THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 5 March 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Road Accident Fund and Others v Hlatshwayo and Others (724/2023 and 724B/2023) [2025] ZASCA 17 (5 March 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal in respect of the second and third appellants. The first appellant was ordered to pay the first and second respondents' costs of the appeal, including the costs of two counsel, where so employed.

At the heart of the appeal was an order against the appellants to pay the costs connected to the late settlement of the third-party claims of Mr Dumisani Elvis Hlatshwayo (the first respondent) and Mr Mzwandile Modcay Masilela (the second respondent), as well as the costs of the inquiry that the Mpumalanga Division of the High Court (the high court) held on the strength of rule 37A of the Uniform Rules of Court which provides for judicial case management. The high court ordered the CEO and the Board to pay the costs in their personal capacities. This appeal was with special leave of this Court.

The two cases of the first and second respondents were consolidated by the high court for the purposes of holding an inquiry into the costs which were incurred until the last-minute settlement of the two claims. The second appellant, the Chief Executive Officer of the Road Accident Fund (the CEO) and the third appellant, the Board of the Road Accident Fund (the Board), were ordered to pay the costs in their personal capacities.

Molitsoane AJA found that the high court was entitled, in terms of its practice directives, the empowering rule 37A (13), as well as the wide discretion it has in the

award of costs, to hold an inquiry into what the high court deemed to have been wasted costs.

However, when it came to assessing the liability of the Board, the SCA held that the high court ordered personal costs orders against the Board without affording it the opportunity to be heard. Furthermore, there was no explanation or reasons advanced in the high court judgment why the Board is mulcted with costs. Molitsoane AJA reasoned that such a personal cost order goes against the notion of procedural fairness and cannot stand.

The SCA evaluated whether there was any bad faith behind the late settlement of the third-party claims as envisaged in s15(3) of the Raf Act and found that there was simply no evidence before the high court to arrive at the finding of bad faith by the appellants, either based on malicious intent or even gross recklessness that reveals a breakdown of the ordinary exercise of authority and therefore the appellants cannot be held personally liable for the wasted costs.

The SCA held that even though the inquiry in the high court was not brought about at the request of the Road Accident Fund, it nevertheless failed to validate the claims as required by section 24(5) of the RAF Act. It also failed to attend the rule 37 conferences and judicial case management hearings which ultimately caused the high court to hold the inquiry into costs and therefore it was to blame for the holding of the inquiry.

For the above reasons the SCA found that it is in the interests of justice that the RAF be held liable for the costs of the inquiry in the high court as the first and second respondents were not responsible in anyway. Therefore, the SCA upheld an appeal in respect of the second and third appellants and the order of the high court was set aside and replaced by the following order: 'The defendant is ordered to pay the plaintiff's costs of suit, including the costs of the inquiry and of two counsel in the inquiry, where so employed.'

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