



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT
JUDGMENT**

Case No.: 357/2024

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED **YES/NO**

SIGNATURE NGWENYA AJ

DATE 21 JANUARY 2026

In the application between:

BHEKI MAURICE CELE

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

LINK NO: 4131702

JUDGMENT

NGWENYA AJ

[1] The Plaintiff sued the Road Accident Fund (“the Fund”) for injuries arising out of an accident that happened on or about the 16th of July 2017, near R[...] E[...] Road, Nelspruit, Mpumalanga Province, when two vehicles collided.

[2] The Defendant filed its plea, including two special pleas.

[3] At the hearing, the parties agreed that I should first determine the special pleas. In fact, I was asked to deal only with one of the special pleas, i.e., the special plea on prescription. This special plea is couched in the following terms:

“The Plaintiff is required in terms of section 23(3) of the Road Accident Fund Act 56 of 1996 to issue and file summons within period of 5 years from the date the cause of action arose

The Defendant pleads that the Plaintiff’s claim in his personal capacity has become prescribed in that a period of 5 years within which the Plaintiff was supposed to issue and serve summons to the Defendant has expired.

The Defendant pleads that the period of 5 years from the date of the cause of action has elapsed on the 15th day of July 2022.

The Plaintiff issued his summons on the 31st of January 2024. Under the circumstances, the Defendant pleads that the Plaintiff’s claim has become prescribed.”

[4] The Plaintiff replicated as follows:

“Ad paragraph 1, 2, 3 and 4

1.1 The contents of this paragraph are denied and in application of the denial the Plaintiff admits as follows:

1.1.1 The Plaintiff lodged a claim on his own accord and appointed the Road Accident Fund to act on his behalf.

1.1.2 During this period, the Plaintiff could not have been expected to issue summons as he was represented by the Road Accident Fund.

1.1.3 On the 24th of January 2022, the Plaintiff terminated the mandate of the Road Accident Fund and appointed Nkhwashu-Magaggula

Attorneys as his attorneys of record. This when the Plaintiff could have reasonably expected to issue as the RAF could not issue summons against itself. A copy of the termination of mandate, notice of entrance as attorneys of record and special power of attorney attached hereto and marked "NM1", "NM2" and "NM3" respectively."

[5] Both counsel for the Plaintiff and the Fund addressed me, after which I requested further submissions in terms of heads of argument. Indeed, the parties filed their heads of argument.

[6] In its heads of argument, the Plaintiff dealt with the background and stated as follows:

[6.1] The accident took place on the 16th of July 2017

[6.2] On the 21st of July 2014, the Plaintiff lodged its claim directly with the Fund.

[6.3] The Fund failed to finalise the claim and further failed to inform the Plaintiff that the claim would prescribe.

[6.4] When the Plaintiff realised that the Fund was neglecting the claim, he approached attorneys, terminated the Fund's mandate on the 25th of January 2022, and, through the attorneys, issued summons on the 31st of January 2024.

[7] It then referred to case law and legislation. I was referred to the case of *Lottering v RAF and Another 2021 ZANCHC 36 (13 August 2021)*. I was referred to the paragraph where the court found that, where the Fund represents a claimant in settling a claim without external legal advice, a greater duty of care rests on the Fund to take all reasonable steps to prevent the claim from prescribing. The court, dismissing the Fund's special plea of prescription, found it unjust for the Fund to benefit from its inaction.

[8] I was then referred to section 12(3) of the Prescription Act, which deals with prescriptions in general. I also referred to another case, *Ralph v The Road Accident Fund* 2014/03112 [2016] ZAGPJHC 94. This case also echoed the sentiments mentioned in the case above. Lastly, I was referred to the case of *Road Accident Fund v Mdeyide* (CCT/10/10) [2010] ZACC 18; 2011 (1) 1 BCLR 1 (CC); 2011 (2) SA 26 CC (30 September 2010).

[9] The Fund also submitted heads of argument and dealt with the background as follows:

[9.1] The Plaintiff lodged a direct claim with the Fund on the 21st July 2017.

9.2 On the 24th of January 2022, the Plaintiff terminated the mandate of the Fund and instructed attorneys.

9.3 On the 25th of January 2022, the Plaintiff's attorneys served a termination of mandate and a notice of appointment as attorneys of record.

9.4 On 31 January 2024, the Plaintiff issued a summons, and the summons was served on the 24th of February 2024.

[10] The Fund then also referred to legislation and case law.

[11] First, I was referred to section 23(3) of the Road Accident Fund 56 of 1995. The Fund submitted that, under this section, a claimant has 5 years to issue a summons.

[12] I was further referred to the case of *Van Zyl NO v Road Accident Fund*, in which the court held that prescription in relation to the Road Accident is regulated by section 23(1), which supersedes all other laws governing prescription.

[13] It also referred to another case; in fact, it is the same case the Plaintiff referred to, except that the Fund cited a section in which the Constitutional Court said there is a difference between the Prescription Act and the RAF Act.

[14] It then concluded that the prescription started running on the 16th of July 2017.

DISCUSSION

[15] From the onset, I need to make it clear that section 12(3) of the Prescription Act is not applicable to the RAF matters. Therefore, the Fund's contention that section 12(3) is not applicable in this matter is correct, as clearly stated in the Constitutional Court judgment. However, that is not the end of the matter.

[16] There was no evidence, oral or otherwise, led by the parties. From the submissions, I gathered the following:

[16.1] The Fund has not disputed that it had assumed the Plaintiff's legal representation before the Plaintiff's current attorneys came on record.

[16.2] The Fund has not disputed that it did not process the claim until it prescribed.

[16.3] The Fund has not disputed that the Plaintiff terminated the Fund's mandate because the latter failed to process the claim.

[17] It is true that, through its internal claims system, the Fund acted as the Plaintiff's legal representative. Accordingly, it had a duty to ensure that the Plaintiff's claim was properly dealt with. I find that the Fund did not handle the Plaintiff's case with care.

[18] The Fund's argument that the mandate was terminated five months before expiry of the 5 years, and that it prescribed in the hands of the Plaintiff's current attorney, may seem valid at face value. However, I find that the Fund should not benefit from this, as stated in the cases referred to by the Plaintiff. Those cases do

not address the situation in which the mandate is terminated before the prescription takes effect. Those cases deal with matters where prescription has already taken place. Therefore, the question in this matter is slightly different in that Plaintiff's attorneys came on record 5 months prior to the prescription. The question is: should they be blamed for not issuing summons within the 5-month period?

[19] I find that they should not be blamed, as the Plaintiff should have the full benefit of the 5-year period afforded to it by the statute. In this instance, the Fund wasted 4 years and 7 months, and no explanation has been offered for this. It would be unfair to expect the Plaintiff and the attorneys to work on the summons hastily within a shorter period, when the statute affords the Plaintiff 5 years to do so.

[20] In the premises, I find that the matter has not prescribed, and I make the following order:

1. The Defendant's special plea on prescription is dismissed.
2. The Defendant is ordered to pay the Plaintiff's costs on High Court Scale C.

T S NGWENYA AJ
ACTING JUDGE OF HIGH COURT,
MPUMALANGA, MBOMBELA

Date of hearing: 09 JUNE 2025

Date of judgment: 21 JANUARY 2026

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