



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

CASE: 2608/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED
<u>11 March 2026</u> DATE
 SIGNATURE

In the matter between:

MAKHOSONKE AMOS MTHIMKHULU

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 11 March 2026 at 10h00.

JUDGMENT

MANGENA AJ:

[1] Plaintiff instituted a claim against the Road accident Fund (RAF) arising out of the driving of a motor vehicle accident which occurred on or about 16 January 2022.

[2] In the particulars of claim, he avers that he suffered damages in the amount R 9 300 000.00 which comprises of the following:

1.1 Future medical expenses:	Undertaking
1.2 Past medical expenses:	R 1000 000.00
1.3 Past loss of income:	R 300 000.00
1.4 Future loss of income:	R 4000 000.00
1.5 General damages:	R 4000 000.00

[3] Merits were settled in favour of the plaintiff and quantum remains outstanding in respect of all heads of damages.

[4] When the matter came for trial, counsel advised me that the defendant has raised a special plea of non-compliance with the provisions of Section 24 of the Road Accident Fund Act of 1996, as amended. By agreement between the parties, the special plea was to be argued first, and quantum had to stand over for later determination.

[5] The essence of the defendant's special plea is that plaintiff's claim for past medical expenses, past loss income, future loss of income as well as future medical expenses is not substantially compliant in that the prescribed form by the plaintiff was not completed in all its particulars save for general damages. The contention by the defendant is that plaintiff was required to indicate in the claim form the various heads of damages upon which the claim is based. Because he did not do so, he cannot enforce the claim by way of summons, nor can he submit a new (additional) RAF 1 form. According to the defendant, plaintiff can only submit one claim form.

[6] In addition to the above defendant alleges that by submitting an additional form which does not bear a stamp of the RAF the claim for additional head of damages should be

rejected as invalid and unenforceable. There is also an argument raised that the claim may for that reason be regarded as fraudulent though no evidence was adduced to support this allegation.

[7] Plaintiff denies allegations of fraud and argues that there is simply no legal basis upon which such a claim can be made. The fact that the RAF 1 claim form does not bear a stamp cannot be a reason for rejecting it as invalid. It is not a peremptory requirement of the Act that a claim form should be stamped on all pages before the claim can be said to be valid.

[8] Mr Magagula, counsel for the plaintiff is correct in his submission that the law does not prescribe a requirement that a claim form should be stamped before the court can accept it as valid for purpose of enforcement of the claim. This is because the act of stamping a form is an internal administrative process within the exclusive control of the RAF. The claimant bears no responsibility whatsoever for ensuring that the form is stamped on all pages or at all. Of course, this is not to say that the defendant cannot raise a defence that the claim was not lodged and therefore not unenforceable. However, in raising the defence the fund cannot rely on non-compliance with its own internal administrative process to defeat the claim.

[9] The RAF Act allows the lodgment of claims through registered mail and a claimant who is confronted with a defence that his/her claim has not been lodged, need only produce proof of lodgment to defeat that defence. To require the claimant to bear the responsibility for the fund's internal processes will not only be burdensome but too onerous as he does not have control over the process. Accordingly, the issue about the stamp is pure red herring and should in all fairness not keep us detained any further because it is not a prescribed legal requirement for the validity of the claim.

[10] This now brings me to Section 24 of the RAF Act. The purpose of section 24 has been the subject of many cases and has received the attention of both the Supreme Court of Appeal as well as the Constitutional Court. The position is that a claimant is required to submit a completed RAF 1 claim form which substantially with the requirements prescribed in the Act and the Regulations. The claimant should provide all the information necessary to enable the Fund to investigate the claim and determine the extent of its liability, if any.

[11] The test in assessing whether a claim complies substantially with the prescribed requirements is an objective one. The prescribed form must be examined to see whether or not on all information it contains, a reasonable insurer would have been prevented by any omission or inaccuracy therein from properly investigating the claim and determining its attitude towards it. The minimum amount of information to be supplied includes the identity of the claimant, the accident, the identification of the insured motor vehicle, the injuries and the loss caused thereby, and the compensation claimed.

[12] In *Van Zyl MM v RAF*, (34299/2009) 2012 SA GSJ (11 June 2012) Satchwell J dealt with the meaning of a claim and arrived at a conclusion that the Act does not refer to many claims or rights. There is only a claim for compensation which is in respect of “any loss or damage” suffered. The Act does not spell out rights or claims in respect of different causes of loss or damage. Her conclusion, with which I agree, was guided by the authority of the Appellate Division in *Evins v Shield Insurance*, 1980 (2) SA 814 (A) where Corbett JA expressed the legal position as follows:

“a plaintiff who suffers bodily injury will at common law and under legislation have a single cause of action in respect of damages claimable by him whether such damages relate to patrimonial loss or constitute a solatium for pain and suffering, disfigurement, disability, etc”.

[13] As I see it, failure by the claimant to indicate an amount for a particular head of damage in the Raf 1 claim form cannot be a basis for the fund to refuse to assess the claim for additional head of damages submitted later through another RAF claim form or directly in the summons when that claim arises from the same cause of action. This is so because a delictual claim is based on a cause of action and not head of damages. Damages constitute an element of a delict and needs to be proven together with other requirements before the wrongdoer can be said to be liable for the loss wrongfully committed by his act or failure to act.

[14] Writing on this aspect in the matter of Mukwevho v RAF, (3864/2020) [2024] ZALMPPHC 179 (15 November 2024), Monene AJ said the following:

“It is not our law that if a party does not list a particular head of damages at lodgement of a claim or subsequent pleading, such a claim as it arises from the same facts or cause of action prescribes as separate from other claims or the main cause of action”.

In Nonkwali v RAF (105/2007) [2008] ZASCA 3 (6 March 2008) the SCA per Maya JA (as she then was) clarified this point as follows:

“Authorities are legion to the effect that a plaintiff who claimed for damages sustained as a result of wrongful and negligent driving under the Act’s predecessors had but a single, indivisible cause of action and that the various items constituting the claim were thus not separate claims or separate causes of action”.

The interpretation, in my view, necessarily extends to claims brought under the Act as it has the same objective and effect as these previous statutes.

The effect of this finding cannot be articulated better than Corbett JA did in Evins v Shield Insurance Co Ltd, 1980 (2) SA 814 (A) at 836 C-E. There the court dealing with the

concept of a single cause of action in the context of prescription with regard to the amendment of a plaintiff's claim as originally pleaded by him, said:

“where a plaintiff seeks by way of an amendment to augment his claim for damages, he will be precluded from doing so by prescription if the new claim is based upon a new cause of action and the relevant prescriptive period has run, but not if it was part and parcel of the original cause of action and merely represents a fresh quantification of the original claim or the addition of a further item of damages”.

The cause of action is one and indivisible for prescription purposes and portions thereof cannot be excised and be said to have prescribed when the cause of action to which they belong has not prescribed.

[15] I fully align myself with the above sentiments. This is in line with the “once and for all” rule which requires a party with a single cause of action to claim in one and the same action whatever remedies the law accords him. The rationale underlying the rule is that, if a cause of action has previously been finally litigated between the parties, then a subsequent attempt by the one to proceed against the other on the same cause for the same relief can be met by an exception *rei judicatae vel litis finitiae*. The rationale in our law is to prevent inextricable difficulties arising from discordant or conflicting decisions due to the same suit being aired more than once in different judicial proceedings or actions. The Rule has its origins in considerations of public policy which require that there should be a term set to litigation and that an accused person or defendant should not be twice harassed in respect of the same cause. *Olesitse NO v Minister of Police* (470/2021) [2022] ZASCA 90 (15 June 2022) at para 19 -20 and 2024 (2) BCLR 238 (CC) at para 51-52.

[16] During oral submissions I asked counsel to share their views on the judgment of *Zitha v RAF*, (228/2024) [2026] ZAMPMBHC 7 (30 January 2026) authored by Ratshibvumo DJP. Mr Mathebula for the defendant unsurprisingly placed much reliance on it and submitted that the defendant fully endorses the interpretation and the reasons underpinning it. Mr Magagula contended otherwise and submitted that he does not support the interpretation of section 24 contained in the judgment.

[17] As I see it, *Zitha* does not introduce a new approach to the interpretation of the provisions of section 24 of the RAF Act. It confirms the correctness of all the previous judgments on this issue including *RAF v Busuku*. The findings it makes in relation to the RAF claim form was case specific and it is no authority for the proposition by the RAF that a claimant cannot enforce a claim for heads of damages not previously mentioned in the RAF claim form nor does it say that there can be no instance where a claimant can submit an additional RAF claim form. All what it says is that if this were to happen, the claimant should be able to provide an explanation if required to.

[18] From my reading of the judgment, the defendant raised several discrepancies with the form, and the plaintiff or his counsel could not provide a plausible explanation in answer to the queries. It then gave rise to suspicion of it being a fraudulent transaction, but no specific finding was made in this regard.

[19] The above is not the case. No material discrepancies have been raised in the instant case except that the claim form was not stamped. The plaintiff explained that the form was acknowledged and processed by the defendant after it was lodged through a registered mail. An objection was raised within a period of 60 days from the date of submission. The objection letter stated that the defendant does not accept documents sent via e-mail or posted and informed plaintiff that it will raise a special plea should

summons be issued. No allegations of fraud were made nor was it stated that the Act prohibits a party from submitting more than one claim form. The inference is inescapable that this appears to have been a standard letter as it was not aligned to the facts.

[20] The summons was already issued, and the defendant had already pleaded to the claim. Once summons is issued the defendant pleads to the claim as it appears in the summons as pleaded by the plaintiff and not how that claim was described in the claim form. It is the claim in the summons that the plaintiff advances against the defendant and to which he/she must plead.

[21] I therefore remain unpersuaded that Zitha is on point in so far as the facts of this case are concerned. It is clearly distinguishable and finds no application in this matter. The reliance on it is misplaced and the special plea should accordingly fail.

[22] It is ordered that:

22.1 The special plea is dismissed;

22.2 The defendant is ordered to pay costs on a party and party scale B of the high court tariffs.



M I MANGENA

**ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA**

APPEARANCES:

Attorney for the Plaintiff:

Ms EM Mabaso, Mabaso Attorneys

Pegasus Building 1 210

Amarand Avenue Menlyn Maine

Pretoria,

0181

Tel: 013 752 3069/ 072 098 3611

C/O NP MADONSELA ATTORNEYS

38 Mostert Street

Cheritta Building Second Floor, Unit 7

Mbombela

Tel: 013 752 3069

Counsel for the Plaintiff:

Advocate Magagula

E-Mail: adv.magagulachambewrs@maglaw.co.za

Attorneys for the Defendant

Ms G Mokoena

The State Attorney Mbombela

3rd floor, Admin Building,

West wing

R104 Samora Machel Drive

Mbombela

Tel: 013 101 3722

Counsel for the Defendant:

Advocate Mathevula

E-Mail: ritomathevula@duma.nokwe.co.za

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