IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 23548/2021

In the matter between:

SELLO PETROS MOKHELE Applicant

and

THE ROAD ACCIDENT FUND Respondent

REASONS FOR JUDGMENT

KUBUSHI J

INTRODUCTION

[1] The relief sought by the applicant in this matter was in the form of a *mandamus* for an order directing the respondent to accept delivery on 17 May 2021 before close of business (that is, prior to the intervention of extinctive prescription) of the applicant's documents embodying his claim for compensation under and in terms of the Road Accident Fund Act 56 of 1996, as amended ("the Act"), and to acknowledge in writing receipt of same in terms of section 24 of the Act.

[2] The applicant had approached the court on an urgent basis. While the applicant, in opposing the application, had contended that the matter was not urgent, alternatively that the urgency, if any, was self- created, I was of the view that the matter was urgent due to the fact that the applicant's claim was about to prescribe and that he will not be afforded substantial redress at a hearing in due course.

[3] The application was determined on the papers filed on Caselines without oral hearing as provided for in this Division's Consolidated Directives re Court Operations during the National State of Disaster issued by the Judge President on 18 September 2020.

[4] I decided the matter in favour of the respondent and dismissed the application with costs. Because this matter was on the urgent roll, I granted the order without providing any reasons. The applicant has applied in terms of Uniform Rule 49 to be provided with the reasons for such an order. Below are my reasons.

[5] In addition to the defence raised by the respondent in opposing the application, the respondent had submitted that the court should at the outset, *in limine*, before the merits, consider the *locus standi* of the deponent to the founding affidavit. Because of the decision I came to on the merits, I found it not necessary to deal with the *in limine* points of the respondent.

FACTUAL MATRIX

[6] The facts as distilled from the papers are largely common cause. The applicant, as a passenger, was involved in a motor vehicle collision. According to the applicant, the driver of the motor vehicle lost control of the vehicle causing the motor vehicle to overturn. The applicant suffered bodily injuries in the said collision. As a result of such injuries, the applicant was desirous of instituting a claim against the respondent for compensation under and in terms of the Act.

[7] In terms of section 24 (1) (a) of the Act,[1] read with regulation 7[2] of the Road Accident Fund Regulations, 2008 ("the Regulations"),[3] a claimant such as the applicant intending to claim compensation must lodge with the respondent a prescribed claim form known as the RAF1 form. The respondent is required to acknowledge receipt thereof in writing. Thereafter, the respondent has sixty (60) days in which to object to the validity of any such claim lodged.

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[1] Section 24 (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.

[2] 7 Forms

(1) A claim for compensation and accompanying medical report referred to in section 24 (1) (a) of the Act, shall be in the form RAF1 attached as Annexure A to these Regulations . . .

[3] Published under GN R770 in GG 31249 of 21 July 2018.

[8] According to section 23 of the Act,[4] a claimant such as the applicant is obliged to lodge any such claim within three (3) years after the date upon which the claim arose. In the present case the claim arose on the date of the collision which is 18 May 2018. The period of three (3) years would, in this instance, expire at midnight on 17 May 2021.

[9] It was averred that on 10 May 2021 the applicant's claim documents were presented for lodgement at the business address of the respondent. However, the respondent refused to accept same. The claim documents were returned to the applicant. When returning the documents, the respondent indicated in a letter to the applicant, the documents which were outstanding for valid lodgement which would in turn enable the respondent to assess, investigate and settle the claim. Accordingly, no claim was lodged and prescription, which was to expire on 17 May 2021, was not interrupted.

[10] It was not in dispute that the respondent created a Management Directive titled Compulsory Supporting Documents required for RAF Claims Administration ("the Management Directive") in which it prescribes numerous requirements, directing that certain documents be attached to all claims submitted to the respondent. The respondent's reason for refusing to accept the applicant's claim was that some of the documents required in terms of the Management Directive, were not attached to the claim. In this sense, the respondent's contention was that the applicant failed to comply with the requirements of section 24 of the Act which stipulates that any form referred

[4] Section 23 (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 the 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.

to in this section which is not completed in all its particulars shall not be acceptable.

[11] In its submission the applicant argued that the respondent's refusal to accept the lodgement of his claim and claim form was evidently predicated upon this Management Directive which requires documents over and above those stipulated in the Act and its Regulations. As such, it was the applicant's case that:

11.1 the applicant had substantially complied with the requirements of section 24 of the Act read with regulation 7 of the Regulations; the so-called Management Directive dated 8 March 2021 was not enforceable and was *ultra vires* the Act and its Regulations;

11.2 As a result of the applicant's substantial compliance with the Act and its Regulations, the respondent was legally obligated to accept the applicant's lodgement and was not allowed to refuse the lodgement.

[12] The respondent's case, on the other hand, was that in terms of its object as set out in section 3 of the Act,[5] the respondent is mandated to pay out compensation in accordance with the Act for loss or damage caused by the driving of motor vehicles. In order to achieve this object, the Board of the Fund and the Minister of Transport approved the RAF Strategic Plan 2020 – 2025. The strategy is mainly aimed at settling claims within one hundred and twenty (120) days of the lodgement of a claim, to avoid litigation.

[5] Section 3 The object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.

[13] In exercising its powers in terms of section 4 (1) (a) and section 4 (2) (g) of the Act, the respondent contended that it took a decision to stipulate the terms and conditions upon which claims for the compensation contemplated in section 3 shall be administered and the terms and conditions which should be complied with when lodging a claim. Such stipulations are set out in the said Management Directive mainly making it compulsory that certain documents as inevitably required to asses, investigate and settle the claims be attached to and accompany the form referred to in section 24 of the Act and Regulation 7.

[14] The question I had to determine was whether the Management Directive created by the respondent is *ultra vires* the Act and its Regulations and should, therefore, not be complied with when lodging a claim. Put differently, the question was whether the respondent was authorised the create the Management Directive.

[15] The respondent relied on the provisions in sections 4 (1) (a) and 4 (2) (g) of the Act as empowering it to create the Management Directive. The said provisions of the Act stipulate the following:

15.1 In terms of section 4 (1) (a) of the Act, the Fund (respondent) is empowered and/or authorised to stipulate the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered.

15.2 In order to achieve its object as contemplated in section 3 of the Act, the Fund (respondent) is empowered and/or authorised, in terms of section 4 (2) (g) of the Act, to take any other action or steps which are incidental or conducive to the exercise of its powers or the performance of its functions.

[16] It is evident from the aforementioned provisions of the Act that to achieve its objective, the respondent through its strategy and as mandated by section 4 (2) (g) of the Act, decided that claims be paid within one hundred and twenty (120) days after lodgement of a claim. In order to do so, the respondent, as authorised by section 4 (1) (a) of the Act, saw it fit to create the terms and conditions upon which claims for compensation shall be administered. The terms and conditions are set out in the Management Directive. The Management Directive and its title are telling that a claim should be lodged with documents (compulsory) sufficient to enable the respondent to assess, investigate and settle claims within one hundred and twenty (120) days of lodgement.

[17] It is, thus, clear that the Act and its Regulations mandate the respondent to stipulate the terms and conditions upon which claims for compensation contemplated in section 3 of the Act, shall be administered and in order to achieve its object to take any other action or steps which are incidental or conducive to the exercise of its powers or performance of its functions. In this sense, it cannot be said that the Management Directive is *ultra vires* the Act and its Regulations. Any purported lodgement that does not comply with these terms and conditions will defeat the purpose of lodgement and the object of the respondent, and should, thus, be rejected.

[18] It is provided in section 24 (1) (a) of the Act that a claim for compensation and accompanying medical report shall be set out in the prescribed form, which shall be completed in all its particulars. In addition, in section 24 (4) (a) of the Act,[6] it is clearly worded that the respondent shall not accept any form referred

[6] Section 24 (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.

to in this section which is not completed in all its particulars, and RAF 1 form is, one such form.

[19] It is common cause that when the applicant lodged his RAF 1 form, not all the documents required in terms of the Management Directive were attached to the form. It is also not in dispute that in its own version the applicant admitted that despite attempts he has to date been unable to obtain any additional documents as required in terms of the Management Directive, and that it is impossible to comply with the respondent's directive. It is, thus, manifest that the respondent decided not to accept the applicant's lodgement for want of compulsory documents as *per* the Management Directive.

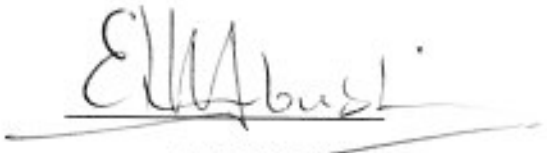
[20] The contention by the applicant that the respondent insists on strict compliance with the management directive whereas substantial compliance has always been regarded as sufficient, is not correct. The stipulations in sections 24 (1) and 24 (4) of the Act are clear and peremptory. The form must be completed in all its particulars and the respondent must not accept any form that has not been completed in all its particulars.

[21] Furthermore, I am in agreement with submission made by the respondent that the decision to create the Management Directive is an administration action and for as long as the Management Directive has not been reviewed nor set aside it remains enforceable. This is trite.

[22] I, also, found that the respondent was correct in its submission that the applicant seeks a final mandatory interdict against the respondent but has failed to prove the requirements of a final interdict as required in our law. The applicant could not prove a clear right to the subject matter of the litigation; there were no facts showing how the measures set out in the Management

Directive would injure the right of the applicant to submit a valid claim for compensation as contemplated in section 3 of the Act; there were, also, no facts averred or alleged sustaining a finding that the applicant did not have an alternative remedy whereas the applicant could have just submitted the documents required in terms of the Management Directive.

[23] It is for all the above reasons that I dismissed the application.



E.M KUBUSHI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearance:

Applicant's Counsel	: **ADV D D SWART**
Applicant's Attorneys	: MACHOBANE KRIEL INC
Respondents' Counsel	: **NONE**
Respondents' Attorneys	: MPOYANA LEDWABA INCORPORATED
Date of hearing	: 17 MAY 2021
Date of judgment	: 17 MAY 2021