

SOUTH AFRICA / JUDGMENT

Macwecwe v Road Accident Fund (A250/2023) [2024] ZAGPPHC 1345 (11 December 2024)

[2024] ZAGPPHC 1345**COURT**

North Gauteng High Court, Pretoria

BEFORE

Swanepoel, Hassim, Mohlala

CASE / FILE NUMBER

A250/2023

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case****number: A250/202023****A****quo case no. 50812/2020****Date****of hearing: 13 November 2024****Date****delivered: 11 December 2024****(1)****Reportable: No****(2)****Of Interest to Other Judges: No****(3)****Revised****In**

the application of: OWAULE
 DANIEL MACWECWE
 Appellant
 and
 THE
 ROAD ACCIDENT FUND
 Respondent

JUDGMENT

SWANEPOEL J: (HASSIM J ANO MOHLALA AJ CONCURRING)

- [1] On 2 October 2020 the appellant launched a claim under the Road Accident Fund Act, 56 of 1996 ("the RAF Act") for damages, pursuant to injuries that the appellant suffered in an accident on 20 February 2009. The claim was instituted more than eleven years after the cause of action arose. The respondent did not enter an appearance to defend the action, it did not participate in the proceedings before the Court a quo, nor did it appear in this appeal.
- [2] The appellant relied mainly on a claim in terms of the respondent's statutory obligation in terms of the RAF Act to compensate injured persons for loss or damages resulting from the wrongful driving of a motor vehicle. However, the plaintiff also pleaded two claims in the alternative.
- [3] The first alternative claim alleged that the respondent had launched a public campaign in which it invited members of the public who had claims arising from motor vehicle accidents to approach the respondent directly with such claims. It undertook to administer the claims in a fair, transparent and rational manner, and to pay the appellant fair compensation for his injuries, so the appellant says. By accepting the claim, the appellant alleges, the respondent was given a mandate to fairly assess the claim and to effect payment of reasonable compensation. The appellant says that the respondent failed to execute its mandate properly or at all, and that it had thus breached its contractual obligations and was liable for damages.
- [4] The second alternative claim is a delictual claim, based on the contention that the respondent was under a legal obligation to fairly compensate the appellant. It did not do so, the appellant alleges, and the respondent is thus liable for damages.
- [5] On 16 March 2023 the matter came before the Court a quo for default judgment. The Court a quo ordered that the matter would be heard in chambers, and only if the court required, would counsel be heard. The appellant was, therefore, not given an opportunity to address the Court a quo. The Court a quo dismissed the claim without giving judgment. In a widely shared note on Caselines the learned Judge wrote that it was evident that the matter had become prescribed by the time that the summons was issued, and consequently, the claim was dismissed.

[6] This appeal is brought on two grounds:

[6.1] Firstly, that the issue of prescription had not been pleaded, and that a court is not at liberty to raise prescription *mero motu*; and

[6.2] Secondly, that the court *a quo* had not considered that there were two alternative claims in respect of which prescription could not be determined simply on a consideration of the facts pleaded in the summons.

[7] Section 17 of the Prescription Act, 68 of 1969 reads as follows:

"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."

[8] In terms of section 12 (1) of the Prescription Act prescription commences running when a debt is due. Section 12 (3) of the Prescription Act provides that a debt is not due until the creditor has knowledge of the identity of the debtor, and of the facts from which the debt arises.

[9] We were referred to the matter of *Road Accident Fund v Mdeyide*[1]

in which the Constitutional Court was seized with a prescription plea in terms of section 23 (1) of the RAF Act. The question for

determination was whether the specific provisions of section 23 (1) of the RAF Act, that were clearly in conflict with section 12 (3) of the Prescription Act, trumped the provisions of the Prescription Act. The appellant brought the matter to our attention as the judgment seemed to suggest that the Prescription Act did not apply to road accident claims.

[10] Section 23 (1) of the RAF Act provides:

"(1) Notwithstanding anything to the contrary in any law contained... the right to claim compensation under section 17 from the Fund or an agent...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."

[10] Section 16 (1) of the Prescription Act provides that:

- (1) The provisions of this Chapter[2] shall, save in so far as they are inconsistent with the provisions of any Act of Parliament, which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt or imposes conditions on the institution of an action for the recovery of a debt, apply to any debt after the commencement of this Act."

- [11] The Constitutional Court held that the provisions of section 23 (1) of the RAF Act were inconsistent with section 12 (3) of the Prescription Act, and that, as provided by section 16 of the Prescription Act, claims in terms of the RAF Act therefore were subject to the prescription period provided for in section 23 (1). The Court said[3]:

"The Prescription Act and RAF Act are thus inconsistent. Section 12 (3) of the Prescription Act cannot apply to claims under the RAF Act."

- [11] Does that mean that the entire Prescription Act does not apply to claims in terms of the RAF Act? In my view not. Section 12 (3) of the Prescription Act falls under Chapter III of the Act. The legislator clearly foresaw that there would be instances where specific legislation provided for specified prescription periods that were inconsistent with the Prescription Act. For that reason, it said that if other legislation was inconsistent with the provisions of Chapter III of the Prescription Act, the former would apply.

- [12] Section 17 of the Prescription Act falls under Chapter IV of the Prescription Act. It is, in my view, applicable to all debts, notwithstanding that the debt arises from the RAF Act. There is no conflict between the RAF Act and the provisions of section 17. The Constitutional Court's remarks in respect of section 23 (1) of the RAF Act, and its inconsistency with section 12 (3) of the Prescription Act are not applicable to the provisions of section 17

- (1) of the Prescription Act.

- [14] There is a further aspect to the matter. The alternative claims are, firstly, contractual, and secondly, delictual in nature. One cannot, from the papers alone, determine when the alleged contractual breach occurred in respect of the first alternative claim, nor when the respondent allegedly breached its duty of care in terms of the second alternative claim,

- [15] In my respectful view, even if it was open to the Court a quo to take notice of prescription mero motu, there were no facts upon which the Court a quo could have determined a date upon which the alternative claims fell due, and as a consequence, it could not have come to the conclusion that the alternative claims had prescribed.

- [16] We were urged, that if the appeal were successful, to make a finding on the merits of the claim. We have no evidence before us upon which to consider the merits, and we decline to do so.

- [17] In the premises, I propose the following order:

- [17.1] The appeal is upheld.

- [17.2] The matter is referred back to the default judgment Court for

determination.

- [17.3] The respondent shall pay the costs of the appeal.

SWANEPOEL J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

I agree:

HASSIM J

MOHLALA J

ACTING JUDGE OF THE HIGH COURT

AND IT IS SO ORDERED.

Counsel for the appellant: Adv. L Louw Instructed by: VZLR Inc. Counsel for the respondent: No
appearance Date heard: 13 November 2024 Date of judgment: 11 December 2024

[1] RAF v Mdeyide 2011 (2) SA 26 (CC)

[2] Chapter III of the Prescription Act

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2024/1345.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/macwecwe-v-road-unknown-topic-agpphc-2024>

Prepared on 10 October 2026 · Esheria