IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

JUDGMENT

Case Number: 2436/24

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **NO**

30/04/2025 [redacted]

DATE SIGNATURE

In the matter between:

MATHEBULA VUSI ALFRED **PLAINTIFF**

And

ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

KEKANA AJ

INTRODUCTION

[1] This is the adjudication of the special plea raised by the defendant that the plaintiff issued the summons pre-maturely and secondly that the claim in respect of the loss of earnings and future medical expenses has prescribed.

BACKGROUND

[2] The plaintiff was involved in an accident which occurred on the 16th September 2021. He lodged a claim against the RAF on the 18th July 2023 for compensation arising from injuries sustained in the accident. He claimed general damages. On the 28th May 2024 the plaintiff's attorneys issued summons claiming general damages, future medical expenses and loss of earnings.

FIRST SPECIAL PLEA – PRE-MATURE SUMMONS

[3] The first special plea raised by the defendant is that the summons was issued pre-maturely.

LEGAL FRAMEWORK

[4] Section 24(1) of the Act requires a fully completed claim form including medical reports to be lodged before legal action can be taken. Further that precise details in respect of each item under the heading compensation claimed be given and be supported by vouchers where applicable.

[5] Section 24(6) of the Act provides as follows: "No claim shall be enforceable by legal proceedings commenced by summons served on the Road accident 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 agents as contemplated in subsection 1; and

(b) before all requirements contemplated in section 19f 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".

SUBMISSIONS

[6] The defendant's submission is that the summons was issued prematurely because the plaintiff issued summons before the lapse of the prerequisite 120 days in respect of the loss of earnings and future medical expenses claim. The defendant contends that the plaintiff issued summons without complying with

the provisions of section 24(6) of the Road Accident Fund Act 56 of 1996 (the Act) and therefore the plaintiff's claim is premature and/ or legally defective and thus ought to be dismissed. The defendant argued that because the plaintiff only complied with the requirements for the lodgment of the loss earnings and medical expenses on the 11th September 2025, the summons issued on the 28th May 2024 were premature in respect of the loss of earnings and medical expenses. The defendant further contends that the 120-day period is mandatory and the plaintiff failed to comply.

[7] The plaintiff submission is that a new RAF 1 form was not required because the addition of new heads of damages did not introduce a new cause of action.

ANALYSIS

[8] The defendant does not take issue with the initial claim form submitted by the plaintiff in which the plaintiff claimed only general damages, impliedly the form was compliant. In my view the defendant's contention that the plaintiff ought to have submitted a new claim form in respect of the loss of support and future medical expenses claim prior to issuing summons produces untenable consequences. The effect of this contention is that plaintiffs must restart the claims process every time they expand or refine their damages, even when the original claim was already valid.

[9] On this approach, a plaintiff who only becomes aware of a further injury after the expiry of the prescription period, or shortly before such expiry, would be precluded from incorporating that claim into the summons until the prescribed 120-day period has elapsed after submitting a new RAF 1. Should

the plaintiff proceed to issue summons prior to the expiry of that period, the RAF would be entitled to raise a special plea on the basis that the summons was issued prematurely. Conversely, in case of a claim that is 120-day short of prescribing, if the plaintiff was to await the lapse of the 120-day period, the RAF would then be entitled to raise a special plea of prescription.

[10] This would result in a situation where a particular head of damages would be said to have prescribed while the underlying cause of action remains intact. Such an outcome is unsustainable. A head of damages cannot be assessed in isolation. Upon acceptance by the RAF that the plaintiff is entitled to compensation arising from the injuries sustained in the accident, the determination of the various heads of damages necessarily follow as part of a single, indivisible claim.

[11] In Nokwali v RAF 2009 (4) SA 333 (SCA) The court a quo upheld the special plea on the basis that Ms Nokwali's claim form did not meet the requirements of section 24 of the Act for failure to list the head injury sustained which was discovered three years after the collision, after the claim was lodged. Ms Nokwali had however amended her pleadings to include the injury upon discovery. The high court further held that even if Ms Nokwali had a valid claim, it had prescribed by reason of the provisions of section 23 of the Act.

[12] The Supreme Court of Appeal held that it was not necessary to amend the claim form to include the additional injury and that amending summons in that regard sufficed. The SCA further held that the claim in respect of the additional injury did not introduce a new cause of action and was merely an additional item to her original cause of action.

[13] In Seboko v Road Accident Fund (1683/24) [2026] ZANWHC 48 (10 March 2026) the facts can be summarized as follows: Seboko lodged a claim form that did not include past and future loss of earnings. Seboko later issued summons and included loss of past and future earnings. The RAF defended the action and raised a special plea taking issue with Seboko's loss of earnings which had never been lodged with the RAF. The RAF's contention was that the summons was therefore premature in respect of the claim for loss of earnings. It was common cause that Seboko did not submit an amended RAF 1 setting out a claim for loss of earnings prior to issuing summons.

[14] The court in Seboko followed the principle in Nokwali, finding that Seboko's cause of action arose from a single motor vehicle accident, the RAF was notified of that accident and of the injuries sustained when the RAF 1 form was lodged. The court reasoned that the RAF had an opportunity to investigate the claim, including the potential for loss of earnings arising from those injuries. The court concluded that Seboko was not required to lodge an amended claim form before including the new head of damages in her summons because it merely amplified an existing cause of action.

[15] Similarly in this matter, the newly included heads of damages merely amplifies the existing cause of action by quantifying further heads of damages arising from the same accident. The RAF had an opportunity to assess the claim as it had been provided with the RAF 1 and supporting documents with the details of the accident, injuries sustained by the plaintiff and heads of damages albeit not all heads of damages. The plaintiff followed the prerequisite pre-litigation steps including proper lodgment of the claim which was done on the 18th July 2023 before issuing summons.

[16] In my view the plaintiff was not required to lodge an amended claim form before including the claim for loss of earnings and future medical expenses in the summons because it merely amplified an existing cause of action. Accordingly, the inclusion of loss of earnings and future medical expenses does not introduce a new claim as it arises from the same accident. The defendant's special plea in this regard ought to be dismissed.

SECOND SPECIAL PLEA: PRESCRIPTION

[17] In the second special plea the defendant contends that the plaintiff's claim for future medical expenses and loss of earnings has prescribed since it was lodged after the expiry of 3 years within which the plaintiff had to lodge his claim. The basis of this contention is that, in the initially submitted RAF 1, the plaintiff did not include a claim for loss of earnings and future medical expenses. The above was only included in the subsequent RAF 1 that was submitted to the defendant on the 11th September 2025.

[18] It is common cause that the accident occurred on the 16th September 2021. The plaintiff lodged a claim on the 18th July 2023 claiming general damages. The plaintiff lodged another RAF1 form on the 03rd September 2025 claiming future medical expenses and loss of earnings. On the 19 January 2026 the plaintiff amended his particulars of claim introducing claims for past and future loss of earnings and future medical expenses.

SUBMISSION

[19] Defendant contends that the plaintiff's claim for loss of earnings and future medical expenses has prescribed because the plaintiff failed to lodge the claim within the requisite 3 years. In this regard the defendant refers to the subsequent RAF 1 form that was lodged on the 03rd September 2025.

[20] The plaintiff submitted that the matter has not prescribed and that it was timeously lodged in 2023. The plaintiff argued that the non-inclusion of the loss of earnings and future medical expenses did not require the plaintiff to lodge another RAF1 form. Plaintiff further contends that the summons issued and served in 2024 stayed prescription.

LEGAL FRAMEWORK

[21] Section 10 (1) of the Prescription Act 68 of 1969 provides as follows: "Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt." The relevant prescription period in respect of the plaintiff's claim is 3 years.

[22] It is trite that prescription runs against a debt, and not against each individual head of damages. Where multiple heads of damages arise from the same set of facts, they do not constitute separate debts.

[23] In this regard, the principle was stated in Evins v Shield Insurance Co Ltd 1980 (2) SA 814 (A) at 835 C, a single wrongful act gives rise to one debt, and all damages flowing from it must be claimed together.

[24] The Plaintiff's claim, including the subsequently introduced claim for loss of earnings and medical expenses arises from a single motor vehicle accident. The inclusion of loss of earnings and future medical expenses does not introduce new factual averments but flows from the same cause of action already pleaded.

[25] The claims for medical expenses, general damages, and loss of earnings are merely components of a single, indivisible debt, arising from the same wrongful act.

[26] All damages suffered by the Plaintiff as a result of the negligent driving of the insured driver constitute one cause of action, and not separate causes of action for each head of damages.

[27] In Nokwali v RAF the court held that a subsequently discovered injury does not create a new cause of action. In this regard the Court reasoned that the original cause of action remains intact and the discovery of a new injury does not alter the fundamental basis of the claim.

[28] The subsequent inclusion of a claim for loss of earnings and medical expenses does not create a new debt, but merely amplifies and completes the relief already claimed by the plaintiff in his initial claim against the defendant.

CONCLUSION

[29] In the present matter, no new factual basis has been introduced; the claim remains rooted in the same accident and the additional heads of damages are a natural consequence of the injuries already pleaded. Accordingly, the Defendant's special plea of prescription is without merit.

In the result I make the following order:

1. The defendant's special plea of pre-mature summons is dismissed.

2. The defendant's special plea of prescription is dismissed.

3. The defendant is ordered to pay the costs on a party and party scale B, including costs of the 16th and 17th March 2026.

[redacted]

P D Kekana

Acting Judge of the High Court

Date of hearing: 17 March 2026

Date of judgment: 30 April 2026

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