

SOUTH AFRICA / JUDGMENT

Cawood and Others v Road Accident Fund (27980/2022) [2022] ZAGPPHC 766 (12 October 2022) [2022] ZAGPPHC 766

COURT

North Gauteng High Court, Pretoria

BEFORE

Moshoana

CASE / FILE NUMBER

27980/2022

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IN

THE HIGH COURT OF
SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
CASE
NO: 27980/2022

DATE:

2022-10-05

REPORTABLE:

NO
OF
INTEREST TO OTHER JUDGES: NO
REVISED.
In
the matter between
ADV
CAWOOD & 4
OTHERS
Applicants
and
ROAD
ACCIDENT
FUND
Respondent

JUDGMENT

MOSHOANA J:

20 Before me is an application brought on an urgent basis, seeking an order reviewing and setting aside a decision to impose an internal block on the payments to the fifth respondent, being Simpson Attorneys incorporated, and that the internal block so imposed be uplifted by this court, and costs.

The facts pertinent to this matter are not in dispute, and it is not necessary for the purposes of this judgment to repeat those

facts.

What became an issue before me was the issue of the urgency of the application and also the issue of costs, in particular the scale at which the cost order should be made.

With regards to urgency, Mr. Mokgoroane, appearing for the respondent, submitted that the applicants do have a substantial redress in due course, and that redress, according to his submission, would arise out of launching a review application on a normal basis, which could also be expedited by approaching the head of this court to have the matter brought before court earlier than usual.

In relation to the issue of substantial redress, firstly the court must indicate that this court possessed with a wide discretion when it comes to whether to entertain a matter as one of urgency. Of course, that discretion ought to be exercise judiciously and also, having regard to the circumstances of each case that serves before a judge.

What became apparent in this matter is that, the Road Accident Fund, the respondent before me, took a decision and predicated that decision on some investigations that were underway, which investigations were investigating an allegation of double-payment.

There is evidence that upon being informed of those allegations the fifth respondent made attempts to establish the basis of the allegations, but all of that did not come forward.

Now I raised the issue with Mr. Mokgoroane about self-help, which is something that is inimical to the rule of law and to the principle of legality. Mr. Mokgoroane submitted that Section 4 of the Road Accident Fund Act, empowered the fund to conduct the investigation

and to take certain actions.

Unfortunately for that argument there are two decisions emanating from the full court of this division, full court, that suggests that there is no such power to impose a block on the payments of the claims. So that clearly indicates that out of Section 4 there are no powers to do what the respondent did.

Therefore, clearly this is a self-help situation and as it was held by the Constitutional Court in the [1]Lesapo v North West Agricultural bank and Another. The Constitutional Court made it very clear that in an instance where a party believes that there is some unlawfulness on the part of another party, it is appropriate to make use of the courts and not take the law into one's own hands.

Clearly, the Road Accident Fund may have had the basis to suspect whatever they suspected, but they were not entitled, as it were, to take the law into their own hands.

Clearly this court is exalted by Section 165 of the Constitution, to intervene, in order to ensure that there is compliance with the rule of law. Given the circumstances of this matter, and the undisputed facts, it would be inappropriate for this court to send the applicants back in the face of an illegality that would continue, albeit as submitted by Mr. Mokgoroane, perhaps for a short duration if they approached the court for an expedited date of the review application.

So, under those circumstances, this court is satisfied that the matter was entitled to be heard on an urgent basis

Turning to the merits, Mr. Mokgoroane indicated to the court that the Road Accident Fund has no difficulty in complying or paying the first to the fourth applicant directly, and it does then seem to the court that there is absolutely no basis why the payment should not be made, of the claim.

I have to consider, of course, the submission made that because there is an investigation, allegedly, involving the fifth respondent, the court must then, if I were to accept Mr. Mokgoroane's submission, make the other applicants suffer because of those investigation.

The difficulty I have with that submission is, firstly, the payments that are to be made would include the payments that are due in respect of fees for the fifth respondent. Now, this court would not have any basis in law to deprive the respondent - the fifth applicant of its fees and/or costs, simply on the basis that there is some investigation.

For that reason I do not accept the basis of not effecting the payment. Of course, Mr. Mokgoroane argued that based on that, there is some justification for this court not to accept the draft order handed up by Mr. Geach SC appearing for the applicants on the issue of costs.

It is submitted with regards to costs that the Road Accident Fund was acting, as I indicated earlier, within its powers in terms of Section

4. Thus conduct was bona fide and as a result the Road Accident Fund should not be mulcted with punitive costs.

In retort Mr. Geach SC submitted that one of the judgments of this court made it very clear what the legal position is in relation to the internal block. That being the case, it is very clear that the Road Accident Fund, persisting with an internal block in the face of those judgments, and in persisting up to a point of opposing an application of this nature, is nothing but a conduct that warrant a punitive costs.

In the result the order I make is as contained in the draft order. I will mark it X, handed up by Mr. Geach SC. Which reads:

- 1) The decision of the respondent to impose an internal block on payments to the fifth respondent is hereby reviewed and set aside.
- 2) The internal block by the respondent on payments the fifth applicant is hereby uplifted.
- 3) The respondents shall pay the costs of this application and the scale is between attorney and client, including the costs of two counsel, which shall include, but not limited to counsel's day fees, as well as the costs of instructing attorney Simpson in Cape Town and the correspondent attorneys, Savage Jooste and Adams in Pretoria.

If I may just return to the order and add to the draft order,

10 paragraph a) which will read:

- a) The matter is heard as one of urgency.

That shall be the order of court

MOSHOANA J

JUDGE OF THE HIGH COURT

DATE: 12/10/2022

[1]

[1999] ZACC 16; 2000 (1) SA 409 paragraph 19.

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