THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

CASE NO: 228 / 2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 30 January 2026

SIGNATURE

In the matter between:

NELLY ZITHA **PLAINTIFF**

ID NO. 8[...]

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

RATSHIBVUMO DJP:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down is deemed to be 30 January 2026 at 14H00.

[1] Introduction.

The Plaintiff lodged a claim for past and future loss of earnings and/or loss of earning capacity against the Defendant, which is a statutory body established in terms of the Road Accident Act no. 56 of 1996 (the Act). The Plaintiff alleged that this loss emanates from the injuries she sustained in a car accident that happened on 01 July 2022 along R40 in Acornhoek. The Defendant raised a special plea against the claim to the effect that the Plaintiff failed to comply with the provisions of section 24 of the Act in that she failed to complete Form RAF1, or she failed to complete it with substantial compliance (with the statutory requirements).

[2] In reply, the Plaintiff contends that she substantially complied with the provisions of section 24 of the Act and/or that if she did not comply, the Defendant should be estopped from raising a special plea, as they confirmed in a telephone conversation with the Plaintiff’s legal representative that they had received a claim from the Plaintiff.

[3] Background

No evidence was presented by either party. They both argued the case on the understanding that the facts were common cause.

[4] The Plaintiff completed four RAF1 forms. The first one appears as an attachment to a letterhead of the Plaintiff's attorneys dated 08 December 2022.[1] No reference is made to Annexure NZ2 in the Defendant's special plea or in the Plaintiff's reply. Failure to refer to this document indicates that its inclusion may have been in error. The Plaintiff may have realised that it was unhelpful because it bears no date stamp affixed by the Defendant to acknowledge receipt, no proof or allegation was made that it was sent by registered mail, and it is not in the Defendant's system. Several pages of this form were incomplete, and where deletions occurred, they are not confirmed by signatures. For these reasons, failure to refer to this document is commended. The court, however, laments its inclusion in the record. From this form, it can, however, be deduced that the Plaintiff has always been represented by the same firm of attorneys, Mabjana Thulare Attorneys.

[5] In her reply to the special plea, the Plaintiff referred to the next RAF1 form she completed and submitted to the Defendant on 17 February 2023 as her first lodgement. The Defendant objected to this lodgement on several bases on the same date of lodgement.

[6] The reasons for objection include, but are not limited to, the form containing ticks, dashes, deletions, and alterations that are not confirmed by signatures; RAF4 not having been completed for serious injuries; and payslips, proof of income, and medical reports not having been attached.

[7] Following the objection noted above, the Plaintiff submitted another RAF1 form. She refers to this as the second lodgement. According to this form, the Plaintiff's claim was based on general damages and future medical expenses. The Defendant has since settled this claim.

[1] See Annexure NZ2 on p. 30-22 on Court Online

[8] The Plaintiff alleges that she submitted the last RAF1 form to the Defendant on 10 March 2023. She refers to this as the third and final lodgement. The claim in this form was limited to loss of past and future earnings and/or loss of earning capacity. The Defendant could not verify this submission as it is not in its system. The Defendant made its submissions on the assumption that the lodgement was made by the Plaintiff as alleged, stating that non-compliance persists. I will deal with those issues later in this judgment. It is appropriate to examine the statutory requirements first.

[9] <u>The statutory provision.</u>

The relevant parts of section 24 of the Act provide,

> "24 Procedure
>
> (1) A claim for compensation and accompanying medical report under section 17 (1) shall-
>
> *(a)* be set out in the prescribed form, which shall be completed in all its particulars;
>
> *(b)* be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.
>
> …
>
> (4) *(a)* Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.
>
> *(b)* A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words 'not applicable' shall be inserted.
>
> *(c)* A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.
>
> ...

(6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent-

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and

(b) before all requirements contemplated in section 19 *(f)* have been complied with: Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be.

[10] In *RAF v Busuku*[2]*,* the Supreme Court of Appeal held that the test on whether there was substantial compliance is an objective one:

> "It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in "*SA Eagle Insurance Co Limited v Pretorius*" reiterated that the test for substantial compliance is an objective one."

[11] <u>Discussion.</u>

The question of whether there was substantial compliance in this case requires an analysis of the form(s) allegedly submitted. Unfortunately, the court is not in a position to tell if the form completed in the "first lodgement" (that is, the form handed in on 17 February 2023) was substantially compliant with the statutory requirements because it does not form part of the record. In the reply, the Plaintiff attached the RAF1 form titled Annexure NZ2, which is dated 08 December 2022. Any reference by the Plaintiff to Annexure NZ2 as RAF1 form submitted on 17 February 2023 must have been erroneous.

[12] The state of the form that was submitted to the Defendant on 17 February 2023 can only be presumed through the reading of the Defendant's letter of objection. Whatever it may have contained is now immaterial for evaluation

[2] 2023 (4) SA 507 (SCA). See also *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA) para 19.

purposes, since, in completing another form, the Plaintiff appears to have accepted the objection. It will now be pointless to evaluate the compliance in the completion of that form, even if it were part of the record.

[13] Following the Defendant's objection dated 17 February 2023, the Plaintiff submitted a newly completed RAF1 form dated 31 July 2023.[3] In this form, the Plaintiff claimed for general damages and future medical expenses. This claim was settled and paid by the Defendant. The Plaintiff's attorney made sure that every page of this form contained the Defendant's date stamp. Nothing material arises from this form because it was settled.

[14] Without prompting from anyone, the Plaintiff completed another RAF1 form, which was submitted to the Defendant on 10 November 2023. It is unclear why the Plaintiff chose to lodge claims in a fragmented manner. However, her counsel defended this stance as deliberate. The form completed on 10 November 2023 is not available in the Defendant's system. This form, however, was discovered by the Plaintiff on 25 March 2025. Whereas the RAF1 form contains 17 pages, the form discovered by the Plaintiff, as submitted to the Defendant, has eight pages, with pages 3, 5, 10-16 missing.

[15] Although the Plaintiff's attorney knew from the lodgement dated 31 July 2023 that the Defendant should stamp every page of the form, none of the pages in this form had a date stamp, except page 17, which also contained the Plaintiff's signature. Interestingly, page 17 of this form has the Defendant's date stamp of 31 July 2023. On closer inspection, this page was removed from the RAF1 form submitted on 31 July 2023, which the Defendant settled. On face value, this appears to have been a misrepresentation of the facts.

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[3] See p. 028-27 on Court Online.

[16] Failure to discover a complete RAF1 form submitted by the Plaintiff to the Defendant precludes evaluation of whether there was substantial compliance, as no such form is on record. For that reason, the Plaintiff cannot meaningfully contest the Defendant's special plea. For this reason alone, the special plea stands to be upheld.

[17] The Plaintiff's claim also stands to be dismissed for being unenforceable. Section 24 of the Act provides that "[N]o claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent…" From 10 November 2023, the date of lodgement of the RAF1 form, to 23 January 2024, makes it 75 days. This falls short of the 120-day requirement under the statute.

[18] <u>Conclusion.</u>

The more sensible approach the Plaintiff could have adopted was to remove the matter from the trial roll to address compliance first. After all, she is the one who chose a fragmented approach in lodging her claims. In so doing, she allowed the Defendant to evaluate every form she lodged individually. She should have known before defending her stance against the special plea that she did not have the lodged copy of the RAF1 form and/or that at the time she issued the summons, 120 days had not yet lapsed. Uploading an incomplete form, with pages removed from another submitted form, should be discouraged.

[19] For the reasons above, the special plea should be upheld. There is no reason costs should not follow the outcome.

[20] <u>Order.</u>

I therefore make the following order:

20.1 The special plea is upheld.

20.2 The Plaintiff's claim does not comply with section 24 of the Road Accident Act and, as such, is unenforceable.

20.3 The Plaintiff's claim is dismissed with costs.

TV RATSHIBVUMO
DEPUTY JUDGE PRESIDENT
MPUMALANGA DIVISION OF THE HIGH COURT

APPEARANCES:

FOR THE PLAINTIFF:	**ADV. T MASHABANE**
INSTRUCTED BY:	**MABJANA THULARE ATTORNEYS**
	POLOKWANE
C/O:	**BM NDLOVU ATTORNEYS**
	MBOMBELA
FOR THE DEFENDANT:	**MS. GP MOKOENA**
INSTRUCTED BY:	**STATE ATTORNEY**
	MBOMBELA
DATE HEARD:	**28 JANUARY 2026**
JUDGMENT DELIVERED:	**30 JANUARY 2026**