

SOUTH AFRICA / JUDGMENT

Shabalala v Road Accident Fund (2021/29064; 2021/58021) [2025] ZAGPJHC 66 (24 January 2025) [2025] ZAGPJHC 66

COURT

South Gauteng High Court, Johannesburg

BEFORE

Weideman AJ

CASE / FILE NUMBER

2021/29064; 2021/58021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES:NO

(3)

REVISED: NO

In the matters between:

Case Number: 2021/39064

Daisy

Shabalala

Applicant

And

Road Accident

Fund

Respondent

Case Number: 2021/58021

Matjankgowa Rolty

Sefadi

Applicant

and

JUDGMENT

Weideman AJ

[1] Both these matters came before court on the same legal question and it is therefore appropriate to address the matters together. The matter of Shabalala was on the Road Accident Fund Default Judgment Court roll during the week of the 8th of October 2024 and the matter of Sefadi during the week of the 29th of October 2024.

[2] Two court orders were given in each matter before it was enrolled on the Default judgment court roll.

In the matter of Shabalala these were:

[3] An order by the Honourable Mayet AJ, handed down on the 31/11/2023. At that stage and in accordance with this order all issues between the parties were finalised but for the Plaintiff's claim, if any, for general damages. The claim for general damages was postponed sine die. The reason was simple – as at the date of the hearing of the matter the Road Accident Fund (hereafter the RAF) had not yet applied its administrative mind to the question of the seriousness of the plaintiff's injuries and thus no decision had been made.

[4] An order by the Honourable Steyn AJ, handed down on the 3rd May 2024. In accordance with this order the RAF was compelled to apply its administrative mind to the matter and to take a decision on whether it accepts or rejects the plaintiff's claim that the injuries sustained in the accident were serious. According to the order the defendant had 10 days to make up its mind and to render a decision. Should it not do so the defendant would be ipso facto barred and the plaintiff may apply to the registrar to have the matter referred to the Default Judgment court for adjudication on the issue of general damages. The implication is that the RAF's failure to adhere to the order would have the effect that the injuries are deemed to be serious, hence the referral to the default judgment court for finalization.

In the matter of Sefadi these were:

[5] An order by the Honourable De Wet AJ, handed down on the 8th March 2024. All heads of damage settled and finalised, but for the claim for general damages and which was postponed sine die.

[6] An order by the Honourable Wijnbeek AJ, handed down on 17 April 2024. The wording is an exact copy of the wording of the order handed down by Steyn AJ in the Shabalala matter. The same legal team appeared for the Plaintiffs in both matters.

Counsel's submissions:

[7] In presenting his clients' cases, counsel for the plaintiffs argued along the following lines. According to the SCA decision in *Mpahla v RAF* (698/16) [2017] ZASCA 76 the RAF's failure to take a decision within the time periods prescribed by the Road Accident Fund Act and

Regulations issued pursuant thereto, does not create a deeming provision. The plaintiff's answer lies therein that it has the opportunity after the expiry of the 90-day period provided for in the Regulations to apply for a mandamus in terms of PAJA to compel the RAF to make a decision.

- [8] The argument then continues, in both these matters the plaintiff, as per the SCA's ruling, did apply for a mandamus and it was given. This would be the orders handed down by Justices Steyn AJ and Wijnbeek AJ. Just as the RAF had failed to act in accordance with its obligations in terms of the RAF Act and Regulations it is now also in contempt of the PAJA compelling orders.
- [9] Given the RAF's complete disdain for its obligations in terms of the Regulations and the subsequent PAJA mandamus orders, not at all being concerned about being in contempt of the court orders, the question then arises, what more could the plaintiffs do, to enable the aspect of general damages to be finalised and for them to move on with their lives? The capital that they received for the other heads of damage was being eroded by legal costs in pursuing application after application simply to get the RAF to take a decision, which it is clearly either not capable of making or care so little for the effects of their actions, that they refuse to adhere to court orders and do what they are by legislation obliged to do, i.e. evaluate and settle claims.

The Law:

- [10] Regulation 3 (3) (dA) provides as follows: 'The Fund or an agent must, within 90 days from the date on which the serious injury assessment report was sent by registered post or delivered by hand to the Fund or an agent who in terms of section 8 must handle the claim, accept or reject the serious injury assessment report or direct that the third party submit himself or herself to a further assessment.'
- [11] The clear language of regulation 3 (3) (dA) enjoins the RAF to decide within 90 days from the date on which the report was sent or delivered by hand to (a) accept the SIA report; (b) to reject it; or
- (c) to refer the third party for a further assessment. Regulation 3
- (3) (dA) was enacted to stipulate the time period within which the Fund must make a decision as to whether or not the third party has suffered serious injuries.

In *Mpahla v RAF* the court said the following:

- [12] 'An interpretation that seeks to suggest that because the Fund did not make a decision within 90 days of receipt of the SIA report, it is deemed to have accepted that the third party has suffered serious injuries is untenable and in conflict with the provisions of subsections 17(1) and 17(1A) of the Act, and Regulation 3. It is always open to the Fund to reject the SIA report when it is not satisfied that the injury has been correctly assessed in terms of regulation 3 (3) (dA). This regulation does no more than prescribe a period within which the Fund can reject

or accept the report. It would be an anomaly if, in terms of regulation 3 (3) (dA), where the Fund has failed to make a decision within the prescribed period, an otherwise not serious injury would by default become serious because of the delay.’ (My underlining)

[13] In my opinion, the orders of Justices Steyn AJ and Wijnbeek AJ, suggesting that if the Fund fails to make a decision within 10 days from the date of their orders, the plaintiffs may apply for a default judgment date and approach the default judgment court to finalise the aspect of general damages, are, with respect, wrong and in conflict with the SCA’s decision in *Mpahla v RAF* and it was not open to them to make such orders. The implication of their orders is that the injuries are deemed to be serious, simply because the RAF is in breach of the order compelling them to take a decision within ten days.

[14] I declined to hear argument on general damages and indicated that I reserved my judgments and reasons for doing so.

Reasoning and conclusion:

[15] I have no doubt that the manner in which the RAF has weaponised and grossly neglected its obligations and duties in terms of Regulation 3 is unconstitutional. By this I am not saying that the Regulation, per se, is unconstitutional, albeit that it might be, but that the manner in which the RAF has acted in fulfilling, or rather its failure to fulfil, its obligations in terms of Regulation 3 is unconstitutional. It could never have been the intention of the legislator that plaintiffs have to wait years and incur significant legal costs simply because of their lackadaisical attitude to their obligation to take a decision on whether or not a plaintiff’s injuries are serious.

[16] For the purpose of this judgment it is not necessary for me to make a decision on the constitutionality of Regulation 3 as I am of the view that there is a more effective way in addressing the problem, via the Promotion of Administrative Justice Act 3 of 2000. [PAJA]

[17] Paragraph 6 of PAJA contains, inter alia, the following:

‘6. (1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.

(2) A court or tribunal has the power to judicially review an administrative action if—

(g) the action concerned consists of a failure to take a decision;’

‘8. (2) The court or tribunal, in proceedings for judicial review in terms of section 6(3), may grant any order that is just and equitable, including orders—

(b) declaring the rights of the parties in relation to the taking of the decision;’

[18] I am of the opinion that the wording of the Act is wide enough to allow the plaintiff to, in one application, call on the RAF to take a decision and, in the event that it fails to do so to approach the court on the same papers, suitably amplified for an order, substituting the court for the RAF and for the court to take the decision which the RAF refuse to make. In my

opinion it would not be appropriate for the court, in considering the application, to consider the matter any further than to issue a directive that the plaintiff's claim must be referred to the HPCSA for consideration, as is provided for in the Regulations. In this way the matter will move forward, the Plaintiff will receive a ruling from the HPSCA in respect of his/her claim and will be able to finalise the matter. If the injuries are serious and in the event that the RAF fails to make an appropriate tender in respect of the claim for general damages, the plaintiff may then enroll it for adjudication.

- [19] Due to the Road Accident Fund's failure to take a decision in accordance with Regulation 3 of the Road Accident Fund Regulations, 2008, as amended, and having further failed to do so, after an order in terms of section 6(2)(g) and 6(3) of The Promotion of Administrative Justice Act 3 of 2000, this court will take the decision, as is provided for in section 8(2)(b) of PAJA.
- [20] The question of costs needs to be considered briefly. The court always has an inherent discretion when it comes to costs. It is clearly iniquitous that a plaintiff is compelled to bring application after application simply because the defendant cannot or does not want to make a decision. It is the type of matter that I believe warrants a punitive cost order.

Orders:

1. In the matter of Daisy Shabalala and in accordance with Regulation 3(3)(d)(i) the plaintiff's serious injury assessment report is rejected.
2. In the event that the plaintiff does not accept the rejection the plaintiff is ordered to lodge the prescribed dispute resolution form with the Registrar of the Health Professions Council of South Africa within 90 days from date of this order in accordance with the requirement of Regulation 3(4)(a) of the Road Accident Fund Regulations.
3. The plaintiff is awarded costs on the attorney and client scale, as taxed or agreed. Counsel's fees shall be on scale B.

Case number: 2021/58021

1. In the matter of M R Sefadi and in accordance with Regulation 3(3)(d)(i) the plaintiff's serious injury assessment report is rejected.

WEIDEMAN AJ

JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 24 January 2025

Heard: 8 October 2024 and 01 November 2024

Delivered: 24 January 2025

APPEARANCES:

Applicant's counsel:

Adv. S Tshungu

Applicant's Attorneys: K Titus & Associates

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