



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 5814/2024

In the matter between:

CECILIA MATABA PEPENENE

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

Neutral citation: *Pepenene v Road Accident Fund* (5814/2024) [2026] ZAFSHC 272
(05 May 2026)

Coram: MAJOSI AJ

Heard: 25 November 2025

Delivered: 05 May 2026

Summary: Special pleas raised by defendant – non-compliance with s 4(1) read with s 24 of Road Accident Fund Act 56 of 1996 (the Act) – premature summons issued – prescription in terms of s 23 of the Act – special pleas dismissed with costs.

ORDER

1 The defendant's special pleas are dismissed with costs on a party and party scale.

JUDGMENT

Majosi AJ

[1] The plaintiff instituted a claim for damages arising from injuries sustained in a motor vehicle accident on 06 September 2021, whilst being a passenger in a service ambulance on a public road in Bloemfontein, Free State, namely Church Street. The action was defended. The defendant pleaded to the summons and raised three special pleas namely non-compliance with s 24 of the Road Accident Fund 56 of 1956 (the Act), the issuing of a premature summons and prescription. The matter was set down for trial for two days. On the trial date, parties agreed that the special pleas be heard first. Due to their potential dispositive nature, arguments pertaining to the special pleas were heard. This is the basis of my adjudication.

[2] A brief background is as follows. The plaintiff, before issuing summons sent a letter to the defendant on 10 May 2024 and lodged a claim for damages. Annexed thereto was, a RAF 1 form, a certified copy of the plaintiff's identity document, a special power of an attorney, a consent form for access medical records, a SAPS accident report, an affidavit in terms of s 19, various salary advices of the claimant and her medical records.

[3] On 23 July 2024, the defendant caused an objection letter to be sent to the plaintiff's attorneys in that firstly, they failed to comply with the provisions of s 24 of the Act, secondly summons was served prematurely as the plaintiff did not lodge a valid claim and as per the period provided for in s 24(5) of the Act and lastly, that the claim had prescribed as the plaintiff failed to cure the objection within 3 years as required by

s 23(1) of the Act.

[4] The said objection was raised by the defendant in line with Board Notice 271 of 2022 as published in the Government Gazette number 46322 on 6 May 2022 being the Stipulated Terms and Conditions Upon which Claims for Compensation shall be administered in terms of s 4 of the Act. This letter also indicated that the lodgment of the claim is not accepted until such time claimant(plaintiff) corrects same.

[5] For the sake of completeness, the actual objection included the following complaints namely:

- (a) that the medical section of RAF 1 form had not been properly completed in terms of s 24(2) of the Act,
- (b) a certified copy of the claimant's identity document was required;
- (c) the s 19 statement needed to refer to the date of the accident;
- (d) paragraph 15 of the RAF 1 form requiring the claimant's permission/consent to obtain and inspect her medical records was not complete;
- (e) the claim had not been completed in its entirety;
- (f) clarity on the date of the incident;
- (g) official accident report with a sketch plan or case docket had not been supplied;
- (h) medical records were outstanding;
- (i) pay slips pre and post-accident;
- (j) employers' certificate of injured service records; and
- (k) invoices from a medical provider for past medical expenses and proof of payment of medical expenses

[6] The plaintiff issued summons on the 14 of October 2024. The defendant filed their plea on 14 March 2025. In July 2025, the plaintiff subsequently amended their particulars of claim resulting in the defendant filing an amended plea in the very same month raising the aforesaid special pleas. More specifically, that they failed to comply with the provisions of s 24 of the Act, secondly summons was served prematurely as the plaintiff did not lodge a valid claim and as per the period provided for in s 24(5) of the Act and lastly, that the claim had prescribed as the plaintiff failed to cure the objection within three years as required by s 23(1) of the Act.

[7] By lodging an objection to the validity of the plaintiff's claim, the defendant unequivocally indicated that they do not accept the documentation presented to them due to non-compliance and returned all documentation provided.¹ The plaintiff was also informed that prescription on her claim will only be interrupted once a compliant and valid claim has been lodged and should summons be issued, a special plea would be raised in line with the objection.²

[8] Counsel for the plaintiff argued that substantial compliance had taken place as the documents provided to the defendant allowed them to assess the merits of the plaintiff's claim. To that end, I was referred to a litany of cases law in their heads of argument. For the purpose of this judgment, I had regard to *Pithey v Road Accident Fund*,³ wherein it was stated that although the submission of a claim form is peremptory and the prescribed requirements concerning the completeness of the form are directory, substantial compliance with such requirements suffices and that the test for substantial compliance is an objective one.⁴ It was thus submitted that the plaintiff had substantially complied with the Act and that the defendant's special pleas ought to be dismissed with costs.

[9] Transversely thereto counsel for the defendant argued that the plaintiff had not complied with the provisions of s 24 of the Act despite an objection being raised in July 2024 alerting them to the deficiencies in the claim and what is actually required. The defendant thus deployed the said notice to regulate how claimants lodge their claims in order to assess if a particular claim should be accepted or not. The non-compliance with the objections raised thus resulted not only in insufficient information being placed at its disposal, but that the plaintiff prematurely issued summons. Furthermore, due to this non-compliance, the claim had prescribed in terms of s 23(1) read with s 4(1) of the Act as they did not correct same in terms of the required time periods.

[10] It was submitted that in *Legal Practitioners Indemnity Insurance Fund NPC And*

¹ RAF objection letter dated 23 July 2024, paras 3-4.

² Ibid paras 5-6.

³ *Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA); [2014] 3 All SA 324 (SCA).

⁴ Ibid para 19.

Others v Road Accident Fund and Others,⁵ the defendant (RAF) has successfully obtained leave to appeal to the Supreme Court of Appeal after reconsideration was granted. Furthermore, that the case of *Mautla and Others v Road Accident Fund*⁶ is also awaiting adjudication in the Supreme Court of Appeal specifically pertaining to the encumbered notice being reviewed and set aside with an order that claimants resubmit their claims wherein objections were raised and claims were not accepted by the Fund. Moreover, that all three special pleas are to be upheld with costs.

[11] Section 24 of the Act stipulates the specific procedure, forms and medical reports that must accompany a claim for compensation. It also gives a time frame within which a claimant has to respond to an objection raised by the Fund, failing which, no claim shall be enforceable by legal proceedings commenced by the service of summons as per s 24(6) of the Act.⁷

[12] In *Legal Practitioners Indemnity Insurance Fund NPC And Others v Road Accident Fund and Others*,⁸ the full court considered the Minister's constitutional duties in terms of s 7(2) of the Constitution to respect promote and protect the Bill of Rights and held that the RAF 1 form must not become an instrument that obstructs valid claims. The court thus applied the principles laid down in *Road Accident Fund v Busuku*⁹ that the RAF1 form does not call for detailed information, but on the interpretation of ss 24 and 25 of the Act, it calls for the claimant to provide sufficient information to the Fund to investigate the claim.

[13] In the absence of public hearings and comment on the new RAF1 form, the full court concluded that the Minister's action constituted administrative action both the RAF

⁵ *Legal Practitioners Indemnity Insurance Fund NPC And Others v Road Accident Fund and Others* [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP).

⁶ *Mautla & Others v Road Accident Fund & Others* [2023] ZAGPPHC 1843; 2023 JDR 4259 (GP).

⁷ 'Section 24(6) of the Road Accident Fund Act 56 of 1996 provides:

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'

⁸ *Legal Practitioners Indemnity Insurance Fund NPC And Others v Road Accident Fund and Others* [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP) para 37.

⁹ *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA) paras 16-17.

1 and the Board Notice were unlawful and made appropriate orders in that regard.¹⁰ At the time of hearing argument on this special plea, the RAF had obtained leave to appeal to the Supreme Court of Appeal after reconsideration in terms of s 17(f) of the Superior Court Act 10 of 2013, and the matter had been enrolled for hearing. More of this later.

[14] In my view, the plaintiff herein has substantially complied with the requirements of s 24 of the Act for the following reasons. Firstly, it is so that the medical section of the RAF 1 form had not been properly completed. The supporting documents however indicate her actual medical records from Pelonomi and Netcare Hospital which, clearly indicate that she was admitted to the former on 06 September 2021, which injuries she sustained, what treatment she received and when she was discharged. This is more than sufficient for the defendant to determine when she was admitted, to which facility and which doctor treated her upon admission.

[15] Secondly, a certified copy of the plaintiff's identity document was provided separately as attached to the letter dated 10 May 2024. This cannot thus still be considered an issue. Thirdly, although paragraph 15 of the RAF1 requiring the consent of the plaintiff to access and inspect her medical records is blank, she provided them with an affidavit giving them permission to do so. The hospital records also give a clear indication where the hospitals are and her full name and surname. Her unique account number and reference number used at Pelonomi and Netcare is also visible on both for further inspection and verification.

[16] Fourthly, the police accident report attached also not only gives an indication of the reference number from the police station, but also provides an indication of the date of the accident, where it occurred and who the drivers were together with their contact details and a sketch plan. The affidavit of the plaintiff in terms of s 19 does indeed refer to another date. However, when one reads the affidavit together with the accident report form and her date of admission to Pelonomi Hospital, it is easy to surmise that the date of the incident was 6 of September 2021. It must be remembered that the information provided on the RAF 1 form is for the defendant to investigate a claim. A simple query to verify the date of the incident could have been done with SAPS themselves.

¹⁰ Ibid para 12.

[17] Lastly, the plaintiff provided approximately 6 salary advices from the year 2020 until 2022. These salary advices give an indication as to when she was first employed which speaks to her service record and if indeed she continued to work after the accident. It is plain to see from those that she is still employed by the same employer so there is no need for her to provide the defendant with employment certificates from different organisations as she is still employed at the same place and still, according to her salary advice, holding the same job title. I thus conclude that the special pleas raised by the defendant have no merit and must be dismissed.

[18] Even if I am wrong in this conclusion, the Supreme Court of Appeal on 30 April 2026 in *Road Accident Fund and Others v Legal Practitioners' Indemnity Insurance Fund, NPC and Others*¹¹ concluded that the Minister's decision pertaining to the Board notice 271 constitutes administrative action (under the Promotion of Administrative Justice Act 3 of 2000) which is unlawful and falls to be set aside. It dismissed the appeal by the Fund. The order of the full court was confirmed with amendments to paragraph vii to reflect the date of 30 September 2026, in that the Fund would have to:

(v) It is declared that Claimants whose claims were accepted by the Second Respondent ('the RAF') to have been lodged in compliance with the Board Notice and/or the RAF 1 Form are deemed to have been lodged in terms of the RAF Act, and the RAF will continue to investigate and process these claims as lodged claims;

(vi) From 6 May 2022, the prescribed form contemplated in s 24 (1)(a) of the RAF Act shall be deemed to be the RAF 1 third party claim form ('the 2008 RAF 1 Form'), forming part of the Regulations published by the Minister on 7 July 2008 in Government Gazette No 31249, until such time as the Minister prescribes an amendment to the 2008 RAF 1 Form in terms of s 26 of the RAF Act;

(vii) Claimants who sought the lodgement of their claims in terms of the Board Notice or the RAF 1 Form, but lodgement was declined by the RAF or was not acknowledged by the RAF, are afforded a period until 30 September 2024 to resubmit their claims to the RAF in terms of the 2008 RAF 1 Form and those claimants who thereby secure lodgement will enjoy the benefits of such lodgement as from the date on which lodgement was originally sought by them;

(viii) The RAF will take all reasonable measures to inform Claimants referenced in (v) and (vii) above of the contents of this order, which measures shall include the publication of this order in at least three newspapers circulated nationally, and, in addition, the RAF will take reasonable measures to inform the public of this order;

¹¹ *Road Accident Fund and Others v Legal Practitioners' Indemnity Insurance Fund, NPC and Others* [2026] ZASCA 63 para 50.

(ix) The Minister is ordered to adopt and publish a revised RAF 1 Form within 6 months hereof.¹²

[19] This effectively means that claimants such as the plaintiff in this matter is afforded a period of time until 30 September 2026 to resubmit their claims to the RAF as they will enjoy benefits of such lodgment as from the date on which lodgment was sought by them and that they (RAF) is to take reasonable measures to inform the public of this order. In addition to this, the Minister was ordered to adopt and publish a revised RAF1 form within 6 months. The RAF contentions pertaining to the encumbered notice was thus found to be wanting as well as objections raised in terms of this notice.

[20] It is trite that costs follow the result. Counsel for the defendant requested a punitive cost order be made against the defendant given the nature of the special pleas raised. Counsel for the defendant submitted that there were no real grounds for such an order to be made as they were, as a litigant at liberty to raise special pleas. I hereby exercise my discretion and will order that the defendant pays costs on a party and party scale.

[21] Accordingly, it is ordered:

1 The defendant's special pleas are dismissed with costs on a party and party scale.

O R MAJOSI
ACTING JUDGE OF THE HIGH COURT

¹² *Legal Practitioners Indemnity Insurance Fund NPC And Others v Road Accident Fund and Others* [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP) para 55.

Appearances

For the plaintiff:

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