



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

Case No.: 3538/2024

(1) (2) (3)	REPORTABLE: NO OF INTEREST TO OTHER JUDGES: NO REVISED NO
<u>11/08/2026</u> DATE	 SIGNATURE

In the matter between:

NYIKO FORTUNE HLEKANI

PLAINTIFF

And

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

VUKEYA ADJP

[1] Nyiko Fortune Hlekani, ("the plaintiff") instituted legal proceedings for damages against the Road Accident Fund ("the defendant") following a motor vehicle accident

that occurred on 6 January 2016. The defendant entered an appearance to defend the plaintiff's claim. As part of its defence to the plaintiff's claim, the defendant raised a special plea of Prescription and, in turn, the plaintiff raised a replication to the defendant's special plea.

[2] This judgment concerns only the special plea as it addresses the issue of prescription.

[3] The defendant alleges that the plaintiff's claim was not lodged timeously in terms of section 23(1) of the Road Accident Fund Act 56 of 1996 ("the RAF Act") and has therefore prescribed.

[4] It is common cause that the accident which is the bone of contention of the main application happened on 6 January 2016. According to the defendant, the plaintiff was required, in terms of Section 23(3) of the RAF Act to issue and file summons within a period of 5 years from 6 January 2016. It contends that the plaintiff's claim in her personal capacity has become prescribed in that a period of 5 years, within which she was supposed to issue and serve its summons to the defendant expired on 5 January 2021.

[5] It was argued on behalf of the defendant that the plaintiff was aware of the cause of action and the identity of the debtor and therefore nothing stopped the running of prescription of the 5-year period. According to Counsel, the plaintiff failed to state that she did not have the requisite knowledge that she was supposed to issue summons within five (5) years. Counsel argued that it was the plaintiff's responsibility to ensure that her claim was properly instituted and the duty of care only applies where the plaintiff lacked the knowledge. It was therefore submitted that the plaintiff's claim falls to be dismissed with costs.

[6] The plaintiff submitted that having made a direct claim to the RAF, she could not have reasonably known that the matter was still open to prescription. In her defence, she argues that the RAF should have informed her if there was anything outstanding from her side for them to process her claim, but they failed to do so. It was argued on behalf of the plaintiff that the RAF failed to take any steps to enlighten the plaintiff about issues of prescription and can therefore not plead prescription.

[7] Counsel for the plaintiff argued on her behalf that the claimant's lack of knowledge about their rights can be a crucial factor in determining whether a claim has prescribed. He referred this Court to the case of *Moremedi vs Road Accident Fund* (86838/19) [2024] ZAGPPHC 1338 (18 December 2024) where the court held that prescription only begins to run when the claimant has the necessary knowledge of the facts or when they reasonably could have acquired it.

[8] Relying on the case of *Makgati vs RAF* (7316/2022) [2025] ZALMPPHC 27 (12 FEBRUARY 2025), Counsel argued that the RAF has a duty to take reasonable steps to prevent direct claims from prescribing. He submitted that the defendant failed in its duty of care to inform the plaintiff of prescription and to assist her by explaining steps she needed to take to avoid prescription. He prayed for the dismissal of the defendant's special plea.

[9] The issues to be determined in this special plea are whether the plaintiff's claim has prescribed and whether the defendant has a duty to assist a claimant to take steps to prevent a direct claim from prescribing.

[10] The defendant bears the onus to prove that the plaintiff's claim had prescribed by the given date. For the defendant to prove that, he must show that prescription began to run against the plaintiff's claim not later than 5 January 2021. It must also show what the facts are that the plaintiff was required to know before prescription could commence running and that the plaintiff had knowledge of those facts on or before 5 January 2021.

[11] Section 23 of the RAF Act provides that:

(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;

(2) Prescription of a Claim for compensation referred to in subsection (1) shall not run against:

(a) a minor;

(b) any person detained as a patient in terms of any mental health legislation; or

(c) a person under curatorship.

(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose. [My emphasis]

[12] Section 24(1) requires that a claim for compensation be lodged in the prescribed manner and form. It provides that a claim for compensation and accompanying medical report under section 17 (1) shall be set out in the prescribed form, which shall be completed in all its particulars; 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.

[13] There was no dispute between the parties that the plaintiff's application was lodged with the defendant in terms of section 24 of the RAF Act and that in terms of section 23 (3) it would prescribe before the expiry of five years from 6 January 2016, namely, 5 January 2021.

[14] It remains common cause that the accident happened on 6 January 2016 and that the plaintiff issued summons on 31 July 2024, seven (7) years after the accident happened. It is also undisputed that the plaintiff personally lodged her claim against the defendant by submitting her RAF 1 form to the defendant on 12 August 2016 with the assistance of the defendant's employee. The claim was captured on the defendant's system under claim number 546/12420436/09/0 with link number 3938799, at this point, the claim had not prescribed.

[15] No evidence was led in this application and the court relied on the parties' pleadings, namely, the plaintiff's particulars of claim, the defendant's plea, special plea and the plaintiff's replication to the special plea. In her particulars of claim the plaintiff stated that she would, from the date of lodgement of claim to date, call the defendant's

relevant claims handler to check progress of the claim and the defendant would on all occasions tell the plaintiff to be patient as the claim was still under investigation.

[16] The plaintiff, being a layperson and having made a direct claim to the defendant, was not reasonably expected to have known that the matter was still open to prescription. Instead of being assisted by the defendant's employees and informed of her claim which was due to prescribe, she was told to be patient as the RAF was busy investigating her claim. From the papers which were presented before me, there is no indication that the defendant was doing anything to assist the plaintiff. The defendant's employees should have informed the plaintiff if there was anything outstanding from her side for them to process her claim, but they failed to do.

[17] In *Lottering v Chief Executive Officer of the Road Accident Fund N.O and Another* (1541/2018) [2021] ZANHC 36 (13 August 2021) Williams J remarked as follows:

"25. The court held in Johannesen that where the RAF represents to a claimant that it will assist in settling a claim without external legal advice, a greater duty of care rests on the RAF to take all reasonable steps to prevent claims prescribing in its hands – which steps would include responding to the claimant's enquiries, bringing the matter to finality, and informing the claimant about the rejection or prescription of the claim. In the absence of evidence by the RAF of the reasonable steps taken to contact the plaintiff or to properly process the claim, it would be unjust for the RAF to benefit from inaction on its part.

26. I agree with the responsibilities and duties of the RAF expressed in the above-mentioned matters. In addition, Mr Nortier has referred to s 24(5) of the Act as being the nail in the coffin for the RAF. S 24 (5) provides the RAF with 60 days in which to object to the validity of a claim, failing which it shall be deemed to be valid in law in all respects."

[18] When the plaintiff, a layperson, lodged her claim directly with the defendant, the defendant assumed the position of being the plaintiff's legal representative. This means it would have to advice, assist in settling the claim, respond to the plaintiff's

enquiries, assist in bringing the matter to finality, and inform the plaintiff about the rejection or prescription of the claim as it was stated in Lottering (supra).

[19] There is no evidence that the defendant alerted the plaintiff to the possibility of her claim prescribing. I agree with what was stated in Makgati (supra) that the defendant's duty to care extends beyond just accepting the lodgement of the plaintiff's claim. The defendant, particularly where direct claims are lodged has a duty to take reasonable steps to prevent claims from prescribing.

[20] Clearly, the defendant failed in its duty of care and ensuring that the plaintiff is provided with enough information relating to the progress made in her claim and at least information relating to a looming prescription of her claim. My considered view is that the defendant has failed to discharge the onus it had to prove that the plaintiff's claim had prescribed and that the defendant's special plea of prescription falls to be dismissed.

[21] Consequently, the following order is made:

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

21.2. The defendant is ordered to pay the plaintiff's costs on High Court Scale B.



VUKEYA LD

ACTING DEPUTY JUDGE PRESIDENT

APPEARANCES:

For the Plaintiff: Adv. Musa Sithebe

Plaintiff's Attorneys:

Ms Madingana Matimu Attorneys

Tel: 015 280 0773

Cell: 068 1 63 2120

Cell: 083 222 9888 (Counsel)

Email: Madinganamatimu@gmail.com
admin@madinganaattorneys.co.za

For the defendant: Adv. N Zwane

Defendant's Attorneys:

STATE ATTORNEY

NELSPRUIT

Tel: 013 101 3722

Email: gugum1@raf.co.za

REF NO: 3938799