

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 9483/2021

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|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |

..... **4 June 2024**

SIGNATURE

DATE

In the matter between:

MOSOMA RAMATSEMELA

Applicant

And

THE ROAD ACCIDENT FUND

Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time of hand down is deemed to be 4 June 2024 at 10:00.

MNISI AJ

[1] The applicant, brought an application in terms of which the following relief is sought:

- “1. The Applicant’s non-compliance with the provisions of section 23(3) of the Road Accident Fund Act be and is hereby condoned in terms of Rule 27(1) and (3) of the Uniform Rules of the court.

2. The Applicant’s prosecution of the action under the above case number against the Defendant is hereby condoned and the Applicant is granted leave to proceed with the said action instituted against the Defendant.

3. Costs of the application to be costs in the action.”

[2] The respondent did not file any opposing papers. Accordingly the matter came before me in an unopposed roll on 29 January 2024.

[3] According to the founding affidavit, the applicant, Ms Ramatsela Mosoma (Ms Mosoma), was injured in a motor vehicle accident on 13 April 2013. It is further alleged that she sustained the following bodily injuries comprising of (a) a fracture of the left clavicle, (b) an injury to the neck and shoulder, and (c) general body pains.

[4] Subsequent to the injuries as aforesaid, the applicant lodged her claim directly with the Road Accident Fund (RAF) on the 15th of October 2015. In terms of section 23(1) of the Road Accident Fund Act¹ (RAF Act), the claim should have

been filed within three years of the accident, that is, by 13 April 2018. However, section 23(2)(b) and (c) of the RAF Act protects persons against prescription if they have mental disabilities, and consequently, are detained in terms of mental health legislation or placed under curatorship.

[4] Acting on the applicant's behalf, her attorneys of record issued summons against the RAF on 1 March 2021, some seven years after the accident occurred. The applicant alleges that the claim prescribed due to the RAF's failure to advise her to undergo a serious injury medical assessment in terms of section 17(1)(a) and regulation 3(1)(b) of the Road Accident Fund Act.

[5] Before this Court, the applicant claims that this matter in essence implicates the affected persons' right of access to courts under section 34 of the Constitution. Counsel for the applicant urges me to extend the application of section 13(1)(a) of the Prescription Act to the applicant by adopting a harmonious reading of its provision with that of section 23(2) of the RAF Act.

[6] In support of this argument, the applicant looks to Constitutional Court jurisprudence on the interplay between section 13(1)(a) of the Prescription Act and the RAF Act. By way of illustration, the applicant directs this Court to the matter of *Phillipa Sussan Van Zyl N.O v Road Accident Fund*.² In that case, Mr Koos Jacobs (*Mr Jacobs*) was seriously injured in a motor vehicle accident on May Day 2010.³

[7] As a result of the accident, Mr Jacobs suffered severe head injuries that impaired his mental capacity to such an extent that he was unable to manage his own affairs. More particularly, he was unable to lodge his claim against the RAF within the prescribed period. Acting on his behalf, Mr Jacobs' mother lodged his claim for damages with the RAF on 18 January 2017, some seven

Act 56 of 1996.

2 Van Zyl N.O. v Road Accident Fund **[2021] ZACC 44**.

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years after the accident. On 28 November 2017, Mr Jacobs' mother secured a court order appointing Ms Phillipa Susan van Zyl *N.O.* (Ms Van Zyl), as his *curatrix ad litem*. Ms van Zyl instituted an action against the RAF for payment of damages on his behalf on 8 March 2018.

[8] There, the Constitutional Court held that section 23(2) of the RAF Act interpretation, excludes the affected persons from protection against prescription because it limits their rights under section 34 of the Constitution. As a result, the Court set aside an order of the Supreme Court of Appeal (SCA) in which a special plea of prescription was upheld.

[9] Additionally, referring to Mr Jacobs' case, the applicant argues that the injuries rendered it impossible for the applicant to know about the requirement of section 23 of the RAF Act and to act on her own to lodge her claim.

[10] The applicant further argues that she is a layperson and has no knowledge of the law and procedures, and that the RAF had a duty to protect and act fairly towards her in order to protect her claim from prescription. From the onset, it is my considered view that the facts of this case are distinguishable from Mr Jacobs' case.

[11] The applicant's counsel could not direct me to any other specific authority which supports this particular argument. Having regard to the applicant's submissions above, the singular issue for determination is whether Ms Mosoma's claim against the RAF can be saved from prescription.

[12] It is now a well-established legal principle that people with mental disabilities who are neither so detained nor under curatorship, and who are therefore not expressly protected by section 23(2)(b) and (c) of the RAF Act, will be referred to as "affected persons".

[13] Unlike the Jacobs' case, section 23 of the RAF Act suspends the running of prescription against the affected persons? As pointed out above, it is not what this case is all about. There is also nothing to suggest that the applicant falls within the ambit of 'affected persons'. Instead, she simply blames the RAF for its failure to advise her regarding the provisions of section 17(1) and regulation 3(1)(b) of the RAF Act.

[14] Section 17 of the RAF Act provides that the RAF is liable to compensate persons for any loss or damage suffered because of bodily injuries or death, caused by, or arising from, the driving of a motor vehicle, if such injury or death which was caused due to the negligence or other wrongful act of the driver or owner of the motor vehicle. Section 23(1) and (2) of the RAF Act circumscribe the RAF's liability as follows:

“(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.*

(2) Prescription of a claim for compensation referred to in subsection

(1) shall not run against—

(a) a minor;

(b) *any person detained as a patient in terms of any mental health legislation; or*

(c) *a person under curatorship.”*

- [15] The ordinary meaning of the prelude “[n]otwithstanding anything to the contrary in any law contained”, is that the RAF Act supersedes any other law where claims arise for compensation under section 17. It follows from the ordinary meaning of the text in section 23(2)(b) and (c) that the RAF Act suspends the running of prescription against persons who are either detained as patients in terms of any mental health legislation or who are under curatorship. Section 23(2) is silent about suspending prescription for the affected persons.
- [16] It is noteworthy that the constitutional validity of section 23(1) of the RAF Act fell under the spotlight in *Road Accident Fund v Mdeyide (Mdeyide II)*. The brief factual matrix in *Mdeyide II* was that he was a poor, illiterate and uneducated man who, for six months after sustaining injuries in an accident, had no knowledge of his rights. Knowledge, as a function in determining prescription, was the cornerstone of the reasoning in that case. It was held that knowledge, set the prescription clock ticking under the Prescription Act but was ruled to be utterly irrelevant for triggering prescription under the RAF Act.
- [17] Unanimously, the Court found that prescription under section 23(1) of the RAF Act limited the right of access to courts under section 34 of the Constitution. The point of departure in *Mdeyide II* between the majority and minority was whether the limitation was justifiable in circumstances of a deprived socio-economic reality. The majority held that it was justifiable, but the minority concluded otherwise. Significantly, the Court observed that there was a real risk that claimants may explain their lateness by relying on “their ignorance of the law”.
- [18] At the heart of this matter lies the question whether Ms Mosoma’s claim has prescribed because it was instituted more than three years from the date of the accident from which it arose. There is no doubt that the three years’ limitation on the period within which she could institute her claim is imposed by section 23 of the RAF Act.

[19] The facts are not in dispute. It is accepted that the claim was instituted after a period of three years had lapsed from the date on which the cause of action arose. The question is whether, the failure by the RAF to advise the Applicant to undergo any serious injury medical assessment in terms of section 17 and regulation 3(1)(b) of the Act constitutes any special circumstances in this matter. It is my considered view that those circumstances can only be ascertained from Ms Mosoma's state of mind at the time.

[20] Unlike the Jacobs' matter as pointed out above, Ms Mosoma's does not allege that after the accident, she has become a person of unsound mind, neither does she allege that she could not institute legal proceedings on her own because she lacked legal standing and could not instruct others to do so on her behalf due to any kind of condition, including *inter alia*, mental condition.

[21] Section 23 of the RAF Act is divided into five subsections and subsections (2) to (5) address exceptions to the extinctive prescription imposed by the provision in subsection (1).

[22] The exceptions in subsections (4) and (5) are not relevant to his case. Section 23 of the RAF Act provides that:

“(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.

(2) Prescription of a claim for compensation referred to in subsection

(1) shall not run against—

- (a) a minor;
- (b) any person detained as a patient in terms of any mental health legislation; or
- (c) a person under curatorship.

(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.”

[23] Section 23(1) informs us that the right to claim compensation from the RAF in respect of loss or damage arising from the driving of a motor vehicle, becomes prescribed on the expiry of three years from the date of the accident. In other words, such claim must be lodged within a period of three years if the identity of the driver or owner of the offending vehicle was established. Prescription starts running under the section from the date of the accident, regardless of any provision to the contrary in any other law.

[24] As pointed out above, section 23(1) has internal exceptions and these are to be found in subsections (2) and (3). Subsection (2) declares that the prescription provided for in subsection (1) shall not run against persons listed in it. These are (a) minors; (b) persons detained as patients under mental health legislation; and (c) persons under curatorship. But significantly, the exceptions in (b) and (c) must have occurred before the expiry of three years from the date of the accident for them to interrupt the running of prescription or before the date of the accident, for them to prevent prescription from commencing to run.

[25] While subsection (2) prevents and stops prescription from running against persons mentioned in it, subsection (3) extends the prescription period by a further two years in respect of certain claims. These are claims lodged in

terms of section 17(4) or section 24 of the RAF Act. These claims become prescribed upon the expiry of five years from the date of the accident.

[26] It is not in dispute that on a literal interpretation of section 23, Ms Mosoma's claim had become prescribed. Similarly, the Prescription Act cannot save Ms Mosoma's claim from prescription because the Act does not apply to the present matter. Moreover, in light of the fact that Ms Mosoma does not fall within the exceptions in terms of section 23(2) and (3), her claim had prescribed upon the expiry of the three years from the date on which the cause of action arose, therefore her present application falls to be dismissed.

[27] In *Mdeyide II*, the court stated that for the majority, the country wide prevalence of poverty and illiteracy yielded to concerns for "the functioning and financial sustainability of a hugely important public body which renders an indispensable service to vulnerable members of society". The majority concluded:

"The RAF Act was legislated for a specific area and purpose. It limits the right of access to courts, but the importance of the purpose, the nature and extent of the limitation and the relation between the limitation and its purpose render the limitation proportional to its purpose and thus reasonable and justifiable."

[28] For the minority, the absence of a knowledge requirement for prescription to start running, or provision for condonation to counter the socio-economic realities, rendered the limitation of the right of access to courts in section 23(1) of the RAF Act "too inflexible to be justified".

[29] In this case, I have taken into consideration the principles laid down in several judgments including *Mdeyide II* and concluded that the applicant's reliance on 'ignorance of the law' in trying to persuade this court to condone the late filing

of her claim is misguided. Similarly, as pointed out above, the facts in Mr Jacobs' matter are distinguishable from this matter.

[30] In conclusion, I recognise that the Prescription Act does not apply to suspend the running of prescription under the RAF Act. However, in my view, the common law impossibility and incapacity principles do not find application to rescue Ms Mosoma's claim from prescribing in this instance. It is clear that the RAF Act saves the State from exposure to claims of violating its legislative obligations.

[31] I have taken into consideration the recognition of the validity of the RAF Act and the rights of the affected persons to human dignity and to access courts, without over burdening the RAF. Under section 23(1), prescription begin to run against Ms Mosoma from the date of the accident, and there is no doubt that it has prescribed.

[32] In the circumstances, I make the following order:

1. The application is dismissed.
2. There is no order as to costs.

Mnisi AJ

Acting Judge of the High Court

Heard on: 29 January 2024

Decided on: 4 June 2024

For the Applicant: Ms Thabethe

Attorneys for Applicant: Mojapelo Attorneys

For the Respondent: Unknown