




**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 58660/2021**

- (1) REPORTABLE: YES / ~~NO~~  
(2) OF INTEREST TO OTHER  
JUDGES: YES / ~~NO~~  
(3) REVISED: YES / ~~NO~~

 29/09/22

In the matter between:

**ABSA TRUST LTD N.O ET KABINDE TRUST**

**APPLICANT**

AND

**THE ROAD ACCIDENT FUND**

**RESPONDENT**

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**JUDGMENT**

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This Judgment was handed down electronically by circulation to the parties' and or parties representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed on April 2022.

**BAQWA J:**

## **A. INTRODUCTION**

- [1] In this application the applicant ABSA TRUST LTD NO (the Trust) seeks an order that the Respondent pays an amount of R37 769.98 to the applicant for costs incurred by the Trust in respect of the annual trust administration fees for the period 2019-2020, allegedly incurred in terms of the application section 17(4)(a) undertaking certificate read with paragraph 4.1 of the Court Order dated 06 June 2017 together with interest on the aforesaid amount at a rate of 7% per annum until date of payment thereof.
- [2] The application has not been opposed by the Respondent, the Road Accident Fund, (Fund).

## **B. FACTS**

- [3] The beneficiary of the Trust Thembinkosi Kabinde("Kabinde") was involved in a motor vehicle collision that occurred on the 30 January 2015. As the result of the collision the beneficiary incurred injuries and an action was instituted for compensation. The action was finalised on the 06 June 2017.
- [4] In terms of the Court Order, the Fund was ordered to pay the applicant an amount of R4 270 950.95 which would be payable to the applicant's attorneys' trust account Nemasis Incorporated. In paragraph 8 of the Court Order the plaintiff's attorneys were ordered to assist the plaintiff to open a Trust in the name of the plaintiff to protect the award made in the order. No order was made regarding the administration cost of the Trust.

[5] In paragraph 4 of the Court Order, the following is stated; *“The Defendant is ordered to furnish the Plaintiff on behalf of the Plaintiff with an undertaking in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996. As amended, (“the Act”) for 100% of the future medical costs and hospital costs of accommodation in a hospital or nursing home to treatment of or rendering of a service to him arising out of the injuries sustained by Thembinkosi Kabinde in a motor vehicle accident on or about the 30<sup>th</sup> of January 201, after such costs have been incurred and upon proof thereof.*

4.1 the undertaking referred to above in paragraph 4 will include payment of the reasonable cost of administering the statutory undertaking furnished in terms of section 17(4) (a) of the Road Accident Fund Act 56 of 1996, as amended.”

[6] The applicant, ABSA TRUST is a trustee of the ET KABINDE TRUST with registration number IT001448/2018(T) which was established on behalf of Excellent Thembinkosi Kabinde, the Beneficiary.

[7] The undertaking made by the fund and recorded in annexure “E” states as follows;

### **C. UNDERTAKING**

*2.1 The fund's liability to compensate the claimant for the future accommodation in a hospital or a nursing home or treatment of or rendering of a service or the supplying of goods to the claimant, which are incurred as a result of injuries the Claimant sustained in the collision, is limited to the tariff or tariffs in force under the Act from time to time, and in lieu of such a tariff or tariffs, to the necessary*

*and reasonable costs incurred by the claimant as a result of the injuries sustained in the accident.*

*2.2 The Fund shall compensate:*

*2.2.1 The claimant after the costs have been incurred and on proof thereof; or*

*2.2.2 The provider of such service or treatment, directly.”*

#### **D. APPLICANT’S CASE**

- [8] According to the applicant, the Court Order marked as annexure “D1” and specifically paragraph 4.1 thereto, makes provision for the costs for the formation of the Trust as well as the costs pertaining to the administration of the trust and the bond of security.
- [9] Paragraph 4.1 of the Court Order is fully quoted above and the contents thereof do not support the allegations by the applicant.
- [10] The applicant further alleges that in terms of annexure “E” the statutory undertaking by the Respondent is obliged to reimburse the trust for the costs incurred in respect of rendering of services or supplying of goods to the beneficiary, arising out of the injuries sustained by the beneficiary as well as all costs which are necessary to be incurred in respect of the establishment of the Trust, after such costs have been incurred and on proof of submission thereof as per statutory undertaking which the Respondent provided to the beneficiary in terms of section 17(4) (a) of the Act.



- [11] In my view this is a misinterpretation of the relevant provisions which specifically relate to medical treatment and/or hospital accommodation and provision of related services or goods.
- [12] The related services do not include the annual trust administration fees for the period 2019-2020 which applicant claims to have incurred in terms of section 17(4) (a) of the Act.
- [13] The annual trust administration costs arise out of a Trust which was set up to administer the settlement amount which was ordered in terms of paragraph 1 and 8 of the Court Order. They do not arise in terms of paragraph 4 of that order.
- [14] The issue is put beyond any doubt upon a reading of the provisions of section 17(4) (a) which provides;

*“(a) Where a claim for compensation under subsection (1)-*

*Include a claim for the costs of future accommodation of any person in a hospital or nursing home or treatment or rendering of a service or supplying of goods to him or her, the fund or the agent shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or agent to furnish such undertaking, to compensate the third party in respect of the said costs after the costs have been incurred and on proof thereof”.*

## **E. CONCLUSION**

- [15] Section 17(4) (a) is not a “catch all” provision for the injured person to recover all costs associated with setting up, the administration, auditing and other running

costs of the trust to be recovered from the Fund. It is the responsibility of the founder or alternatively the Trust itself to make provision for the administration costs thereof.

[16] In light of the above I find that the applicant's claim is unsustainable. I am not persuaded that it has made out a case for the relief sought.

#### **F. ORDER**

[17] In the result I made the following order.

The application is dismissed and there is no order as to costs.

A handwritten signature in black ink, appearing to read 'Selby Baqwa', is written over a horizontal line.

**SELBY BAQWA**  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Date of hearing:

Date of judgment:

**Appearance**

On behalf of the Applicants

Mr. KE Modiba

An attorney with right of appearance

Appearing as counsel for Applicant

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On behalf of the Respondents

Unrepresented