

SOUTH AFRICA / JUDGMENT

# Maboe v Road Accident Fund (2985/2020)

## [2024] ZAMPMHC 24 (12 March 2024)

**[2024] ZAMPMHC 24****COURT**

Middelburg High Court, Mpumalanga

**BEFORE**

MBG Langa

**CASE / FILE NUMBER**

2985/2020

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**Policy****IN****THE HIGH COURT OF SOUTH AFRICA****MPUMALANGA****DIVISION (MIDDELBURG LOCAL SEAT)****CASE****NO: 2985/2020****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED****DATE:**

12/03/2024

**SIGNATURE**

In

the matter between:       MATSOMANE  
                                  MABOE  
                                  PLAINTIFF  
                                  AND  
                                  ROAD  
                                  ACCIDENT FUND  
                                  DEFENDANT

## JUDGMENT

LANGA J:

### Introduction

and background

- [1] This is a delictual action for damages against the Road Accident Fund, (“the Defendant / the Fund”). The action arises out of an alleged motor vehicle incident which occurred on 07 May 2018 at Paxton Road, presumably within the jurisdiction of this court. I say presumably because it is not stated exactly where the street is situated and whether it is within the jurisdiction of this court. It is alleged that the Plaintiff, a pedestrian, was hit on his left leg by an unknown white quantum vehicle, presumably a quantum mini bus. He was apparently thereafter taken to Witbank General Hospital by the driver of the said unknown white quantum.
- [2] When the matter came before me on 19 February 2024 it was for trial on the issue of quantum according to the Plaintiff’s practice note. However, before the hearing could commence, the Defendant’s counsel, Mr N Mhlanga, raised an objection and argued that the Defendant had filed a special plea of prescription and that the merits are still in dispute. He referred to the pre-trial minutes of 16 November 2024 where it is conceded and recorded by the Plaintiff that the offer of settlement of the merits had been withdrawn by the Defendant. Although counsel for the Plaintiff Adv Hopane was of the view that the merits had been settled before at the pre-trial held on 3 October 2023, it however, emerged that from the later pre-trial minutes of 16 November 2024 that the Defendant withdrew the offer on the merits and indicated that it is pursuing the special plea of prescription.
- [3] After discussions the parties agreed the issues of liability and quantum are still in dispute and that the issue of prescription be dealt with first. The matter was adjourned to 22 February 2022 for the filing of the heads of argument specifically for the adjudication of the prescription.

The Pleadings

- [4] According to the papers filed of record that Defendant filed the notice to defence as well as the plea on or about 24 October 2023. There appears to be no dispute that same was served electronically on the Plaintiff's attorneys on 24 October 2023. As part of the plea the Defendant raised three special pleas. I will refer to the relevant one which is that the Plaintiff's claim has been extinguished by prescription. It is common cause that there was no replication by the Plaintiff on the plea and special pleas.

#### The Applicable legislation

- [5] While the extinction of debts by prescription is generally regulated by the Prescription Act 68 of 1969, the Road Accident Fund Act 56 of 1996 ("the Act"), also provides for the extinction of claims relating to the Road Accident Fund ("the Fund"). Section 10 the Prescription Act 68 of 1969 provides that "(1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt."

- [6] Sections 17(1)(a) and 17(1)(b) of the Road Accident Fund Act 56 of 1996.

Section 17 provides that, "the Fund or an agent shall –

- (a) "subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;

(b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established.

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee". (my emphasis)

- [7] Section 23 of the Road Accident Fund Act 56 of 1996 provides as follows:

23 (1) "Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.

23 (3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 17

- (4) (a) or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose."

[8] The Road Accident Fund Regulations, 2008 –

Regulation 2(1)(a), (b) and (c)

- (1) (a) A claim for compensation referred to in section 17 (1) (b) of the Act shall be sent or delivered to the Fund in accordance with the provisions of section 24 of the Act, within two years from the date upon which the cause of action arose.
  - (b) A right to claim compensation from the Fund under section 17 (1) (b) of the Act in respect of loss or damage arising from the driving of a motor vehicle in the case in where the identity of neither the owner nor the driver thereof has been established, shall become prescribed upon the expiry of a period of two years from the date upon which the cause of action arose, unless a claim has been lodged in terms of paragraph (a).
  - (c) In the event of a claim having been lodged in terms of paragraph (a) such claim shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose.
- (2) Notwithstanding anything to the contrary contained in any law a claim for compensation referred to in section 17 (1) (b) of the Act shall be sent or delivered to the Fund within two years from the date upon which the cause of action arose irrespective of any legal disability to which the third party concerned may be subject.

The Defendants Contentions.

- [9] The Defendant contended that the Plaintiff's claim has been extinguished by prescription as he failed to lodge the claim within the prescribed period of two years. The Defendant contended that as the identity of the driver and motor vehicle is unknown, the action should have been lodged within a period of two years from the date of the collision. The Defendant contended therefore that as the Plaintiff failed to establish either the identity of the driver or the motor vehicle involved, Section 17(1)(b) of the Act applies. The Defendant argued that as the cause of action arose on 07 May 2018,

the claim ought to have been delivered to or served on the Defendant by not later than 06 May 2020 instead of the 4 June 2020.

The Plaintiff's contentions

- [10] While it was contended that immediately after 07 May 2018 the Plaintiff personally lodged the claim directly with the Fund during 2018, no proof of such lodgement could be produced by the Plaintiff. The Plaintiff however also confirmed that another lodgement of the claim was made by his attorneys on 4 June 2020 and the summons issued on 6 October 2020 and served on the Defendant on 7 October 2020. In challenging the plea of prescription, the Plaintiff essentially contended that the period of prescription was interrupted by the direct or personal lodgement of the claim by him in 2018 immediately after the accident. The Plaintiff further contended that by tendering offer of settlement on merits and the Plaintiff acceptance of an

offer, the Defendant waived its rights to rely on the defence of prescription.

## Discussion

[11] Before I delve into the issue of prescription, I must point out that the summons appears to be defective even though this was not picked up by the parties. In the first page it states that “... Macala Sifiso Godfrey, an adult male, who is suing in her personal capacity and currently resident at stand no:7[...], S[...], Emalahleni, Mpumalanga Province. (hereinafter referred to as the Plaintiff). Hereby institute action against the Defendant in which action...” Although the correct name Matsomane Maboe is cited in the particulars of claim, the summons is however defective in that it informs the Defendant that a wrong person, namely Macala Sifiso Godfrey, is instituting the action and not Matsomane Maboe as stated in the particulars of claim. However, given the nature of the defences raised by the Defendant nothing in my view turns of this apparent cut and paste error.

[12] Another issue I find problematic with the summons is that it is alleged in the particulars of claim that “The above honourable court has jurisdiction to adjudicate over this matter by virtue of the fact that the Defendant carries business,

alternatively, has registered offices within the area of jurisdiction of the above honourable court”. This averment purportedly to found jurisdiction cannot be correct particularly if one considers paragraph 2 of the same document where the following is stated. The Defendant is ROAD ACCIDENT FUND, a juristic person constituted as such in terms of provisions of 1996, (sic) situated at 3[...] I[...] STREET, MENLO PARK, PRETORIA WEST, whose full and further particulars are unknown to the Plaintiff, was at all relevant times responsible entirely by virtue of the provisions of section 21 of the Road Accident Fund Act 56 of 1996”.

[13] It is clear that the Defendant’s offices are not registered within this court’s area of jurisdiction nor does it carry on business within this court’s jurisdiction. The Plaintiff cannot therefore rely on this averment to establish jurisdiction. What makes matters worse is that the Plaintiff further fails to allege that Paxton Road where the incident allegedly happened is situated within the jurisdiction of this court. Although the Defendant did not take issue with this aspect which was consequently not argued by the parties, I am of the view that jurisdiction has not been properly pleaded in this matter. However, as the parties did not have the opportunity to argue this aspect, I will refrain from making any

ruling thereon.

[14] I now revert to the nub of the matter before court which is that the Plaintiff’s claim had prescribed. It is common cause that the Plaintiff’s claim in this matter falls under Section 17(1)(b) of the Act since the claim arises from the driving of a motor vehicle where the identity of the driver or the vehicle has not been established, the so-called hit-and-run cases. In such instances prescription is regulated by Regulation 2(1)(a) of the Act which in essence provides that a claim for compensation under Section 17(1)(b) of the Act shall be sent or delivered to the Fund in accordance with

the provisions of Section 24 of the Act, within two years from the date upon which the cause of action arose. (My emphasis).

- [15] Further, in terms of Regulation 2(1)(b), a right to claim compensation under section 17(1)(b) of the Act in such cases shall become prescribed upon the expiry of a period of two years from date upon which the cause of action arose. In this matter it is common cause that the cause of action arose on the 07 May 2018 when the alleged incident took place. By the employment of the civilian calculation of the days, the Plaintiff ought to have lodged his claim lodged by not later than 06 May 2020. It is, however, further common cause that the recorded and official lodgement of this claim was done on 04 June 2020.
- [16] The Plaintiff is however relying heavily on the averment that he personally lodged a claim directly with the Defendant during 2018 before it was lodged again through its present attorneys of record on the 04 June 2020. The biggest problem with this claim is that the Plaintiff is unable to produce any proof of such lodgement. As stated above the only recorded lodgement is that which was done through his attorneys of record on 4 June 2020. It is common cause that this lodgement was out of time.
- [17] In addition, in terms of Regulation 2(1)(a) such claims must be lodged in accordance with the provision of Section 24 of the Act, failing which it shall become prescribed upon the expiry of a period of two years from date upon which the cause of action arose. However, in the case where the claim has been lodged correctly and in time, Regulation 2(1)(c) provides that it shall not prescribe before the expiry of a period of five years from the date upon which the cause of action arose. (My emphasis).
- [18] Section 24(1) of the Act prescribes the manner in which such claims are to be dealt with. It provides that a claim for compensation together with the accompanying medical report under section 17 (1), shall be set out in the prescribed form, which shall be completed in all its particulars and 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. (My emphasis).
- [19] The lodgement of a claim must therefore either be by registered post or personal delivery to the Fund at its principal, branch, or regional office, or to the agent. In this case the Plaintiff simply alleges that he lodged the claim in 2018. The Plaintiff does not state the date on which he lodged the claim, where it was lodged and whether it was lodged by registered post or hand delivery to the Fund or its Agent as prescribed. There is also no proof of posting or receipt of the claim by the Fund or its Agent. There is therefore no proof at all that the claim was correctly and timeously lodged as required by Regulation 2(1) (a) read with Section 24(1) of the Act. Further, unlike Section 23 which makes exceptions in the case of a minor, any person detained as a patient in terms of any mental health legislation and a person under curatorship, Regulation 2(2) makes no exception and in terms thereof the claim "shall be

sent or delivered to the Fund within two years from the date upon which the cause of action arose irrespective of any legal disability to which the third party concerned may be subject". The Plaintiff cannot and correctly does not claim to be covered by the Section 23 exceptions. (My emphasis).

## Conclusion

[20] Based on the evidence before court, the lodgement documents, namely, the RAF1 FORM and annexures reflect that the claim was lodged with the Fund on the 04 June 2020. Consequently, the lodgement of the claim in terms of Regulation 2(1)(a) was done almost a month out of time. As the purported direct lodgement of the claim relied on by the Plaintiff cannot be ascertained, it has to be dismissed as there is no proof thereof. In the absence of proof that the Plaintiff lodged the claim directly with the Defendant in 2018 as alleged, the claim has clearly prescribed in the light of the provisions dealt with above. The Plaintiff's claim has been extinguished by prescription and the special plea ought to be upheld.

## Order

[21] In the result I make the following order:

The Defendant's First Special Plea of Prescription is upheld, and the Plaintiff's action is accordingly dismissed with costs.

MBG LANGA

JUDGE OF THE HIGH COURT

## Appearances:

For the Plaintiff: Advocate PS Hopane For the Defendant: Mr N Mhlanga Date Heard: 22 February 2024 Date delivered: 12 March 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 12 March 2024 at 14h00.

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