

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 11403/2022**

(1) REPORTABLE: YES/NO

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

(3) REVISED.

DATE: 17-06-2025

SIGNATURE:

In the matter between:

T[...] E[...] L[...] obo  
T[...] O[...] M[...]

**1<sup>ST</sup> PLAINTIFF**

T[...] L[...] R[...]

T[...] S[...] P[...]

**2<sup>ND</sup> PLAINTIFF**

T[...] T[...] S[...]

**3<sup>RD</sup> PLAINTIFF**

T[...] K[...] M[...]

**4<sup>TH</sup> PLAINTIFF**

**T[...] T[...] B[...]**

**5<sup>TH</sup> PLAITIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**

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**JUDGEMENT**

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**MASHAMBA AJ**

**INTRODUCTION**

1. This is a claim for loss of support against the Road Accident Fund ("the defendant or RAF") in terms of Section 17 of the Road Accident Fund Act<sup>1</sup>,("the Act") as a result of the accident that occurred on the 23 October 2017. Thekisa David, T[...] ("the deceased"), born on 01<sup>st</sup> June 1968 was a passenger in the insured motor vehicle with registration numbers and letters D[...], when the aforesaid motor vehicle in which he was a passenger lost control and overturned. The deceased was serious injured and succumb to his injuries while in Lebowakgomo hospital on the 26 October 2017 a few days after the accident.

2. The deceased was married to E[...] L[...], T[...], the First Plaintiff, who was born on the 16<sup>th</sup> September 1967, acting in her capacity as a deceased's wife and in her representative capacity as a biological mother of two minor children namely; O[...] M[...], born on the 08<sup>th</sup> December 2007 and L[...] R[...], T[...], born on the 16<sup>th</sup> May 2010, The Second Plaintiff is S[...] P[...], T[...], born on the 14<sup>th</sup> March 1998, The Third Plaintiff is T[...] S[...], T[...], born on the 04<sup>th</sup> July 2000, The Fourth Plaintiff is K[...] M[...], T[...], born on the 17<sup>th</sup> June 2002, and The Fifth Plaintiff is T[...] B[...], T[...], born on the 10<sup>th</sup> July 2005, together instituted a loss of support claim against RAF in their capacity as children depended from the deceased ( "the Plaintiffs").

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<sup>1</sup> Road Accident Fund Act 56 of 1996, as amended

3. On the 19<sup>th</sup> October 2022, the Plaintiffs issued a combined summons at the above honourable court against RAF, which was served by the Sheriff on the 20<sup>th</sup> October 2022.

4. On the 22<sup>nd</sup> February 2024, the Defendant served and filed its notice of intention to defend. Subsequently, the bare denial plea was served to the Plaintiffs and filed with court on the 19<sup>th</sup> April 2024. After the close of the pleadings, the Plaintiffs in terms of rule 35(1) of the Uniform Rules of Court<sup>2</sup> ("the Rules"), discovered all documents and pleadings they intend to use in court. The Defendant's discovery affidavit was not served and filed to court as required by the Rules.

5. On the 11<sup>th</sup> December 2024, the Plaintiffs served and filed their notice of set down. On the 28<sup>th</sup> February 2025 the Plaintiffs via an email invited the Defendant to attend a virtual pre-trial meeting but the Defendant failed to attend with no reasons advanced.

6. The matter was set down for hearing on the 14<sup>th</sup> April 2025. Honourable Judge Muller, allocated the matter same day to Chauke AJ. Honourable Chauke AJ stood down the matter until the 17<sup>th</sup> April 2025 for trial. The matter could not be heard on the 17<sup>th</sup> April 2025 and it was further stood down to be heard on the 25<sup>th</sup> April 2025. The matter was allocated to this court and before the matter could proceed the Defendant's Counsel indicated that he served the Plaintiffs with the notice in terms of rule 28 of the Rules. The Defendant served notice of his intention to amend his plea by adding a prescription special plea against the Plaintiffs. The Plaintiffs confirmed receipt of the said notice in terms of rule 28 on the 24<sup>th</sup> April 2025, a day before trial. The Plaintiff's Counsel objected to the Defendant's late notice in terms of rule 28 of the Rules.

7. After the parties' submissions, the judgment was reserved. The Defendant was directed to serve and file his concise heads of argument on or before the 23<sup>rd</sup> of May 2025 and the Plaintiffs were directed to serve and file their concise heads of

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<sup>2</sup> Uniform Rules of Court of South Africa, as amended on the 01 July 2019 (the rules)

argument on or before the 30<sup>th</sup> of May 2025. Both parties submitted their heads of argument as directed.

8. The Plaintiffs made an application in terms of rule 38(2) of the Rules, that evidence be produced by way of an affidavits, therefore, the application was granted.

### **ISSUES COMMON TO THE PARTIES**

9. The following are common issues not in dispute;

9.1 that on the 23 October 2017 the deceased was a passenger in an insured motor vehicle when it lost control and capsized.

9.2 that deceased was serious injured and succumb three (3) days later as a result of the injuries.

9.3 that the deceased was a bread winner and had a duty to support the Plaintiffs.

9.4 that the First Plaintiff's claim on behalf of the minor children did not prescribe.

### **ISSUES TO BE DETERMINED**

10. The court was to determine the following issues;

10.1 whether the Plaintiffs' loss of support claim was properly lodged in compliance with Section 24 of the Act?

10.2 Whether the Fourth Plaintiff's claim prescribed as a result of her names not appearing on the RAF 1 form lodged on the 18<sup>th</sup> November 2020 and 18<sup>th</sup> November 2022 respectively?

10.3 Whether the First Plaintiffs claim in her personal capacity, and the Second, the Third, the Fourth and the Fifth Plaintiffs' claim prescribed?

### **DEFENDANT'S NOTICE IN TERMS OF RULE 28**

11. The Defendant's Counsel raised a special plea on the bench and requested to handover the notice in terms of rule 28 of the Rules. The Plaintiffs' Counsel objected to the handing over of the said notice and argued that the Defendant had an ample time to amend his plea before trial but had failed to do so. The Plaintiffs' Counsel further argued that raising a special plea on the bench is prejudicial to the plaintiffs, because it is late and has no substance since the Plaintiffs' claims were properly lodged within the prescribed period of three (3) days.

12. The Plaintiffs indicated that Chuene Thema Inc Attorneys ("the previous attorneys") who are currently not in practice lodged their claim and that the previous attorneys mandate was terminated. The Defendant confirmed that the system showed that the funeral expenses' claim was lodged and already paid but argued that there is no proof that the Plaintiffs' claim for loss of support was lodged within prescribed period of three (3) years.

13. The court had a sight of a letter from Defendant which confirmed that the Plaintiff's claim was lodged by the previous attorneys.

14. Subsequent to the parties' deliberations, the court refused to accept the Defendant's amendment in terms of rule 28 of the Rules. The said notice was served to the Plaintiffs very late and there were no cogent reasons given to condone the late service and filing of the notice.

## **THE LAW**

### **Compliance with section 24 of the Act**

15. Section 24 of the Act provides as follows in the relevant parts:

***"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;*

*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.*

*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.*

16. In the SCA decision of **Road Accident Fund v Busuku**<sup>3</sup>, where Eksteen AJA, stated the following:

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<sup>3</sup> *Road Accident Fund v Busuku* [2020] ZASCA 158 at para 14 ("Busuku"). Para 20

*"[I]n respect of the submission of a claim this Court, in Pithey, [Pithey v Road Accident Fund **[2014] ZASCA 55; 2014 (4) SA 112** (SCA) para 19] held: 'It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in "SA Eagle Insurance Co Limited v Pretorius" reiterated that the test for substantial compliance is an objective one.' This approach is confirmed by the terms of the form which says in part 20 that substantial compliance is required in regard to inter alia the medical report".*  
*Para 20*

17. The court further considered the case of **Khamo v Road Accident Fund**<sup>4</sup>, (00667/2017) [2023] ZAGPJHC 1325 (15 November 2023) where Strydom J quoted the case of Busuku, states the following;

*"In Busuku the issue was the incompleteness of the form and not who filled in the medical report, section 22, of the form. From paragraph 3 of this judgment it appears that the portion of the form which provides for the medical report was not completed at all. It was submitted that a copy of the original records of the Mthatha Hospital. which reflected particulars of the claimant's hospitalization. the medical assessment of the claimant's condition from time to time. medical treatment received. and surgical procedures carried out together with the identity of the doctors involved therein. were sufficient for the Fund to consider and investigate the claim". Para 21*

## **Prescription of a claim**

18. In the case of **Mbhiiyozo v Eskom Holdings SOC Limited** (3133/2023) [2024] ZAECMHC 55 (25 June 2024)<sup>5</sup> Zono AJ stated the following;

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<sup>4</sup> Khomo v Road Accident Fund, (00667/2017) [2023] ZAGPJHC 1325 (15 November 2023). Para 21

<sup>5</sup> **Mbhiiyozo v Eskom Holdings SOC Limited** (3133/2023) [2024] ZAECMHC 55 (25 June 2024), para 40-42

"However, that is not the end. **Section 17(1)** finds application in instances where a special plea has to be raised. I next quote the full text of **section 17** of the **Prescription Act**.

**"17. Prescription** to be raised in pleadings

(1) A court shall not of its own motion take notice of prescription.

(2) A party to litigation who invokes prescription, shall do so in the relevant document filed of record in the proceedings: Provided that a court may allow prescription to be raised at any stage of the proceedings." Para 40

These provisions are couched in peremptory terms. If a provision is couched in a negative form, it is to be regarded as peremptory rather than a directory mandate. A statutory requirement construed as peremptory usually need exact compliance for it to have the stipulated legal consequences[18]. As a general rule non-compliance with peremptory provision results in nullity. Para 41

The net effect of the above sentiments is that, if peremptory provisions of **section 17(1)** of the **Prescription Act** may be breached any act that (!lay follow may not only be unlawful but also be null and void. Even though it is permissible for a court to raise any point that is apparent from the papers, that general principle does not apply in the case of prescription. **Section 17(2)** of the **Prescription Act** requires that a special plea with clear and concise facts supporting it must pertinently be raised in the relevant pleading, a plea in this case. The court is expressly prohibited to mero motu raise any point relating to prescription if it is not raised in the plea filed of record". Para 42

## PLAINTIFFS' SUBMISSIONS

19. The Plaintiffs submitted that the matter was properly lodged by the previous attorneys and that the Defendant did not raise prescription in his plea because the matter did not prescribe. The Plaintiffs argued that the Fourth Plaintiff was properly added to the particulars of claim because the notice of amendment was served to the Defendant and no objection was raised against the proposed amendment, therefore, the amendment was effected. The Plaintiffs argued that the amount as



appears in the actuarial calculations is fair and reasonable to compensate the Plaintiffs for their claim for loss of support against the Defendant.

## **DEFENDANT'S SUBMISSIONS**

20. The Defendant submitted that RAF form 1, medical report part was not completed, therefore, did not comply with Section 24 of the Act, which requires that the medical report of the deceased must be completed by the treating Doctor because the deceased died 3 (three) days after the accident. Further that the form only indicates that the Plaintiffs are claiming for future loss of support but past loss of support was not claimed in the RAF 1 form, as a result the Defendant prayed that the Plaintiffs' claim for past loss of support should be dismissed.

21. The Defendant further argued that the matter was lodged on the 18 November 2020 approximately a month later after the prescribed time of 3 (three) years in terms of Section 23 of the Act, therefore the claim prescribed.

22. The Defendant further argued that the Fourth Plaintiff's claim prescribed because she was not part of claimants in RAF 1 form which was completed on the 18<sup>th</sup> November 2020 and was further not part of claimants in the amended RAF1 form which was submitted on the 10<sup>th</sup> October 2022. The Defendant submitted that Fourth Plaintiff was only added in the pleading through an amended particular of claim. The Defendant prayed that the Fourth Plaintiff's claim should be dismissed.

23. The Defendant denied that previous attorneys lodged the claim but confirmed that the system indicates that funeral expenses' claim were lodged and already paid. The Defendant submitted that only the claims of the two minor children, namely, O[...] M[...] and L[...] R[...] which are not prescribed.

24. The Defendant's counsel indicated that he had no instructions with regard to a fair and reasonable amount to compensate the Plaintiffs. The Defendant did not dispute the method used to calculate the past and future loss of support of **R 2 091 440.00** as calculated by Tsebo Actuaries dated 26<sup>th</sup> March 2025.

## THE COURT DISCUSSION AND FINDINGS

25. It took the Plaintiffs years before this matter come to see justice. The Plaintiffs lost support after the deceased who was a bread winner had demised on the 23<sup>rd</sup> October 2017 as a result of the motor vehicle accident. The Defendant did not investigate the Plaintiffs' claim. The Defendant was quiet for approximately seven (7) years after lodgment. On the 24<sup>th</sup> April 2025, a day before trial, the Defendant served the Plaintiffs with the notice in terms of rule 28 of the Rules.

26. The court noted that the Defendant was invited to attend the pre-trial conference but he did not attend. The Defendant did not answer to the Plaintiffs pre-trial questions when requested to do so by the Plaintiff's attorneys. The Defendant did not plead to the Plaintiff's amended particulars of claim.

27. The Defendant admitted that funeral expenses was lodged and paid. For the funeral expenses to be paid the claimant has to comply with Section 24 of the Act. The lodgment documents for funeral expenses' claim were not disclosed before court. It is not disputed that the Defendant was in possession of the deceased's death certificate, police docket, medical records and postmortem. The court finds that the Defendant had enough information to begin with their investigation in this matter but they failed to do so.

28. Although the Defendant was not transparent about the documents which were lodged by the previous attorneys, the court on the balance of probabilities finds that the claim was properly lodged. The Defendant's Counsel was not aware that his client confirmed through a correspondence letter that the previous attorneys were attorneys of record before their mandate was terminated on the 18<sup>th</sup> November 2020. This makes the counsel's argument of prescription to fall away and therefore, the court finds that the Plaintiffs' claim did not prescribe.

29. The court noted that on the 18<sup>th</sup> November 2020 the current Plaintiffs' Attorneys re-lodged the Plaintiffs' claim since they had no file contents from the previous attorneys. The Plaintiffs' attorneys attempted to get the previous attorneys file contents from the Legal Practice Council (LPC) because the previous attorneys

are no longer in practice. The LPC attempted to get the file but did not succeed. The LPC informed the Plaintiffs' attorneys in writing that the file was not traceable.

30. The court had a sight of a letter from Mr Gregory Mphahlale who was a RAF's claim handler in this matter and the letter confirmed that the Plaintiffs' claims were already lodged by previous attorneys. The court finds that this corroborate the Plaintiffs argument that the Plaintiffs' claims were lodged within three (3) years by the previous attorneys.

31. With regard to the claim of the Fourth Plaintiff, the court noted that on the 04<sup>th</sup> March 2025, the Plaintiff served the Defendant with notice of intention to amend the particulars of .claim and the said notice precisely states that unless written objection to the proposed amendment is received within ten (10) days of the receipt thereof, the amendment will be deemed to be so effected. The Defendant did not object to the proposed amendment and the same was effected. The Fourth Plaintiff was added as a party in the particulars of claim. The Defendant did not plead to the amended particulars of claim. No prescription was raised against the Fourth Plaintiff, therefore, the claim remains valid. Furthermore, although the Defendant did not disclose the lodgment records received from the previous attorneys, the court in the balance of probabilities finds that the lodgment included the Fourth Plaintiff's claim.

32. The court finds the Defendant's argument not correct when he submitted that the Plaintiffs' claim for past loss of support should not be allowed because it does not appear in the RAF 1 form. Even if the claim for past loss of support was not done in the RAF 1 form but claimed in the summons is still valid.

33. The court was absolutely puzzled that the Defendant's counsel had no knowledge that the Plaintiffs' claim was lodged by previous attorneys. The court requested further information by requesting the Defendant's written confirmation of their instruction given to the Defendant's counsel who raised prescription against the Plaintiffs' claim and the court further requested all who were involved in giving of such instruction. The Defendant replied through a letter dated the 09 June 2025 as follows;

*"This matter had challenges with al/location in that there was multiple summons issued by the same attorneys with different link numbers. The matter was officially handed to the officer to attend to on the 16<sup>th</sup> of April 2025. As we went through the file, we have discovered that there was non-compliance on the matter and some of the claims had already prescribed following the discovery we instructed the state attorney that we need to raise the special plea to that effect The state attorney was instructed to tender an amount of R300 000 towards the minor children's claim. Issues pertaining the special plea, caused us to request all the files on the matter (both link numbers) and all the special plea could only be finalized on the afternoon of the 23<sup>rd</sup> of April 2025."*

34. The above reply is far-fetched, it does not disclose who were involved in giving of the instruction to raise special plea? The Defendant's letter does not indicate which multiple summons issued by the same attorneys she is referring to because in the court's file there was only one summons. The Defendant's letter further indicates that the matter was handed to the officer but it does not clearly mention who handed the matter to the officer and who is the officer referred to? The Defendant further indicated that the state attorney was mandated to tender R 300 000.00 to minor children but such tender was not forwarded to the Plaintiffs and the court was never informed about such offer.

35. The letter also does not disclose the issue raised relating to the letter written by the defendant to the current attorneys of record regarding a claim which was lodged by the previous attorneys. No documents relating to such claim was provided to the court and the counsel was making oral submission without any documentary evidence to the allegations.

36. The fact that the Defendant's Counsel was not aware of the lodgment by the previous attorneys and that he did not disclose any multiple summons issued by same attorneys, the court is of the view that the Defendant is not transparent about the status of the Plaintiffs' claim. The issues which were raised by the Defendant are a mere speculation and far from the truth. The Defendant did not disclose the information which was lodged by the Plaintiffs' previous attorneys and this court finds

the conduct of the Defendant absurd as an institution which is willing to fairly compensate the deserving claimants, especially in claims for loss of support.

37. As this court deal with this matter, there is no special plea raised in the pleadings. The rejection of the Defendant's notice in terms of rule 28 of the Rules must be taken as an absolute castigation against the Defendant's deliberate failure to comply with the Rules and refusal to co-operate when requested to do so by the Plaintiff.

38. In the case of **Mbhiiyozo v Eskom Holdings SOC Limited** referred in paragraph 18 in *supra* It was stated that if the prescription was not raised in the pleading the court is prohibited to consider it. So, no prescription raised in the pleadings in this matter and such issue of prescription will not be entertained.

39. The court was satisfied that the Plaintiffs' claim was properly lodged in compliance with section 24 of the Act. In the case of ***Khomo v Road Accident Fund*** referred in paragraph 17 in *supra*, precisely states that although the medical part of RAF 1 form was not completed but the fact that the Defendant was in possession of medical records, this was complete to investigate the claim.

40. The Defendant's legal representative indicated that no dispute that the Plaintiffs should be awarded 100 % on merits as the deceased was a passenger in an insured motor vehicle and that the deceased had a duty to support the Plaintiffs. The Defendant's Counsel indicated that he had no instruction with regard to the reasonable amount to compensate the Plaintiffs and had no instruction with regard to the Plaintiffs' actuarial calculations. This again is despite the official from the Road Accident Fund indicating that instruction was given to the attorneys to tender an amount of R300 000.00. It is very clear that someone is not transparent and is lying to the court regarding this claim.

41. The court noted that the deceased was a self-employer and the court perused the deceased's bank statements and was satisfied that the deceased was a self-employer generating an income to support his family.

42. The Plaintiffs' loss of support was calculated by Tsebo Actuaries<sup>6</sup>. Two scenarios were postulated, the first, opined that children dependency will be calculated until the age of 18 and secondly, it was opined that children dependency will be calculated until the age of 21 as the children will go beyond high school to tertiary.

43. The court finds that it is fair and reasonable to consider the second scenario due to the fact that during the demise of the deceased all children were students and expected to study further until tertiary level. So, the court is for the view that is fair and just to consider the Second Scenario. The actuarial calculation calculated the amount of **R 2 091 440.00** as a fair and reasonable estimation for the Plaintiffs' loss of support.

## **COSTS**

44. The Court shall not deviate from the general rule that the cost shall follow the successful party. It took the Plaintiffs years to prosecute their claim and the court considers that it will be fair to award the Plaintiffs a reasonable cost as the successful party in this proceeding.

45. In the circumstances, the court makes the following order;

1. the Defendant to pay the amount of **R 2 091 440.00** to the Plaintiffs, shared as follows;

1.1 For the First Plaintiff the sum of **R 66 932.00** in respect of her past loss of support.

1.2. For the First Plaintiff the sum of **R 502 592.00** in respect of the past and future loss of support on behalf of O[...] M[...] T[...].

1.3. For the First Plaintiff the sum of **R 687 925.00** in respect of the past and future loss of support on behalf of O[...] M[...] T[...].

1.4. For the Second Plaintiff the sum of **R 66 161.00** in respect of her past loss of support.

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<sup>6</sup> Index Vol 4, page 9

1.5. For the Third Plaintiff the sum of **R140 777.00** in respect of her past loss of support.

1.6. For the Fourth Plaintiff the sum of **R 234 092.00** in respect of her past loss of support.

1.7 For the Fifth Plaintiff the sum of **R 392 961.00** in respect of her past and Future loss of support.

2. The Defendant is ordered to pay party and party High Court costs to the Plaintiffs, including counsel fee on scale B, including the cost of appearance on the 14<sup>th</sup> and 17<sup>th</sup> of April 2025.

3. The payment referred above shall be made into the Plaintiffs' attorneys of record Trust account.

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**E MASHAMBA**  
**JUDGE OF THE HIGH COURT,**  
**POLOKWANE; LIMPOPO DIVISION**

### **APPEARANCES**

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DATE OF HEARING : 25<sup>TH</sup> APRIL 2025  
DATE OF JUDGEMENT : 17<sup>TH</sup> JUNE 2025