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**IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)**

**CASE NO: 6810/2020**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 28/05/2026

SIGNATURE: Naude-Odendaal J

In the matter between:

**ELITRO ONTORO**

**PLAINTIFF**

and

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGMENT**

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**NAUDE-ODENDAAL J:**

**INTRODUCTION:**

[1] The Plaintiff instituted an action against the Defendant for damages arising from a motor vehicle accident that occurred on 21 January 2017 at Maswiakae, ga Moloji next to St. Rita's Hospital, Limpopo Province. It was pleaded by the Plaintiff in his particulars of claim that the collision occurred between a motor vehicle with registration letters and

numbers W[...] driven by the Plaintiff and a motor vehicle with registration letters and numbers C[...] ("the insured vehicle") driven at the time by Mamushi Abel.

[2] The Plaintiff lodged his claim with the Defendant on 14 January 2020. The action was instituted on 27 October 2020. On or about 11 March 2025, the Plaintiff filed and served an amended Particulars of Claim. The Defendant also served and filed an amended special plea and plea on or about the 20<sup>th</sup> of March 2026, after the Plaintiff has consented thereto in writing on 20 March 2026.

[3] The Defendant raised two special pleas in its amended special plea and plea. The First being a Special Plea of Prescription and the second being a Special Plea of Non-Compliance with Section 24 of the RAF Act, 56 of 1996 as amended.

[4] In respect of the special plea of prescription, the Defendant pleaded that the alleged collision occurred on 21 January 2017. The Plaintiff lodged its claim for compensation through the RAF 1 form stamped by the Defendant on 14 January 2020. The claim was lodged as an unidentified driver claim as details of the insured driver were not included and/or outlined on the claim form as required.

[5] The Defendant objected to the lodgement in that, among others, the insured driver has not been identified and the claim is not substantially compliant. The objection was communicated in writing to the Plaintiff's legal representatives on 25 February 2020.

[6] It is submitted by the Defendant that the claim as lodged by the Plaintiff was for an unidentified driver and was lodged outside the prescribed period of two years. In terms of Section 23 of the RAF Act, read together with Regulation 2(1), it is stated that a claim for compensation in line with Section 17(1)(b) of the act in respect of loss or damage arising from the negligent driving of a motor vehicle where neither the owner nor the driver thereof has been established shall prescribe upon the expiry of a period of two years from date whereon the cause of action arose.

[7] It was submitted that Section 24(5) of the RAF Act dictates that and affords the Defendant a period of 60 days within which to object to an invalid claim. The Plaintiff attended to issue summons on 27 October 2020 and attended to serve same on the Defendant.

[8] On 13 November 2020 the Defendant attended to repudiate the Plaintiff's claim through a letter. It is submitted that the Plaintiff lodged a claim where the identity of the owner or driver of the other motor vehicle is unidentified outside the prescribed period of two years and in the premises, the Plaintiffs claim for compensation has prescribed. The Defendant prays that the Plaintiff's claim be dismissed with costs.

[9] The Plaintiff in its replication admitted that the claim was lodged as an identified driver claim, however the details of the driver were not completed. In addition, the Plaintiff submitted that the said objection by the Defendant to the Plaintiffs claim was never received as the objection was sent to the email address of t[...] whilst the Plaintiffs cover letter of lodgement reflects clearly the Plaintiffs email address as t[...]<sup>2</sup>. The Plaintiff was therefore not served, nor notified of the objection.

[10] The Plaintiff submitted further that in section 8 of the RAF 1 form, the Plaintiff clearly provides that the accident in question was not a hit-and-run accident. At the time of lodgement of the claim, the Plaintiff was not in possession of the docket in relation to the accident in question and was not privy to the details of the insured driver until his attorneys were in possession of the docket. On the 18th of September 2020, the Plaintiff's attorneys however dispatched copies of the docket to the Defendant through its delegated email address for lodgement, before summons was issued.

[11] The Plaintiff submits that the identity of the driver is identified in the docket dispatched to the Defendant on 18 September 2020 and therefore the Plaintiff's claim would only prescribe after a period of three years from the date of the accident. Wherefore the Plaintiff prays that the Defendant's special plea be dismissed with costs.

[12] **Section 17(1) of the Road Accident Fund Act, 56 of 1996** stipulates as follows:-

*"17. Liability of Fund and agents*

*(1) The Fund or an agent shall-*

*(a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;*

*(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,*

*be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum."*

[13] **Section 23(1)** and further **Section 23(3) of the Road Accident Fund Act**, stipulates as follows:-

*"23. Prescription of claim*

*(1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a*

*motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose."*

*And further, Section 23(3):-*

*"(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 17(4)(a) or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose."*

[14] **Section 24 of the Road Accident Fund Act**, deals with the procedure for lodgment of a claim. It stipulates as follows:-

*"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.*

*(2)*

*(a) The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner*

who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.

(b) Where a person is killed outright in a motor vehicle accident the completion of the medical report shall not be a requirement, but in such a case the form referred to in subsection (1)(a) shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's death, a copy of the relevant charge sheet from which it can clearly be determined that such person's death resulted from the accident to which the claim relates.

(3) A claim by a supplier for the payment of expenses in terms of section 17(5) shall be in the prescribed form, and the provisions of this section shall apply mutatis mutandis in respect of the completion of such form.

(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.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

**(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.**

**(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.**" (Own emphasis added)

[15] In the present matter, from a plain reading of the RAF 1 Form, it is clear that the Plaintiff's legal representatives failed to complete the form as required by **Section 24(1)(a) of the RAF Act**, it is however also clear that the Plaintiff did indicate on the form that it was not a hit-and-run accident, although no particulars of the other vehicle or driver were provided.

[16] It is further clear that the Defendant, although having intended to object to the lodged claim within 60 days, failed to do so as the objection was never communicated to the Plaintiff, alternatively received by the Plaintiff as the objection was incorrectly sent to the incorrect email address.

[17] In my view, although the form was not completed as required and therefore not compliant, the failure by the Defendant to validly object thereto, gives rise to the provisions of Section 24(5) of the Road Accident Fund Act in that no objection was communicated to or received by the Plaintiff within 60 days from the date on which the claim was sent by registered post or delivered by hand to the Defendant and therefore the claim shall be deemed to be valid in law in all respects.

[18] The claim must therefore be accepted as being one for an identified driver, of which the particulars were only sent at a later stage, but before summons was issued and therefore the claim has not prescribed in terms of Section 23 of the Road Accident

Fund Act in that the accident occurred on 21 January 2017 and the claim was lodged on 14 January 2020.

[19] The first special plea of prescription is therefore dismissed with costs.

[20] This brings me to the second special plea of the Defendant - Non-compliance with **Section 24 of the Road Accident Fund Act, 56 of 1996**. The Defendant submits that the alleged motor vehicle accident occurred on 21 January 2020, the Plaintiff lodged its claim for compensation through the RAF 1 Form, which was stamped by the Defendant on 14 January 2020. The Plaintiff then issued summons on 27 October 2020.

[21] The Defendant submits that the Plaintiff has elected to issue and serve summons on the Defendant without waiting for 120 days to lapse on its claim for compensation despite the dictates of Section 24(6)(a) of the RAF Act, as amended and therefore the Plaintiff's claim for compensation on General Damages is non-compliant with the provisions of the governing statute, wherefore the Defendant prays that the Plaintiff's claim be dismissed with costs.

[22] In my view, this contention by the Defendant is without any merit and stands to be dismissed with costs. The Plaintiff issued and served summons well over the prescribed 120 days from the date on which the claim was lodged by hand to the Defendant.

[23] In respect of the costs, there is no reason why costs should not be ordered to follow the event.

[24] I therefore make the following order:-

1. The Defendant's first special plea of prescription is dismissed.
2. The Defendant's second special plea of non-compliance with Section 24 of the Road Accident Fund Act, 56 of 1996, as amended, is dismissed.

3. The Defendant is ordered to pay the costs of both special pleas on a party and party scale - which costs are to be taxed on High Court Scale B.

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**M. NAUDÈ-ODENDAAL  
JUDGE OF THE HIGH COURT,  
LIMPOPO DIVISION, POLOKWANE**

APPEARANCES:

HEARD ON : 23 MARCH 2026

JUDGMENT DELIVERED ON: 28 MAY 2026.

This judgment electronically by was handed down circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 28 MAY 2026 at 10h00

FOR THE PLAINTIFF : Mphela & Associates Attorneys Inc.  
Mphela Law Chambers  
30A Bodenstein Street,  
Polokwane, 0699  
[thendo@mphela.co.za](mailto:thendo@mphela.co.za)  
[tshepho@mphela.co.za](mailto:tshepho@mphela.co.za)

FOR THE DEFENDANT : Mr. K. Phaswana  
The State Attorney: Polokwane  
[kabelop@raf.co.za](mailto:kabelop@raf.co.za)