



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

ON 7 MAY 2021 AT PRETORIA

BEFORE THE HONOURABLE JUSTICE NEUKIRCHER

Via videoconferencing

Urgent application no 29F

In the matter between:

PAUL NEL

and

ROAD ACCIDENT FUND

Private Bag X67, Pretoria 0001

2021 -05- 07

GD-PRET-006

Case No: 22142/2021

Applicant

Respondent

This Order is made an Order of Court by the Judge whose name is reflected hereon, duly stamped by the Registrar of the Court and is submitted electronically to the parties or their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his Secretary. The date of this Order is deemed to be 7 May 2021.

COURT ORDER

HAVING HEARD Counsel for the parties, having perused the documents and considered the matter

IT IS ORDERED THAT:

1. The Respondent is hereby ordered to accept delivery forthwith on 7 May 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended and to acknowledge in writing receipt of same.
2. The Respondent's rights are reserved and preserved in respect of the claim that is to be lodged.
3. The Respondent be ordered to pay the party and party costs of this application including the cost of two counsel.

BY THE COURT

REGISTRAR.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
Private Bag X67, Pretoria 0001

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

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and

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Respondent

APPLICANT'S PRACTICE NOTE: URGENT COURT

- (a) On Roll: Friday 7 May 2021
- (b) Appearances: for Applicant:
BP Geach SC 083 680 6578 geach@geach.co.za
for Respondent: Unknown
- (c) Nature of application: Mandamus obliging the Respondent to accept delivery of Applicant's RAF1 claim form
- (d) Issue: Is the Respondent entitled
 - (1) to set strict additional requirements for the lodging of a claim under Act 56 of 1996 as amended and
 - (2) to refuse to accept the lodgement of a claim and delivery of a claim form
- (e) Need to read papers: Yes
- (f) Urgency: Yes. The claim will otherwise prescribe on 7 May 2021 (24h00)
- (g) Duration: Not more than 15 minutes (even if opposed)

BP GEACH, SC

Applicant's Counsel

IN THE HIGH COURT OF SOUTH AFRICA
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APPLICANT'S HEADS OF ARGUMENT

1.

This application is, with respect, urgent because the third party claim of the Applicant will become extinguished by prescription in terms of section 23(1) of the Road Accident Fund Act, No 56 of 1996, at midnight on 7 May 2021, the relevant collision having occurred on 8 May 2018.

2.

On 5 May 2021 the Respondent refused to accept the lodgement of the Applicant's claim under the Act. In doing so, the Respondent relied upon its own Directive dated 8 March 2021 (with effect from 1 April 2021) which prescribes requirements over and above those stipulated in section 24 of the Act and Regulation 7(1). The Respondent is not entitled to set such additional requirements for the lodging of a claim. It has no power to do so by way of Management Directive. By the same token, the Respondent has no right to refuse to accept delivery of the Applicant's claim form. It may object to the validity of the claim, but it cannot decline to accept the lodgement of the claim by refusing to take delivery of the claim form.

3.

The Respondent apparently now insists on strict compliance by claimants with its own Management Directive as a prerequisite for accepting lodgement of claims. However, in addition to anything else, it is trite that substantial compliance with the prescribed

formalities suffices.

“In 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”.

ROAD ACCIDENT FUND v BUSUKU (Case no 1013/19) [2020] ZASCA 158 (1 December 2020) par [14]

4.

The Applicant has a right to lodge a claim with the Respondent and is required to do so within the prescriptive period. In the present case the Applicant’s completed RAF1 claim form and accompanying documents were simply not accepted by Respondent. It flatly refused to take delivery thereof. The Respondent is not entitled to do so.

5.

The Applicant seeks an order that the Respondent accept delivery forthwith on 7 May 2021 before close of business of Applicant’s documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same. The written acknowledgement of receipt is a procedural requirement (*PROTEA ASSURANCE CO LTD v SOUL 1991 (3) SA 43 (E) at 45*).

6.

It is submitted that a punitive cost order is warranted if only to ensure that the Applicant is not out of pocket (*SWARTBOOI AND OTHERS v BRINK AND OTHERS 2006 (1) SA 203 (CC) par [27] at 213-4; NEL v WATERBERG LAND-BOUWERS KO-OP VERENIGING 1946 AD 597 at 607*).

BP GEACH, SC

Applicant’s Counsel

5 May 2021

Section 24 of the Act

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.

Regulation 7(1)

A claim for compensation and accompanying medical report referred to in s 24(1)(a) of the Act, shall be in the Form RAF 1 attached as annexure A to these Regulations, or such amendment or such substitution thereof as the Fund may from time to time give notice of in the gazette.'

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Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT on Friday 7 May 2021 at 10h00 or as soon thereafter as counsel may be heard, the Applicant intends making application to the above Honourable Court for an order in the following terms:

1. THAT this matter be dealt with as a matter of urgency and that the usual rules pertaining to notice, time limits and service be dispensed with.
2. THAT the Respondent be and is hereby ordered to accept delivery forthwith on 7 May 2021 before close of business of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same.

3. THAT the Respondent be ordered to pay the costs of this application on the scale as between attorney and own client.
4. THAT further and/or alternative relief be granted to the Applicant.

FURTHER TAKE NOTICE THAT the affidavit of MATTHEUS JOHANNES BOTHA that is attached hereto will be used in support of this application.

FURTHER TAKE NOTICE THAT the Applicant hereby appoints the address of his attorneys of record set out below as the address in terms of Rule 6(5)(b) at which the Applicant will accept service of notices and process herein.

FURTHER TAKE NOTICE THAT in the event of the Respondent intending to oppose this application, the Respondent must:

- (a) Serve written notice of intention to oppose on the Applicant by no later than 13h00 on Thursday 6 May 2021; and
- (b) Appoint and address in terms of Rule 6(5)(d)(i) at which the Respondent will accept service of notices and process herein; and
- (c) Deliver the answering affidavit, if any, by no later than 16h00 on Thursday 6 May 2021.

KINDLY ENROLL THE MATTER ACCORDINGLY IN THE URGENT COURT.

VAN NIEKERK ATTORNEYS INC

Plaintiff's Attorneys

Tel: (012) 819 1285 / (012) 819 1288

Fax: 086 512 7448

e-mail: Juan Botha <juan@vnattorneys.net>

Ref: MJB

c/o NEL ATTORNEYS

37A Golf Street

WATERKLOOF, Pretoria.

TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA.

AND TO: THE ROAD ACCIDENT FUND
Respondent
38 Ida Street
MENLO PARK, Pretoria.

IN THE HIGH COURT OF SOUTH AFRICA
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and

ROAD ACCIDET FUND

Respondent

FOUNDING AFFIDAVIT

I, the undersigned

MATTHEUS JOHANNES BOTHA

do hereby make oath and state as follows:

1.

I am a male Attorney of this Honourable Court practising as such at VAN NIEKERK ATTORREYS INCORPORATED, at Plot 87, Fisant Street, Kameeldrift, Pretoria, being the Attorney of Record of the Applicant herein. The facts herein contained fall within my personal knowledge unless otherwise appears and are to the best of my belief both true and correct. I am duly authorised to bring this application on behalf of the Applicant and to depose to this affidavit in support thereof.

2.

The Applicant is PAUL NEL, a major male with the Identity Number 820930 5092 081 born on 30 September 1982, residing at 240 Swaltjie, Zwavelpoort. A copy of the first page of the Applicant's Identity Document is attached hereto as Annexure 'A'.

3.

The Respondent is THE ROAD ACCIDENT FUND, a juristic person established in terms of section 2 of the Road Accident Fund Act, No 56 of 1996, as amended, with its business address and principal place of business at 38 Ida Street, Menlo Park, Pretoria.

4.

On Tuesday 8 May 2018 at 12:35, the Applicant was involved in a motor vehicle accident at or near Boschkop, district Pretoria, when a silver Opel Corsa motor vehicle bearing the registration N 518 B collided with the motorcycle the Applicant was riding. A copy of the Police Accident Report relating to this collision is attached hereto as Annexure 'B'. As recorded in such Police Accident Report the collision occurred when the said Opel Corsa motor vehicle turned to the right in the face of the oncoming Applicant on his motorcycle. The driver of the said Opel Corsa is identified in this Police Accident Report as MANFRIED JOHANN FRIEDRICH KOSTER.

5.

The Applicant, whose motorcycle was not insured against accident damage, claimed such damages, as well as for his crash helmet, jacket and cell-phone, from the insurer of the said Opel Corsa. In response the insurer offered to pay 70% of such damage.

An e-mail embodying such settlement offer is attached hereto as Annexure 'C'.

6.

In the light of the aforesaid, it is contended that the driver of the said Opel Corsa was at least to some degree causally negligent with regard to the relevant collision.

7.

The Applicant suffered bodily injuries in the said collision as set out in the statutory medical report completed in respect of the Applicant by DR VORSTER, a copy of which is attached hereto as Annexure 'D'. At our consultation, Applicant complained of current extreme back and neck pain, headaches, scars and bruises that formed some pigmentation on his body.

8.

The Applicant is desirous of instituting a claim against the Respondent for compensation under and in terms of the aforesaid Act. *Prima facie* the Applicant does have a valid claim in this regard for some if not all of his loss and damages arising from the bodily injuries he sustained arising out of or caused at least partially by the negligent driving of the said Opel Corsa motor vehicle by its aforesaid driver.

9.

In terms of section 24 of the said Act, a claimant such as the Applicant intending to claim compensation under and in terms of the Act in circumstances such as these, must lodge with the Respondent a prescribed claim form, known as a RAF1 form. The Respondent is required to acknowledge receipt thereof in writing. Thereafter the Respondent has 60 days in which to object to the validity of any such claim lodged.

10.

In terms of section 23 of the said Act, a claimant such as the Applicant herein is obliged to lodge any such claim within 3 years after the date upon which the claim arose which in the present case is the date of the collision itself, namely 8 May 2018. No provision is made for condonation. That period of 3 years is set to expire at midnight on 7 May 2021.

11.

The Respondent has nominated its business address referred to above as a place for the lodging of such claim forms locally.

12.

As instructed by the Applicant to do, I caused the RAF1 claim form to be completed in order to lodge his claim under and in terms of the Act with the Respondent Attached hereto as Annexure 'E' are the claim documents prepared on behalf of the Applicant for lodging with Respondent together with the customary covering letter dated 4 May.

13.

On 5 May 2021 the aforesaid claim documents of the Applicant were presented for lodgement at the above business address of the Respondent. However, Respondent refused to accept same. The claim documents have been returned to me. Accordingly no claim has been lodged and prescription, which will expire on Friday 7 May 2021, has not been interrupted. The Applicant has been prevented and precluded from lodging his claim under and in terms of the Act by this conduct of the Respondent. The Respondent must accept lodgement by close of business on Friday 7 May 2021.

14.

The Respondent has created a Management Directive, a copy of which is attached hereto as Annexure 'F', in which it seeks to prescribe numerous requirements over and above those stipulated in the said Act and its Regulations, which according to the Respondent are compulsory when claims are submitted or lodged, directing that henceforth such documents must be attached to all claims submitted to the Respondent effective 1 April 2021. The Respondent's refusal to accept the lodgement of the Applicant's claim and claim form as set out above is evidently predicated upon this management directive.

15.

When refusing to accept the Applicant's claim documents, the Respondent furnished the Applicant with a letter dated 5 May 2021, a copy of which is attached hereto as Annexure 'G', indicating the following (as this letter is printed in blue and is difficult to read, I attach hereto a similar letter received in a different case as Annexure 'H'):

15.1 "Please refer to the attached completed checklist for the outstanding compulsory documents" (paragraph 4.1 of the letter);

15.2 "Claims Lodgement Status" (paragraph 5 of the checklist):

- (a) "All standard documents submitted as per Directive": "NO"
- (b) "All Claims Administration Required Documents submitted per Product":
"NO"
- (c) "Lodgement valid for Registration": "NO"

16.

This letter Annexure 'G' misleadingly appears to indicate that the claim was received but this is not the case at all. The claim was not received or accepted by the Respondent. The claim form and supporting documents together with the covering letter were refused by the Respondent and have been returned. There has been no lodgement of the Applicant's claim. As a result, it is now set to prescribe. The fact that the claim has not been lodged appears unequivocally from the following appearing at the very end of the checklist:

"If the answer is 'No' to any of the above, then advise claimant that claim cannot be lodged due to outstanding information as per Directive"

That is precisely what occurred in the case of the Applicant. His claim was refused and has not been lodged. The Respondent simply refused to accept the claim form and its accompanying documents.

17.

The Respondent has introduced requirements over and above those stipulated in the said Act and its Regulations. Moreover, the Respondent insists on strict compliance whereas substantial compliance has always been regarded as sufficient. It is not within the power of the Respondent to legislate by way of Directive as it has done. Moreover, the Respondent cannot adamantly refuse to accept a claim presented for lodgement. The correct procedure is (and has always been) for Respondent to accept lodgement and raise any objections thereafter. Even if Respondent chooses to raise objections at the outset, it must still receive the claim form and accept lodgement of the claim.

18.

In view of the impending prescription of his claim under and in terms of the said Act, this application is urgent.

19.

The relief that Applicant seeks is simply an order directing the Respondent to accept delivery forthwith on 7 May 2021 before close of business (that is to say prior to the intervention of extinctive prescription) of Applicant's documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same in terms of section 24 of the Act. This is what the Respondent used to do as a matter of course and is in accordance with its statutory obligations in terms of the said Act.

20.

The refusal by the Respondent to accept lodgement of the Applicant's claim and claim form is unconscionable. It is no part of the function of the Respondent to frustrate the rights of road accident victims to claim under the said Act in this fashion. The conduct of the Respondent has obliged the Applicant to approach this Honourable Court for relief on an urgent basis. A punitive cost order will ensure that the Applicant is not unduly out of pocket. In addition, this Honourable Court has been inconvenienced.

In the premises, may it please this Honourable Court to grant the relief sought herein.

M J BOTHA

Thus signed and sworn to in the manner prescribed before me (Commissioner of Oaths) on this the day of May 2021 at Pretoria, the deponent having acknowledged that he knows and understands the contents of this declaration.

COMMISSIONER OF OATHS

Full names:

Appointment/Capacity:

Physical address:

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CERTIFICATE OF URGENCY

I, the undersigned

BRENTON PATRICK GEACH (counsel for the Applicant)

hereby certify that:

1. this matter is of such urgency that it must be heard during the period of Lockdown, or during a period during which restrictions are in place relating to free movement of persons owing to measures to combat the Covid-19 infection pandemic; and
2. I have perused the papers in this matter and I believe that the relief which the Applicant seeks should be considered on an urgent basis and justifies a departure from the ordinary time limits and provisions relating to service as set out in the Rules and Directives of this Honourable Court.

B P GEACH, SC

Counsel for the Applicant

5TH DAY OF MAY, 2021.

