

SOUTH AFRICA / JUDGMENT

Charumbira v Road Accident Fund (371/2024) [2025] ZAFSHC 122 (24 April 2025) [2025] ZAFSHC 122

COURT

Free State High Court, Bloemfontein

BEFORE

Mbhele, Opperman

CASE / FILE NUMBER

371/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable

/ Not reportable

Case

no: 371/2024

In

the matter between

FREDA

CHARUMBIRA

APPLICANT

And

THE

ROAD ACCIDENT FUND

RESPONDENT

Coram:

MBHELE AJP et OPPERMAN J

Heard:

18 November 2024

Delivered:

24 April 2025

Summary:

Postponement of review pending finalisation of an appeal to the Supreme Court of Appeal on the same or similar legal issue

–

whether the use of the words ‘any person’ in s 17 of the Road Accident Fund Act 56 of 1996 (the RAF Act) exclude illegal

foreigners – the legality of the publication of an amended RAF 1 form and the circulation of a Management Directive by the Road

Accident Fund to preclude illegal foreigners from claiming compensation under the RAF Act and prevent such persons from lodging

claims.

ORDER

1.

The matter is postponed pending the outcome of the appeal to the Supreme

Court of Appeal in the matter of Mudawo and Others v

Minister of Transport and Another (011795/2022) [2024] ZAGPPHC

258 (26 March 2024) and it is referred for judicial case management on 15 September 2025 at 14h15.

2.

The parties are granted leave to set the matter down for an earlier date

should the judgment of the Supreme Court of Appeal be handed down before the date above and supplement their papers if necessary.

3.

The costs of 18 November 2024 to stand over for later adjudication.

JUDGMENT

Opperman J et Mbhele AJP

Introduction

- [1] This is an application for review of the decision of the respondent requiring the applicant to supply certain further documentary proof before effecting payment of the capital amount owed to the applicant in terms of a court order. The court order came after her claim for damages was lodged and the said court order was granted by agreement between the parties. The applicant prays that we set aside the respondent’s decision to require certain documentary proof from all foreign claimants, injured and deceased, before effecting payment to them. In addition, there should be further declaratory relief to the effect that such foreign nationals should not be required to furnish the required documentary proof before payment.

[2] The required documents from the claimants include the claimants' first page of the passport as well as pages of the passport which reflect entry and exit dates or an asylum seeker certificate or visa into South Africa when the accident occurred. At the time of the hearing of this matter, the Supreme Court of Appeal (SCA) had already granted leave to appeal in favour of the respondent in another matter in a different division with what appears to be similar issues. Before the hearing, we sent the following query to the parties:

'Considering the Supreme Court of Appeal's decision in the application for leave to appeal in the case of Road Accident Fund v Mudawo and Others, would it be practical to postpone this matter until the Supreme Court of Appeal (SCA) delivers its decision in the Mudawo appeal?'

[3] The parties are not in agreement on the question of postponement as afore raised. The applicant maintains that the matter, for reasons that will be discussed hereunder, does not warrant a postponement and delay and that the review must be adjudicated. The respondent, the Road Accident Fund (the RAF), is steadfast in their argument that the matter must be postponed for the SCA to rule on the issues.

[4] The case before the SCA is Mudawo and Others v Minister of Transport and Another (Mudawo).[1] The SCA granted special leave to appeal the Gauteng Division of the High Court, Pretoria (the high court) decision on 20 September 2024. The procedure for special leave to appeal is regulated by s 16(1)(b) of the Superior Courts Act 10 of 2013. It was argued by counsel for the respondent, correctly so, that the granting of the special leave to appeal is an indication there are reasonable prospects of success and special circumstances warranting an appeal to the SCA.[2]

[5] The facts in Mudawo were summarised as follows by the Gauteng High Court:[3]

'In June and July 2022, the Minister of Transport (the Minister) and the Road Accident Fund (the RAF) sought to put measures in place whereby illegal foreigners would be excluded from the operation of the Road Accident Fund Act (the RAF Act). This was done by the promulgation of a "new" RAF 1 claim form.

On 26 March 2024 this full court reviewed and set aside the abovementioned measures.'

[6] The RAF sought to exclude claims from undocumented foreign nationals. This was followed by the RAF's decision to require proof of the foreign nationals's legal status in the country, including passport stamps, to validate claims. The Minister of Transport (the minister) published the RAF Management Directive in the Government Gazette No. 46661 on 4 July 2022. The RAF argued that allowing illegal foreigners to claim from the fund would be 'aiding and abetting' them, which is prohibited by law. The RAF Act states that any person can claim from the fund but does not specify their immigration status.[4] The minister's actions were seen as an attempt to amend or limit the scope of the RAF Act, which is beyond their powers. The High Court ruled that the RAF's directive and the new RAF 1 form offended the provisions of s 17 of the RAF Act. The RAF's directive was declared invalid and unconstitutional.

The review that lies in casu

According to the applicant

- [7] The applicant maintains that Mudawo is not applicable in the current matter and holds a strong view that the review must be adjudicated. He submits that the regulations may not be applied retrospectively.

For the RAF

- [8] It is the case for the RAF that the facts in Mudawo, in so far as they relate to the fourth applicant in that matter, 'are on all fours with this matter'. Despite not having made any pronouncements on the fourth applicant in that matter, the SCA order granting special leave to appeal, ultimately turns on issues which relate to the fourth applicant and therefore correspond with the applicant's matter in casu. The fourth applicant in Mudawo, just as the applicant here, was also in possession of a court order entitling him to a sum of money as compensation in his RAF claim. Any attempts to distinguish Mudawo and its application and consequences from the matter in casu, is plainly wrong. The issue in question in both matters is whether the applicants, as undocumented foreigners, are entitled to

compensation in terms of the provisions of the RAF Act. The position of the applicant in the current matter is worse than that of the fourth applicant in Mudawo in that, the order in the current matter was granted after the Management Directive was published in the Gazette.

- [9] Counsel for the RAF reiterated that entitlement to payment is at the centre of Mudawo, as it is in this matter.[5]
- [10] It is common cause that the applicant is an unemployed female Zimbabwean citizen currently residing in the Western Cape. The deceased, a Zimbabwean citizen, was her husband. On 7 May 2018, the deceased was involved in a motor vehicle accident. He passed away on the same day as a result of the injuries sustained.
- [11] At the time of the accident the deceased and the applicant had three minor children. A damages claim was lodged with the respondent on behalf of the applicant and the three minor children for loss of support suffered because of the death of the deceased before 7 November 2018.
- [12] During July 2019, the applicant instituted an action against the respondent on behalf of herself and the minor children for damages they suffered as a result of the death of the deceased.
- [13] The matter proceeded through the pre-trial procedure and was declared trial ready. By July 2022, the applicant and respondent had settled both the merits and quantum of the claim and, on 19 July 2022, Reinders ADJP, made a court order as per agreement between the parties (the court order) in terms of which it was ordered that the respondent pay the amount of R3 661 855.00 to the applicant.

- [14] On 1 August 2022, the applicant's attorneys requested payment in terms of the settlement and court order from the respondent. The respondent requested the applicant's attorneys to provide them with a Foreigner Mortality Affidavit, which confirms that the applicant is alive and provides details of herself and the deceased. It also requires the applicant to state that the injured or deceased was involved in a motor vehicle accident while in South Africa and had died as a result of the accident. Although the applicant's attorneys had not heard of this requirement before, they complied to obtain payment.
- [15] Hereafter, the respondent also requested the passport of the deceased containing the pages reflecting his exit and entry stamps into South Africa at the time of the accident or any other supporting documents proving that the deceased was in South Africa at the time of the accident. On 27 March 2023, the applicant's attorneys forwarded a copy of the pages of the deceased's passport to the applicant containing an entry stamp reflecting that he had entered South Africa on 2 September 2015 and no exit stamp thereafter showing that he did not leave South Africa subsequently.
- [16] The RAF would still not make payment. According to them, the date stamps in the passport of the deceased were not acceptable because it reflected stamps in 2015 while the accident happened in 2018. Consequently, they requested the 'correct date stamps'. The applicant's attorneys informed the respondent that the applicant is not in possession of any further stamped passport for the deceased.
- [17] The respondent then requested proof, like a work permit or asylum application, that the deceased was in the country at the time of the accident. The applicant had no further passport of the deceased, and the deceased was not in possession of a work permit or an asylum certificate.
- [18] The passport of the deceased supplied to the respondent was valid until 25 January 2023 and the date stamps on it shows that he only entered South Africa on 12 September 2015, there is no exit stamp on the passport.
- [19] The respondent refused to make payment because the passport of the deceased was not complete for verification purposes because it did not contain an entry stamp into South Africa when the accident happened in 2018. They also required a recent mortality affidavit of the applicant and complete stamped passport showing the 'Entry Stamped at the time of accident 2018' to 'ensure legitimacy of domicile' or presence in South Africa at the time of the accident.

Conclusion

- [20] The argument of Mr Grobbelaar that the issues in this matter centre solely around the retrospectivity in the application of the RAF Management Directive and not its validity as it is the case in Mudawo, is misplaced. The case of the fourth applicant in Mudawo is on all fours with this matter; therefore the more practical way to deal with this matter is to await the decision in Mudawo. As stated above, the same substantial points of law raised in this matter are before the Supreme Court of Appeal in Mudawo. The Supreme Court of Appeal judgment will bring legal certainty.
- [21] The costs of the 18th of November 2024 must stand over for later adjudication. The outcome in the pending appeal will command the direction the application for review will take.

Order

- [22] The following is consequently ordered:

OPPERMAN J

I concur,

MBHELE AJP

Appearances For the applicant: E S Grobbelaar Instructed by: DSC Attorneys, Cape Town c/o Rosendorf, Reitz & Barry Attorneys, Bloemfontein For the respondent: D R Thompson Instructed by: Edward Sithole & Associates Inc., Cape Town c/o LP Shiba Attorneys, Bloemfontein.

- [1] Mudawo and Others v Minister of Transport and Another (011795/2022) [2024] ZAGPPHC 258 (26 March 2024).
- [2] Respondent's written submissions dated 14 November 2024 para 4 with reference to Van Wyk v S, Galela v S (20273/2014, 20448/2014) [2014] ZASCA 152; [2014] 4 All SA 708 (SCA); 2015 (1) SACR 584 (SCA) (29 September 2014).
- [3] Road Accident Fund v Mudawo and Others (011795/2022) [2024] ZAGPPHC 655 (9 July 2024) paras 1-3.
- [4] Section 17(1) of the Road Accident Fund Act 56 of 1996.
- [5] Mudawo supra: '[12] The position of the fourth applicant is slightly different from the other applicants in that, although he is similarly a foreign national who had sustained injuries in a motor vehicle accident in the Republic (on 15 March 2020), he had already obtained judgment in case no 9130/21 in this Division against the RAF for payment of compensation for the injuries sustained and loss of earnings suffered by him. The date of the judgment is 24 July 2023 and the amount of it is R2 612 934.40. No rescission application is pending against this judgment, but the RAF has to date, failed or refused to pay it. The fourth applicant claims that the reason for this refusal is the fact that although his matter pre-dates the management

directive and the Minister's publication, payment is held back because he is a foreign national with only a passport (and no visa). The RAF has not denied this accusation, nor has it furnished Adv Tsatsawane SC, who appeared for the RAF in this matter, with any other reasons for its refusal to satisfy the court order in question.'

[5] Mudawo supra:

'[12] The position of the fourth applicant is slightly different from the other applicants in that, although he is similarly a foreign national who had sustained injuries in a motor vehicle accident in the Republic (on 15 March 2020), he had already obtained judgment in case no 9130/21 in this Division against the RAF for payment of compensation for the injuries sustained and loss of earnings suffered by him. The date of the judgment is 24 July 2023 and the amount of it is R2 612 934.40. No rescission application is pending against this judgment, but the RAF has to date, failed or refused to pay it. The fourth applicant claims that the reason for this refusal is the fact that although his matter pre-dates the management

directive and the Minister's publication, payment is held back because he is a foreign national with only a passport (and no visa). The RAF has not denied this accusation, nor has it furnished Adv Tsatsawane SC, who appeared for the RAF in this matter, with any other reasons for its refusal to satisfy the court order in question.'

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Prepared on 13 October 2026 · Esheria