



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 1185/2024

In the matter between:

THE ROAD ACCIDENT FUND

APPELLANT

and

ADAM MUDAWO

FIRST RESPONDENT

WENILE SIMON NDLOVU

SECOND RESPONDENT

BRUCE MTHOKOSIZI SIBANDA

THIRD RESPONDENT

OYETUNDE ONENIYI AREO

FOURTH RESPONDENT

AND

Case no: 1468/2024

THE ROAD ACCIDENT FUND

APPELLANT

and

LYTON A

FIRST RESPONDENT

TAKAWIRA T

SECOND RESPONDENT

GUDZA N

THIRD RESPONDENT

LEFATSO G M

FOURTH RESPONDENT

CHIKWANA T

FIFTH RESPONDENT

MALEFANE L

SIXTH RESPONDENT

MUSEKIWE I

SEVENTH RESPONDENT

CHITANGO B

EIGHTH RESPONDENT

MUFUNDISI T	NINTH RESPONDENT
OLADIPUPO O F	TENTH RESPONDENT
HASTINGS R	ELEVENTH RESPONDENT
OLUWADARE J A	TWELFTH RESPONDENT
SUCHA C	THIRTEENTH RESPONDENT
THE SHERIFF PRETORIA EAST	FOURTEENTH RESPONDENT
THE SHERIFF CENTRURION EAST	FIFTEENTH RESPONDENT

Neutral citation: *The Road Accident Fund v Mudawo and Others* (Case no: 1185/2024) and *The Road Accident Fund v Lyton and Others* (Case no: 1468/2024) [2026] ZASCA 54 (16 April 2026)

Coram: SCHIPPERS, MBATHA and HUGHES JJA and BASSON and KGANYAGO AJJA

Heard: 16 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 16 April 2026.

Summary: Statutory interpretation – s 17(1) of the Road Accident Fund Act 56 of 1996 (the Act) – directive issued and claim form amended – foreign nationals illegally in South Africa (illegal foreigners) excluded from lodging claims under the Act – s 17(1) obliges Fund to compensate 'any person' for loss or damage – neither Minister of Transport nor Fund empowered to exclude illegal foreigners – violation of principle of legality.

Civil procedure – suspension of court orders and stay of execution – only where real or substantial injustice will ensue – Fund seeking relief on ground that s 17(1) of the Act excludes illegal foreigners – interpretation incorrect – no case made out for suspension of orders and stay of execution.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Davis J, Kok AJ and Mnyovu AJ sitting as court of appeal):

In case number 1185/2024:

The appeal is dismissed with costs, including the costs of two counsel.

On appeal from: Gauteng Division of the High Court, Pretoria (Motha J sitting as court of first instance):

In case number 1468/2024:

The appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

Schippers JA (Mbatha and Hughes JJA and Basson and Kganyago AJJA concurring)

[1] The central issue on these two appeals concerns the meaning and effect of s 17(1) of the Road Accident Fund Act 56 of 1996 (the Act), more specifically, whether ‘any person’ entitled to claim compensation for loss or damage as contemplated in that provision, excludes illegal foreigners. In the first appeal (Case no 1185/2024), a full court of the Gauteng Division of the High Court, Pretoria (the Full Court), held that s 17(1) of the Act does not exclude illegal foreigners. Special leave to appeal that decision was granted by this Court.

[2] The second appeal (Case no 1468/2024) is against an order by the Gauteng Division of the High Court, Pretoria (the High Court), which dismissed an application by the appellant, the Road Accident Fund (the Fund), to interdict the respondents in that case from proceeding with a warrant of execution against the Fund's assets, pending a decision by this Court on the first appeal. The second appeal is with the leave of the High Court. Only the first, seventh, eighth, ninth and tenth respondents participated in the appeal.

Factual background

[3] The basic facts can be briefly stated. The respondents in both appeals are foreign nationals. They were all involved in motor vehicle accidents at various places in this country, in which they sustained multiple injuries. They claimed compensation from the Fund in terms of the Act, for the losses and damages they suffered because of their injuries.

[4] On 21 June 2022 the Fund's Chief Operations Officer issued a management directive titled, 'Critical Validations to Confirm the Identity of South African Citizens and Claims Lodged by Foreigners' (the Directive). It states:

'In instances where the claimant or injured is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident. A copy of the foreign claimant's passport showing the entry stamp and/or exit stamp must be submitted. Where the passport does not have any stamp, the RAF will not be lodging such a claim. Where the passport document does not have an exit stamp, proof that the claimant is still in the country must be produced. In this instance the passport copy indicating approved Visa must be submitted. Copies of the passport must be certified by SAPS.'

[5] In July 2022 the Minister of Transport (the Minister) published a new RAF 1 claim form (the claim form) in the Government Gazette.¹ Concerning injury claims, paragraph 6.1 of the claim form requires a claimant to provide a

¹ Notice no 2235 in GG 46661, 4 July 2022.

certified copy of his or her identity document and ‘[i]f claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident’. A similar provision is contained in paragraph 12.1 of the claim form, in relation to death claims. In what follows, I refer to the decisions to publish paragraphs 6.1 and 12.1 in the claim form and to incorporate them in the Directive, as ‘the impugned decisions’.

[6] In August 2022 the respondents in the first appeal launched an application in the High Court to review and set aside the impugned decisions. The review grounds were that the decisions violated the principle of legality; infringed the respondents’ rights enshrined in ss 9, 10, 12, 27, 33 and 34 of the Constitution; and are unreasonable, substantively and procedurally unfair, and irrational.

[7] The Minister initially opposed the review application but subsequently delivered a notice to abide by the decision of the court. However, he did not provide the court with any reasons for the impugned decisions.

[8] The Fund opposed the review application. The answering affidavit by its Chief Executive Officer (CEO) states that the purpose of the impugned decisions is not to deny qualifying legal foreign claimants access to the social benefit scheme in the Act. Rather, their purpose is to satisfy the Fund that the loss or damage which is the subject of the claim, is caused by the driving of a motor vehicle within the Republic; and to ensure that the Fund does not contravene the Immigration Act 13 of 2002 (the Immigration Act) when processing claims submitted by foreign claimants.

[9] The CEO states that the Fund has established that there are several claimants who are citizens of other countries which do not have a social benefit scheme such as the one created by the Act. He says that a number of these claims are fraudulent, because the loss or damage was sustained in accidents outside the

borders of this country. Unless claimants are asked to state where the loss or damage was caused, the Fund has no way of knowing whether it was caused by the driving of a motor vehicle within South Africa.

[10] The CEO contends that the social benefit scheme in the Act was neither designed nor intended ‘to benefit people who are in South Africa illegally’. The law, he says, distinguishes between foreigners and citizens of the Republic. The former do not have the same rights as citizens and permanent residents of the Republic. The CEO goes on to say that the phrase ‘any person’ in s 17(1) of the Act, is a reference to ‘a South African citizen, a permanent resident and a legal foreigner’; it does not include illegal foreigners.

[11] The Full Court (Davis J, Kok AJ and Mnyovu AJ) reviewed and set aside the impugned decisions, with costs. It found that there is nothing in the Act nor the compensation scheme administered by the Fund, to justify the conclusion that the words ‘any person’ exclude illegal foreigners. The Full Court held that neither the Minister nor the Fund were empowered to amend or limit the ambit of the Act; and that the purported amendment or limitation constituted a reviewable irregularity as envisaged in s 6(2)(a)(i) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The court found it unnecessary to consider the remaining review grounds.

[12] The Full Court’s reasoning, in sum, is this. The Fund accepted that its conduct was based on a new interpretation of the Act, without any amendment to it. It contended that the Minister had taken a policy decision to publish paragraphs 6.1 and 12.1 of the claim form. If this contention is incorrect, the impugned decisions could not have been taken because that would amount to an amendment of the Act or a limitation thereof, which neither the Minister nor the Fund is empowered to do. The Act is social legislation passed to provide the victims of motor vehicle accidents with the widest possible protection, and to protect drivers

from delictual claims. Therefore, the words ‘any person’ in s 17(1) of the Act must be given a wide meaning.

[13] In the second appeal, 13 foreign nationals successfully prosecuted claims for damages against the Fund arising from motor vehicle accidents. They concluded settlement agreements with the Fund, some of which were made orders of court. When they sought to enforce those orders, some through writs of execution, the Fund refused payment.

[14] In November 2023 the Fund launched an urgent application in the High Court for an order suspending the operation and execution of the orders and warrants of execution issued by that court; and interdicting the fourteenth and fifteenth respondents (the Sheriff, Pretoria East and the Sheriff, Centurion East, respectively) from enforcing warrants of execution against the Fund’s assets.

[15] The Fund’s reasons for refusing payment and seeking a stay of the orders and warrants were twofold: (i) the respondents are illegal foreigners; and (ii) the first appeal was pending before the Full Court, which would decide whether they could submit claims for compensation under the Act. The Fund’s application was initially struck off the roll for lack of urgency but was subsequently re-enrolled. It came before Motha J, who concluded that the application was unmeritorious, and on the authority of the Full Court’s judgment, dismissed it with costs.

The first appeal

The relevant statutory provisions

[16] The Fund is a juristic person established in terms of s 2 of the Act. Its powers and functions include determining the conditions on which claims for compensation are administered;² and investigating and settling, subject to the Act, ‘claims arising from loss or damage caused by the driving of a motor vehicle whether or not

² Section 4(1)(a) of the Act.

the identity of the owner or the driver thereof, or the identity of both the owner and the driver thereof, has been established.’³

[17] Section 17(1) of the Act, in relevant part, provides that the Fund shall: ‘be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.’

[18] In terms of s 21(1) of the Act, certain common law claims are abolished. It provides:

‘Abolition of certain common law claims

- (1) No claim for compensation in respect of loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie-
- (a) against the owner or driver of a motor vehicle; or
 - (b) against the employer of the driver.’

[19] The procedure for the submission of claims is prescribed in s 24. It states inter alia that a claim for compensation and the accompanying medical report shall ‘be set out in the prescribed form, which shall be completed in all its particulars’;⁴ and that any form not so completed shall not be acceptable as a claim under the Act.⁵

³ Section 4(1)(b) of the Act.

⁴ Section 24(1)(a) of the Act.

⁵ Section 24(4)(a) of the Act.

[20] Section 26(1) of the Act provides:

‘The Minister may make regulations regarding any matter that shall or may be prescribed in terms of this Act or which it is necessary or expedient to prescribe in order to achieve or promote the object of this Act.’

[21] Section 25(1) of the Immigration Act states:

‘The holder of a permanent residence permit has all the rights, privileges, duties and obligations of a citizen, save for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to citizenship.’

[22] Section 42(1), in relevant part, provides:

‘Subject to this Act, and save for necessary humanitarian assistance, no person, shall aid, abet, assist, enable or in any manner help-

- (a) an illegal foreigner; or
- (b) a foreigner in respect of any matter, conduct or transaction which violates such foreigner’s status, when applicable . . .’

[23] Section 44 of the Immigration Act provides:

‘When possible, any organ of state shall endeavour to ascertain the status or citizenship of the persons receiving its services and shall report to the Director-General any illegal foreigner, or any person whose status or citizenship could not be ascertained, provided that such requirement shall not prevent the rendering of services to which illegal foreigners and foreigners are entitled under the Constitution or any law.’

[24] Section 49(4) states:

‘Anyone who intentionally facilitates an illegal foreigner to receive public services to which such illegal foreigner is not entitled shall be guilty of an offence and liable on conviction to a fine.’

The meaning of ‘any person’ in the Act

[25] The Fund’s submissions, briefly, are these. The Full Court erred in not following the settled approach to the interpretation of statutes in *Endumeni*,⁶ and *Road Traffic Management Corporation*.⁷ The phrase ‘any person’ in s 17(1) of the Act does not include illegal foreigners. It should be interpreted with due regard to the provisions of the Immigration Act, which prohibits foreign nationals from entering and being in the Republic illegally.

[26] More particularly, s 25 of the Immigration Act draws a distinction between illegal foreigners and permanent residents: it provides that the latter have all the rights, privileges and benefits granted to citizens; s 44 states that organs of state must ascertain the status or citizenship of persons receiving their services and report illegal foreigners; and s 49(4) makes it an offence to intentionally facilitate public services to illegal foreigners. These provisions of the Immigration Act, the Fund submits, authorised the Minister and the Fund to prescribe a requirement – which is lawful – that foreign claimants provide evidence that they were lawfully in the Republic when their claims arose, which is a ‘policy choice made by the Executive’, that should be respected.

[27] The Fund further submits that the effect of the Full Court’s judgment is that illegal foreigners are entitled to benefit from the social benefit scheme in the Act, even though they entered the Republic illegally, and their presence constitutes a criminal offence under the Immigration Act. This, so it is submitted, would lead to absurdity. A further effect is that illegal foreigners need not prove that they were in the country when the accident giving rise to the claim happened.

[28] The respondents submit that the impugned decisions constitute an infringement of several constitutional rights, including equality (s 9); dignity

⁶ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA); [2012] 2 All SA 262 (SCA) (*Endumeni*).

⁷ *Road Traffic Management Corporation v Waymark Infotech (Pty) Ltd* [2019] ZACC 12; 2019 (6) BCLR 749 (CC); 2019 (5) SA 29 (CC) (*Road Traffic Management Corporation*) paras 29 and 30.

(s 10); children’s rights (s 28); and the right of access to court (s 34). They contend that the Act must be interpreted to give the greatest possible protection to third parties; that the phrase ‘any person’ in s 17(1) of the Act is one of wide import which includes illegal foreigners; and that the Fund’s internal management directives do not have the force of law that bind the public and claimants.

[29] It is a settled principle that statutory interpretation is a unitary exercise, considering the text, context and purpose of a provision to render a sensible interpretation.⁸ The starting point remains the ordinary, grammatical meaning of the words, which must be read purposively, properly contextualised and construed consistently with the Constitution.⁹

[30] A basic principle of statutory interpretation is s 39(2) of the Constitution. It enjoins a court, when interpreting any legislation, to promote the spirit, purport and objects of the Bill of Rights. Implicit in this injunction are two propositions: ‘first, the interpretation that is placed upon a statute must, where possible, be one that would advance at least an identifiable value enshrined in the Bill of Rights; and, second, the statute must be reasonably capable of such interpretation. This flows from the fact that the Bill of Rights “is a cornerstone of [our constitutional] democracy”. It “affirms the democratic values of human dignity, equality and freedom”.’¹⁰

[31] Unlike other legislation which specifically excludes foreign nationals from its ambit, such as the Social Assistance Act 13 of 2004 which limits beneficiaries to South African citizens, permanent residents and refugees,¹¹ the Act contains

⁸ *Endumeni* fn 6 para 18; *University of Johannesburg v Auckland Park Theological Seminary and Another* [2021] ZACC 13; 2021 (6) SA 1 (CC); 2021 (8) BCLR 807 (CC) paras 64-66.

⁹ *Airports Company South Africa v Big Five Duty Free (Pty) Ltd and Others* [2018] ZACC 33; 2019 (2) BCLR 165 (CC); 2019 (5) SA 1 (CC) para 29, affirming *Endumeni*.

¹⁰ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC) (*Bato Star*) para 72.

¹¹ See also s 24(2)(b) of the Legal Practice Act 28 of 2014 which restricts admission to practice and be enrolled as a legal practitioner, to South African citizens or permanent residents; *Rafoneke and Another v Minister of Justice and Correctional Services and Others* [2022] ZACC 29; 2022 (6) SA 27 (CC); 2022 (12) BCLR 1489 (CC).

no such limitation. Instead, s 17(1), on its plain wording, states that the Fund is obliged to compensate ‘any person’ for any loss or damage suffered as a result of bodily injury to themselves, or the death of or bodily injury to another person, caused by or arising from the driving of a motor vehicle.

[32] The Constitutional Court in *Road Traffic Management Corporation*,¹² affirming this Court’s decisions in *Hayne*¹³ and *Hugo*,¹⁴ said:

‘In *Hayne* the Appellate Division said that “(i)n its natural and ordinary sense any – *unless restricted by the context* – is an indefinite term which includes all of the things to which it relates”. Yet again in *Hugo* it was held that “(a)ny is upon the face of it, a word of wide and unqualified generality. *It may be restricted by the subject matter* or the context, but *prima facie* it is unlimited”.¹⁵

[33] The phrase ‘any person’ in the former Compulsory Motor Vehicle Insurance Act 56 of 1972, was considered in *Stegen*.¹⁶ Kumleben J held:

‘The section in terms obliges the registered company to compensate “any person whatsoever” who is injured in the circumstances stipulated. The phrase is one of obviously wide meaning and its use is in conformity with the general purpose of the Act, which is to substitute a statutory insurer for the actual wrongdoer as regards compensation legally claimable by any person under the common law.’

[34] Thus, on its plain language, s 17(1) cannot be construed as excluding illegal foreigners. This construction accords with the context of the legislative scheme – to compensate third parties who suffer loss or damage wrongfully caused by the driving of motor vehicles,¹⁷ and to abolish claims for compensation against owners or drivers of motor vehicles. It also accords with the purpose of s 17(1) within that scheme.

¹² *Road Traffic Management Corporation* fn 7 para 33B-C.

¹³ *Hayne & Co v Kaffrarian Steam Mill Co Ltd* 1914 AD 363.

¹⁴ *R v Hugo* 1926 AD 268 at 271.

¹⁵ Emphasis in the original.

¹⁶ *Stegen and Others v Shield Insurance Co Ltd* 1976 (2) SA 175 (N) at 177B-C.

¹⁷ Section 3 of the Act provides:

‘The object of the Fund shall be the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles.’

[35] This construction of s 17(1) is also consistent with the purpose of the Act. In *Mvumvu*¹⁸ the Constitutional Court said:

‘The Act constitutes social-security legislation whose primary object has been described as “to give the greatest possible protection . . . to persons who have suffered loss through a negligent or unlawful act on the part of the driver or owner of a motor vehicle”.’

[36] This purpose is not achieved when the phrase ‘any person’ is interpreted as excluding illegal foreigners. On the contrary, the Act is the latest in a line of statutory enactments dating back to 1942, which is ‘designed to compensate persons injured or the dependants of persons killed as a result of the negligent driving of motor vehicles. The intention throughout has been to give such persons the greatest possible protection’.¹⁹

[37] The above interpretation of s 17(1) advances identifiable values enshrined in the Bill of Rights,²⁰ more specifically, equality and freedom. Under s 9 of the Constitution, everyone – regardless of immigration status – is equal before the law. Excluding a category of claimants based on their immigration status, would constitute unfair discrimination and violate the primary object of the Act, which is to provide social security to all road users. That object is to ensure that ‘injured persons or their dependants who might not be able to recover damages owing to the inability of the parties liable to pay, should receive full compensation’.²¹

[38] The interpretation of ‘any person’ as meaning ‘everyone’, plainly advances the right to freedom and security of the person entrenched in s 12(1) of the Constitution. In *Law Society*,²² the Constitutional Court explained the extent of this right as follows:

¹⁸ *Mvumvu and Others v Minister for Transport and Another* [2011] ZACC 1; 2011 (2) SA 480 (CC); 2011 (5) BCLR 488 (CC) para 20.

¹⁹ *SA Eagle Insurance Co Ltd v Van der Merwe NO* 1998 (2) SA 1091 (SCA) at 1095J-1096A, affirmed in *Law Society of South Africa and Others v Minister for Transport and Another* [2010] ZACC 25; 2011 (1) SA 400 (CC); 2011 (2) BCLR 150 (CC) para 40.

²⁰ *Bato Star* fn 10 para 72.

²¹ *Rose’s Car Hire (Pty), Ltd v Grant* 1948 (2) SA 466 (A) at 471.

²² *Law Society of South Africa* fn 19 para 63.

‘Section 12(1) confers the right to the security of the person and freedom from violence on “everyone”. There is no cogent reason in logic or in law to limit the remit of this provision by withholding the protection from victims of motor vehicle accidents. When a person is injured or killed as a result of negligent driving of a motor vehicle, the victim’s right to security of the person is severely compromised. The State, properly so, recognises that it bears the obligation to respect, protect and promote the freedom from violence from any source.’

[39] Sections 9(1) and 12(1) of the Constitution, and s 17(1) of the Act itself, draw no distinction between any persons, let alone between South African citizens and illegal foreigners. Consequently, the Act covers all road users. Had the legislature intended that a category of claimants should be excluded from claiming compensation under the Act, it could, and would, have said so.

[40] It follows that the Fund’s reliance on the provisions of the Immigration Act is misplaced. Section 25(1), which states that a permanent resident has the rights, privileges and duties of a citizen, does not assist the Fund. Section 25(1) does not detract from the fact that the Act is social security legislation to provide the fullest possible protection to victims of road accidents. The Fund misreads s 44 of the Immigration Act. First, it cannot be interpreted to mean that where an illegal foreigner lodges a claim for compensation under the Act, the Fund is ‘aiding or abetting’ that person to contravene the Immigration Act when it investigates or settles that claim.²³ Second, s 44 itself contains a proviso that the requirement to ascertain the status of persons receiving services from an organ of state, shall not prevent the rendering of services or performance to which illegal foreigners are entitled ‘under any law’. The Act is such a law. Section 49(4) of the Immigration Act does not apply as illegal foreigners are included in terms of s 17(1) of the Act.

[41] The Fund’s contention that the Directive and the changes to the claim form were necessary, because of loss or damage sustained by foreign claimants in

²³ *Maphosa v Road Accident Fund* [2024] ZAGPJHC 263 paras 99-101.

accidents outside South Africa and to stop fraud, does not withstand scrutiny. Paragraph 3 of the claim form requires a claimant to provide details of the date, time and place of the accident, and the name and address of the police station to which the accident was reported. That report contains details of persons killed or injured. Given this information, which is compulsory, it is inconceivable that the Fund has no way of knowing whether a foreign national sustained injury in an accident in this country. And there is simply no evidence of any fraudulent claims by illegal foreigners.

[42] Moreover, not every foreigner without a passport containing an entry and exit visa stamp as required by the Directive, is in South Africa illegally. Section 27(b) of the Refugees Act 130 of 1998 (the Refugees Act) grants refugees (persons who leave their home country due to a well-founded fear of persecution based on race, religion, nationality, social group, or political opinion) protection, including the rights in the Bill of Rights. In *Ruta*,²⁴ the Constitutional Court held that the provisions of the Immigration Act must be read together and in harmony with the Refugees Act. Although an asylum seeker who is in the country unlawfully is an ‘illegal foreigner’ under the Immigration Act, the specific provisions of the Refugees Act provide imperatively that notwithstanding that status, the claim for asylum must first be processed under the Refugees Act.

[43] The Full Court’s conclusion is thus correct. There is nothing in the text of the Act, the context of its social security scheme, and its purpose, which suggests that the phrase ‘any person’ in s 17(1) should be restrictively interpreted to exclude illegal foreigners. The decision to the contrary in *Chola v RAF*²⁵ is incorrect and should not be followed.

²⁴ *Ruta v Minister of Home Affairs* [2018] ZACC 52; 2019 (3) BCLR 383 (CC); 2019 (2) SA 329 (CC) para 43.

²⁵ *Chola v RAF* Johannesburg High Court case number 4182/2019.

The impugned decisions violate the principle of legality

[44] The founding affidavit states that the Fund and the Minister circumvented the parliamentary law-making process, and that this conduct offends the principle of legality and the rule of law. In addition, there is no rational basis for excluding illegal foreigners from submitting claims under the Act.

[45] The Fund contends that the impugned decisions constitute a policy choice made by the executive which a court should not interfere with. However, this contention has no foundation in the evidence. There is nothing in the answering affidavit indicating that the Minister had taken a policy decision to issue the Directive or amend the claim form.

[46] Further, there is no explanation of how or why paragraphs 6.1 and 12.1 were incorporated into the claim form, save for the following bald statement:

‘[T]here is a proper rational connection between paragraphs 6.1, 12.1 of the Form RAF 1, the directive and the purpose for which they were issued of verifying that the claimant or victim was legally in the Republic when the motor vehicle collision occurred; . . .’

[47] The constitutional principle of legality, an aspect of the rule of law, requires that a body or a functionary exercising public power must act within the powers lawfully conferred on them.²⁶ Moreover, the exercise of public power must not be arbitrary or irrational. In *Pharmaceutical Manufacturers Chaskalson P* said:²⁷

‘It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power

²⁶ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Traditional Metropolitan Council and Others* 1999 (1) SA 374 (CC) para 58.

²⁷ *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) para 85.

by the Executive and other functionaries must, at least, comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action.’

[48] The power of the Minister is confined to making regulations in terms of s 26 of the Act, concerning the matters referred to in that provision. The Minister has no power to exclude any category of claimants from the social benefit scheme created by the Act. The impugned decisions are not rationally related to the powers conferred on the Fund by s 4(1) and s 17(1) of the Act. Prohibiting illegal foreigners from submitting claims under the Act, has nothing to do with the Fund’s power to determine the terms and conditions on which claims for compensation shall be administered; nor the investigation and settling of claims. For these reasons, the impugned decisions are arbitrary.

[49] As stated, Parliament has determined that the Fund shall compensate ‘any person’ for any loss or damage sustained as contemplated in s 17(1) of the Act. It follows that the exclusion of illegal foreigners in terms of the impugned decisions, is a violation of the principle of legality.

[50] The High Court was accordingly correct in holding that impugned decisions were not authorised by an empowering provision, as contemplated in s 6(2)(a)(i) of the PAJA, albeit on the basis that these decisions constitute administrative action.

The second appeal

No case made out for the suspension of court orders

[51] This appeal can be dealt with briefly. The case in the founding affidavit for an order suspending the operation of court orders and warrants of execution, is that rule 45A of the Uniform Rules of Court grants a court a discretion to suspend

the execution of any order.²⁸ The warrants of execution and the attachments of the Fund's assets, the founding affidavit states, are unlawful because they were 'not obtained by court order or judicial oversight'. However, there is no factual basis for this allegation in the founding affidavit.

[52] Rather, the basis for the application to suspend the operation of the orders and warrants of execution, is a statement in the founding affidavit that the 'social benefit scheme was not designed and intended to benefit people who are in South Africa illegally, neither to accommodate claims that are fraudulent'. The affidavit further states that the Fund requested 'verification documents' relating to the immigration status of the first to thirteenth respondents, which had not been provided, or where such documents were provided, they did not comply with the Directive. Then it is said that if the Fund is vindicated in its stance that illegal foreigners are not entitled to claim compensation under the Act, 'any payment made to such claimants should not have been made', and that the Fund might not be able to recover those payments from foreigners.

[53] As stated above, the Fund's interpretation that s 17(1) of the Act excludes illegal foreigners from claiming compensation, is wrong. Consequently, the basis of the application to suspend the court orders and warrants falls away. Solely for this reason, the second appeal must fail.

No retrospective application of the Directive and claim form

[54] Apart from the fatally flawed basis of the second appeal, neither the Directive nor the claim form has retrospective operation. Several claims of the respondents in the second appeal – which the Fund has settled – for example, those of the first, second, fourth, sixth, seventh, eighth, ninth and tenth respondents, were lodged with the Fund before the Directive came into force on

²⁸ Rule 45A provides that the court may suspend the operation or execution of any order as it deems fit.

21 June 2022, and the claim form, on 4 July 2022. On 9 November 2021 the first respondent obtained an order that the Fund was liable for payment of 100% of his proven or agreed damages. On 9 March 2022 the sixth respondent obtained an order striking out the Fund's defence, and by court order dated 22 April 2022, the Fund was ordered to pay him damages and to provide him with an undertaking for future medical treatment. The eighth respondent's claim was settled on 1 July 2022.

[55] There is nothing in the Directive nor the claim form that gives them retrospective force. On the contrary, the Directive states that documentary proof that a foreign claimant was legally in South Africa when the accident occurred applies to all lodgements received *from the date of the Directive* – 21 June 2022. No legislation should be construed as taking away or impairing a vested right acquired under existing laws, unless the lawgiver clearly intended the legislation to have that effect.²⁹

[56] Despite this, the Fund sought to suspend the operation of the orders and the warrants of execution issued pursuant thereto, without establishing a case in terms of rule 45A. This is impermissible. The Fund has not attacked the underlying cause of any of the judgment debts granted against it in favour of the respondents. In short, it has failed to establish a stay of execution on a ground of real or substantial injustice, either in terms of rule 45A, or the court's inherent jurisdiction.³⁰

²⁹ *Peterson v Cuthbert & Co Ltd* 1945 AD 420 at 430; *S and Another v Regional Magistrate Boksburg: Venter and Another (Boksburg)* 2011 (2) SACR 274 (CC); 2012 (1) BCLR 5 (CC) para 16; *Chisuse and Others v Director-General, Department of Home Affairs and Another* [2020] ZACC 20; 2020 (10) BCLR 1173 (CC); 2020 (6) SA 14 (CC) para 71.

³⁰ *Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others* [2010] ZASCA 68; [2010] 4 All SA 398 (SCA); 2011 (4) SA149 (SCA) (*Van Rensburg*) paras 51-52.

The Fund is bound by compromises

[57] A compromise (*transactio*) is ‘an agreement between litigants for the settlement of a matter in dispute’.³¹ Its purpose ‘is not only to put an end to existing litigation but also to prevent or avoid litigation’.³² In *Gollach & Gomperts* this Court stated the general principle as follows:³³

‘A *transactio*, whether extra-judicial or embodied in an order of Court, has the effect of *res judicata* . . . It is obvious that, like any other contract (and like any order of Court), a *transactio* may be set aside on the ground that it was fraudulently obtained. There is authority to the effect that it may also be set aside on the ground of mistake, where the error is *justus*.’

[58] Our courts encourage parties to deal with their disputes in this way.³⁴ An expedited end to litigation is not only in the parties’ interests, but also advances the orderly and effective administration of justice by reducing overcrowded court rolls.³⁵ When a compromise is concluded it disposes of the proceedings,³⁶ and the parties are precluded from proceeding on the original claim.³⁷

[59] As already stated, several of the respondents’ claims have been compromised. For example, the fourth, eighth, ninth and tenth respondents’ claims were settled, and those settlement agreements were made orders of court. The effect of this, the Constitutional Court has said,³⁸

‘. . . is to change the status of the rights and obligations between the parties. Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the *lis* between the parties; the *lis* becomes *res judicata* (literally, “a matter judged”). It changes

³¹ Grotius *Introduction* 3.4.2, referred to in *Cachalia v Harberer & Co* 1905 T.S. 457 at 462 and cited with approval in *Gollach & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd and Others* 1978 (1) SA 914 (A) at 921B.

³² *Gollach & Gomperts* at 921C.

³³ *Gollach & Gomperts* at 922C; *Moraitis Investments (Pty) Ltd and Others v Montic Dairy (Pty) Ltd* [2017] ZASCA 54; [2017] 3 All SA 485 (SCA); 2017 (5) SA 508 (SCA) para 14.

³⁴ *Hlobo v Multilateral Motor Vehicles Accident Fund* [2001] 1 All SA 322; 2001 (2) SA 59 (SCA) (*Hlobo*) at 65B.

³⁵ *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) paras 22-23.

³⁶ *Hlobo* fn 34 at 65B.

³⁷ *Road Accident Fund v Ngubane* [2007] ZASCA 114; [2007] SCA 114 (RSA); 2008 (1) SA 432 (SCA) para 12.

³⁸ *Eke v Parsons* fn 35 para 31.

the terms of a settlement agreement to an enforceable court order. The type of enforcement may be execution or contempt proceedings. Or it may take any other form permitted by the nature of the order.’

[60] In *Chief Lesapo*, the Constitutional Court held that enforcement of a court order stems from the s 34 right of access to courts:³⁹

‘An important purpose of s 34 is to guarantee the protection of the judicial process to persons who have disputes that can be resolved by law. Execution is a means of enforcing a judgment or order of court and is incidental to the judicial process. It is regulated by statute and the Rules of Court and is subject to the supervision of the court which has an inherent jurisdiction to stay the execution if the interests of justice so require.’

[61] As a general principle, a court grants a stay of execution in terms of rule 45A ‘where real and substantial justice compels such action’.⁴⁰ Apart from rule 45A, the court has inherent jurisdiction, in appropriate circumstances, to order a stay of execution or suspend an order. This inherent power is not exercised as a matter of course, but sparingly.⁴¹ The court has a discretion which it must exercise judicially.⁴² It will come to the assistance of an applicant outside the provisions of the Rules only when the court is satisfied that justice cannot properly be done unless relief is granted to the applicant.⁴³

[62] This is not such a case. The Fund has not questioned, let alone attacked any of the existing underlying judgments. Its claim for an order to suspend the operation of the orders and warrants of execution is squarely founded on the contention that s 17(1) of the Act excludes claims by illegal foreigners. The compromise of the respondents’ claims is a further reason why the second appeal must fail.

³⁹ *Chief Lesapo v North West Agriculture Bank and Another* 1999 (12) BCLR 1420 (CC); 2000 (1) SA 409 (CC) para 13.

⁴⁰ *Van Rensburg* fn 30 para 52.

⁴¹ *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and Another* 1979 (2) SA 457 (W) (*Moulded Components*) at 463A.

⁴² *Potgieter and Another v Van der Merwe* 1949 (1) SA 361 (A) at 373-374; *Van Rensburg* fn 30 para 51.

⁴³ *Moulded Components* fn 41 at 463A-B.

Conclusion

[63] On a proper construction of s 17(1) of the Act, the obligation of the Fund to compensate ‘any person’ (the third party) for loss or damage suffered because of bodily injury to the third party, or the death of or bodily injury to any other person caused by the driving of a motor vehicle, does not exclude illegal foreigners. The Fund’s contention that they are excluded because the Immigration Act prohibits foreign nationals from being in the Republic illegally, and that investigating claims lodged by illegal foreigners amounts to aiding and abetting them in contravention of that Act, is incorrect.

[64] The Fund has failed to make out a case for suspension of the orders and the stay of the warrants of execution in favour of the respondents, in the second appeal. Aside from this, neither the Directive nor the claim form has retrospective operation. The Fund is bound by the settlement agreements concluded with those respondents and the orders of court made pursuant thereto; it has not attacked the existing underlying judgments.

[65] The following order is made:

In case number 1185/2024:

The appeal is dismissed with costs, including the costs of two counsel.

In case number 1468/2024:

The appeal is dismissed with costs, including the costs of two counsel.

A SCHIPPERS
JUDGE OF APPEAL

Appearances:

Case no: 1185/24

For the appellant:

K Tsatsawane SC with C M Rip

Instructed by:

Malatji & CO Attorneys, Johannesburg
Honey & Partners Inc, Bloemfontein

For the first respondent:

P B Geach SC with R Hawman

Instructed by:

Roets Van Rensburg Attorneys, Pretoria
Makubalo Attorneys, Bloemfontein

For the second respondent:

F H H Kehrhahn with S Cliff

Instructed by:

Mduzulwana Attorneys, Pretoria
Makubalo Attorneys, Bloemfontein

For the third respondent:

M Snyman SC with M van Ryneveld

Instructed by:

KWP Attorneys, Pretoria
Makubalo Attorneys, Bloemfontein

For the fourth respondent:

P van der Schyf with D H Hinrichsen

Instructed by:

Slabbert & Slabbert Attorneys, Pretoria
Du Plooy Attorneys, Bloemfontein

Case no: 1468/24

For the appellant:

T Pillay

Instructed by:

Malatji & CO Attorneys, Johannesburg
Honey & Partners Inc, Bloemfontein

For the first respondent:

P B Geach SC with R Hawman

Instructed by:

Roets Van Rensburg Attorneys, Pretoria
Makubalo Attorneys, Bloemfontein

For the eighth respondent: F H H Kehrhahn
Instructed by: Gary Stuart Garden Attorneys, Pretoria
Alberts Attorneys, Bloemfontein

For the ninth and tenth
respondents: M Snyman
Instructed by: Gary Stuart Garden Attorneys, Pretoria
Alberts Attorneys, Bloemfontein.