THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The Road Accident Fund v Taylor and other matters (1136-1140/2021) [2023] ZASCA 64 (8 May 2023)

Today the Supreme Court of Appeal (SCA) upheld appeals against a decision of the Gauteng Division of the High Court of South Africa, Johannesburg (the high court).

The SCA judgment dealt with a number of extraordinary appeals. The appeals were against the order of the high court in respect of two actions against the Road Accident Fund (the RAF) namely *Taylor v RAF* (the Taylor matter) and *Mathonsi v RAF (*the Mathonsi matter*)*, after each of the actions had been settled without proceeding to trial. Aspects of the order were appealed by all the parties concerned, as well as by other persons affected by the order. The appeals raised mainly two legal issues. The principal issue concerned the consequences of the settlement of disputed issues in litigation and the powers of a court in relation thereto. A subsidiary issue related to the rights of a person who was not a party to legal proceedings, but whose conduct was referred to the statutory body or institution responsible for oversight over the members of the profession that the person belonged to.

In both matters, the parties were represented by De Broglio Attorneys Incorporated (De Broglio Inc) and in support of their claims against RAF they delivered various expert reports. These included reports assessing the seriousness of Ms Taylor's and Mr Mathonsi's injuries prepared by a general practitioner, as well as the medico-legal reports of orthopaedic surgeons, occupational therapists and industrial psychologists. They also delivered the reports of an actuary, Mr Ivan Kramer. These reports typically reflected actuarial calculations of future loss of earnings based on information that had been provided to the actuary. The Taylor matter was enrolled for trial for 12 October 2020 and the Mathonsi matter was enrolled for trial on 14 October 2020, however in both matters settlement agreements were concluded. During the hearing of the Taylor matter, counsel for both parties were in agreement that a compromise had been reached, that as a result there was no longer a dispute necessitating trial and requested the court to remove the matter from the roll. In the Mathonsi matter counsel by agreement asked the court to make the settlement agreement an order of court.

The high court in both matters, refused to accede to the requests of the parties and instead reserved judgment. Then on 16 November 2020, the high court handed down a single judgment dealing with both the Taylor and Mathonsi matters. The wide-ranging judgment paid scant attention to questions that had been referred to argument in the Taylor matter and did not mention those in the Mathonsi matter. The court instead ordered that: (a) the matters be postponed sine die; (b) that its judgment be brought to the attention of any court called upon to enforce the purported settlement agreements; (c) that the conduct of De Broglio Inc and the legal practitioners of Ms Taylor be referred to the Legal Practice Council; (d) that the conduct of the general practitioner be referred to the Health Professions Council of South Africa (HPCSA); (e) that the conduct of Mr Ivan Kramer be referred to the Actuarial Society of South Africa and (f) that a copy of the judgment was to be delivered to the Minister of Transport; the

Acting Chief Executive Officer of the Road Accident Fund; and the National Director of Public Prosecutions.

As a result of the high court order, leave to appeal was sought by the RAF, Ms Taylor and Mr Mathonsi, as well as the affected persons. However, the high court dismissed these applications. Subsequently, however, the SCA granted each of the parties and affected persons the leave to appeal that they had sought. On appeal, the SCA firstly held that the referrals of the conduct of the affected persons were made in complete disregard of their rights to be heard and were manifestly unjust.

The SCA proceeded to hold that a compromise puts an end to litigation, has the effect of *res iudicata* and that a court has no power or jurisdiction to embark upon an enquiry as to whether a compromise was justified on the merits of the matter or was validly concluded. It further held that a court asked to make a settlement agreement an order of court, has the power to do so. The exercise of that power essentially required a determination of whether it would be appropriate to incorporate the terms of the compromise into an order of court. It followed that the high court should have removed the Taylor matter from the roll. There was no legitimate reason for refusing to make the draft order in the Mathonsi matter an order of court. The appeals must therefore succeed.

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