

SOUTH AFRICA / JUDGMENT

Road Accident Fund v Mlotha and Another (Leave to Appeal) (25040/2022)

[2024] ZAGPPHC 1305 (10 December 2024)

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COURT

North Gauteng High Court, Pretoria

BEFORE

O Mooki

CASE / FILE NUMBER

25040/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Case No: 25040/2022

Reportable: No

Of interest to other

Judges: No Revised: No

SIGNATURE

Date: 10 December 2024

In

the matter between:

THE
ROAD ACCIDENT
FUND
Applicant
and
M
MLOTHA
First Respondent
THE
SHERIFF, CAPE TOWN WEST
Second Respondent

JUDGEMENT**– APPLICATION FOR LEAVE TO APPEAL**

MOOKI J

1 The first respondent (Mr. Mlotha) seeks leave to appeal the dismissal of his counter-claim. The application was argued on the following two grounds, namely:

1.1 The court is bound by the decision in *Maphosa v Road Accident Fund*,^[1] in relation to that court's determination of the retrospectivity of the Directive by the RAF; together with that court's interpretation of the expression "any person."

1.2 The court is bound by the decision in *Road Accident Fund v Sheriff of The High Court, Pretoria and Another*,^[2] which also dealt with the issue of the retrospectivity of Directive by the RAF.

2 The applicant submitted that the findings in the two decisions are binding on this court. That was because those decisions were not taken on appeal.

3 The Road Accident Fund opposes the application. It raised two points in that regard. First, that the order by this court is not final and is therefore not subject to an appeal. Second, that the applicant had not met the threshold for the grant of leave to appeal.

4 The Road Accident Fund pointed out that the applicant's counter- application was prompted by the relief granted in the matter of *Mudawo and Others v Minister of Transport and Another* ("Mudawo"),^[3] in which the Full Court set aside the directive in terms of which the Road Accident Fund would qualify beneficiaries for relief in terms of the Road Accident Fund Act, 56 of 1996. The dispute in that decision remains live and is to be considered by the Supreme Court of Appeal.

5 It was submitted on behalf of the Road Accident Fund that the order dismissing the counter-claim was not determinative of the applicant's rights. That was because the court expressly dismissed the counter- application on the basis that the substance of the relief sought by the applicant was subject to the Supreme Court of Appeal having considered the appeal in the Mudawo matter.

6 The Road Accident Fund also made submissions on why the application did not meet the threshold requirements for the granting of leave to appeal. It is unnecessary to set out the contentions, given the basis for determining the application.

7 The applicant, in reply, did not make submissions in response to the Road Accident Fund's contention that the order by the court is not final in effect. That was because the point was unanswerable.

8 A court will consider an application for leave to appeal only in relation to an order that is final in its effect.[4] This point is determinative, and the application must fail.

9 I make the following order:

- (i) The application for leave to appeal is dismissed.
- (ii) The applicant is ordered to pay costs.

O MOOKI

JUDGE OF THE HIGH COURT

Appearance:

Counsel for the applicant: G Jacobs Instructed by: Campbell Attorneys Counsel for the respondent: R B Mphela Instructed by: Mpoyana Ledwaba Inc. Date heard: 9 December 2024 Date of Judgement: 10 December 2024

[1] [2024] ZAGPJHC 263 (7 March 2024)

[2] (0114226/2023)

[2023] ZAGPJHC 1336 (20 November 2023)

[3] (011795/2022)

[2024] ZAGPPHC 258 (26 March 2024)

[4] Zweni v Minister of Law and Order 1993 (1) SA 523 (A), TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others 2023 (5) SA 163 (SCA)

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