THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 414/2024

In the matter between:

THE ROAD ACCIDENT FUND	**FIRST APPLICANT**
T MSIBI N O	**SECOND APPLICANT**
C LETSOALO N O	**THIRD APPLICANT**
and	
LESEDI DIKELEDI MAUTLA	**FIRST RESPONDENT**
ANTOINNETTE ELIZABETH BIANCA STEYN	**SECOND RESPONDENT**
GERMARI DIPPENAAR	**THIRD RESPONDENT**
JOHANNES CHRISTOFFEL STRAUSS	**FOURTH RESPONDENT**
NOMTHANDAZO ELIZABETH SILUMA	**FIFTH RESPONDENT**
SINOVUYO KUBOKO	**SIXTH RESPONDENT**
NONHLANHLA CECILIA RADEBE	**SEVENTH RESPONDENT**
OPOLA NDIMA	**EIGHT RESPONDENT**
W E EMERGENCY RESPOND TEAM (PTY) LTD	**NINTH RESPONDENT**
THE MINISTER OF TRANSPORT	**TENTH RESPONDENT**
THE LEGAL PRACTICE COUNCIL	**ELEVENTH RESPONDENT**

Neutral citation: *The Road Accident Fund & Others v Mautla and Others* (414/2024) [2025] ZASCA 200 (19 December 2025)

Coram: MAKGOKA, SMITH and KEIGHTLEY JJA

Heard: 24 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and by release to SAFLII. The date and time for hand-down of the judgment is deemed to be 19 December 2025 at 11h00.

Summary: Superior Courts Act 10 of 2013 – section 17(2)*(f)* – application for reconsideration of refusal of leave to appeal – section 16(1)*(b)* – test for special leave to appeal applied instead of test for 'ordinary' leave under s 17(2)*(b)* – whether grounds for reconsideration and for granting leave to appeal established.

ORDER

On application for reconsideration referred to in terms of s 17(2)(*f*) of the Superior Courts Act 10 of 2013:

1 The application for reconsideration is granted.

2 The order dated 15 March 2024 dismissing the applicants' application for leave to appeal is set aside and replaced with the following order:

'1. Leave to appeal is granted to the Supreme Court of Appeal.

2. The costs order of the high court dismissing the application for leave to appeal is set aside and the costs of the application for leave to appeal in this Court and the high court are costs in the appeal. If the applicants do not proceed with the appeal, the applicants are to pay the costs.'

3 The costs of the application for reconsideration are costs in the appeal.

JUDGMENT

Makgoka and Keightley JJA (Smith JA concurring):

[1] This is an application for reconsideration of an order of two judges of this Court, refusing the application for leave to appeal against an order of the full court of the Gauteng Division of the High Court, Pretoria (the full court), sitting as a court of first instance. The application was referred for oral hearing by the President of this Court in terms of s 17(2)*(f)*, read with s 17(2)*(d)* of the Superior Courts Act 10 of 2013 (the SC Act).

[2] The first applicant is the Road Accident Fund (the Fund). The second applicant, Ms Thembi Msibi, is the former Chairperson of the Board of the Fund. Mr Collins Letsoalo, the third applicant, is the former Chief Executive Officer of the Fund. The latter applicants are cited *nomine officio*. Their interests in the litigation are wholly aligned with those of the Fund.

[3] The first to eighth respondents are individuals who are pursuing claims for compensation under the Road Accident Fund Act 56 of 1996 (RAF Act). The ninth respondent, W E Emergency Respond Team (Pty) Ltd, is an ambulance service that provides first aid services to those injured in motor vehicle accidents and lodges supplier claims with the Fund as contemplated in s 17(5) of the RAF Act. The tenth and eleventh respondents, respectively the Minister of Transport (the Minister) and the Legal Practice Council, were joined as respondents before the high court but did not participate in either of those proceedings or the appeal in this Court.

[4] The first to eighth respondents instituted the high court application against the Fund following difficulties they experienced in securing the lodgment of their claims. These difficulties stemmed from the Fund's decisions to adopt and implement revised compliance rules for the lodgment of claims including, among other things, a new RAF1 Form. The Fund did so by publishing directives and board notices in the Government Gazette in 2021.

[5] In their high court application, the respondents sought to review and set aside the decisions underpinning the Fund's actions. In addition, they prayed for an order declaring Regulation 7(1) of the Regulations[1] promulgated under s 26 of the RAF Act (the Regulations) to be unconstitutional and invalid. Further, that it be reviewed

[1] Road Accident Fund Regulations GN R770, *GG* 31249, 21 July 2008.

and set aside to the extent that it confers on the Fund the right to amend or substitute the RAF1 Form attached as Annexure A to the Regulations. The respondents contended that only the Minister, and not the Fund, has the power to prescribe amendments to the RAF1 Form, and that the Minister has no power to delegate this function to the Fund.

[6] As indicated, the application was considered by the full court, sitting as court of first instance. On 6 November 2023, the court delivered its judgment. It granted the relief sought by the respondents and declared invalid the identified directives and notices, and set them aside. The gist of the full court's judgment was that the Fund had no power under the RAF Act to adopt and implement the impugned decisions, nor could the Minister delegate his powers to the Fund.

[7] The Fund applied to the high court for leave to appeal against its judgment and order. This was refused. The applicants then applied to this Court for the requisite leave. Two judges of this Court considered the application under what is commonly referred to as the 'petition' procedure.[2] On 15 March 2024, the petition judges dismissed the application. That order assumes some significance, to which we shall revert.

[8] On 6 May 2024, the applicants lodged their application for reconsideration under s 17(2)*(f)* with the President of this Court. In an order dated 14 June 2024, the President referred the matter to Court for reconsideration and for oral argument on the leave to appeal. The parties were directed to be prepared to argue the merits, if called upon to do so.

[2] The term 'petition' is not used in the SC Act. It is however, usually understood to be in reference to the process in terms of which this Court determines an application for leave to appeal against a decision of a high court, either where the high court sat as a court of first instance and refused leave to appeal (s 17(2)*(b)*), or where the decision was that of a high court sitting as a court of appeal (s 16(1)*(b)*).

[9] In the interim, further developments were afoot. In the wake of the high court's decision, the Fund withdrew its Board Notice 58 of 2021 and RAF1 Form annexed to it. It then published a new Board Notice 271, on 6 May 2022, in similar terms to that set aside by the high court. The Minister also published a new RAF1 Form on 4 July 2022.

[10] These actions spawned a second review application against the Fund and the Minister in the high court, this time by the Legal Practitioners Indemnity Insurance Fund NPC and Others (the *LPIIF* application). A second full court panel heard the *LPIIF* application and delivered its judgment on 20 March 2024 (the *LPIIF* judgment).[3] It reviewed and set aside Board Notice 271 and the new RAF1 Form gazetted by the Minister on 4 July 2022. It found it unnecessary to rule on the constitutionality of Regulation 7(1). The high court in *LPIIF* subsequently granted leave to the Fund to appeal against its judgment and order, to this Court. That appeal is pending and has been enrolled for hearing on 17 February 2026.

[11] As the present application involves a referral for reconsideration in terms of s 17(2)*(f)*, it necessitates a two-stage inquiry. First, this Court must determine whether the requirements of that section are satisfied and whether leave to appeal should be granted. If so, the Court would ordinarily proceed to consider the merits of the appeal. However, at the hearing of the application, counsel were directed by this Court to restrict the application to two enquiries: first, whether, under s 17(2)*(f),* special circumstances exist to reconsider the order of the two judges refusing leave to appeal. Second, whether, under s 17(2)*(d)*, leave to appeal should be granted. In

[3] *Legal Practitioners Indemnity Insurance Fund NPC and Others v Road Accident Fund and Others* [2024] ZAGPPHC 294; 2024 (4) SA 594 (GP).

other words, were we to grant leave to appeal, we would not proceed at the hearing to consider the merits of the appeal, in light of the pending *LPIIF* appeal.

[12] We start with the s 17(2)*(f)* inquiry. At the time the Fund applied to the President for reconsideration of the dismissal of its application for leave to appeal, the section had been amended.[4] It now reads:

'The decision of the majority of the judges considering an application referred to in paragraph *(b)*, or the decision of the court, as the case may be, to grant or refuse the application shall be final: *Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation*.' (Emphasis added.)

[13] This Court in *Tarentaal Centre Investments v Beneficio Developments*[5] held that the amendment did not alter the nature of the President's discretion in any way. Based on the Constitutional Court's judgment in *S v Liesching* (*Liesching II*)[6] this Court reasoned that the phrase 'exceptional circumstances' encompasses the new jurisdictional factors of 'a grave failure of justice' and the administration of justice being brought 'into disrepute'. Thus, the earlier jurisprudence on s 17(2)*(f)* before the amendment holds good for the amended provision.

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[4] The section was amended by the Judicial Matters Amendment Act 15 of 2023, which came into operation on 3 April 2024. Before its amendment, the section read:
'The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'

[5] *Tarentaal Centre Investments (Pty) Ltd v Beneficio Developments* [2025] ZASCA 38 para 4.

[6] *Liesching and Others v S* [2018] ZACC 25; 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) para 138.

[14] In *Motsoeneng v South African Broadcasting Corporation* (*Motsoeneng*)[7] this Court construed this proviso in s 17(2)(*f*) to mean that it is for the Court to which the referral is made to decide whether there are exceptional circumstances. This Court held that 'the requirement of the existence of exceptional circumstances is a jurisdictional fact that had to first be met, and that absent exceptional circumstances, the s 17(2)(*f*) application was not out of the starting stalls'.[8]

[15] This Court affirmed *Motsoeneng* in *Bidvest Protea Coin Security v Mabena* (*Bidvest*),[9] and held that whether there are exceptional circumstances that permit the referral to the Court for reconsideration of the decision refusing leave, is 'a threshold question', to be determined by the Court.[10] Thus, it is only if we find that there are exceptional circumstances that we can proceed to the second leg of the enquiry, ie whether the refusal to grant leave on petition should be reconsidered. *Motsoeneng* and *Bidvest* were subsequently followed in a number of decisions of this Court.[11] However, in *Schoeman v Director of Public Prosecutions* (*Schoeman*)[12], a minority judgment in this Court declined to follow them, as it questioned their correctness.

[16] On 5 November 2025 the Constitutional Court delivered its judgment in *Godloza v S*.[13] One of the four minority judgments[14] considered whether an appeal lies against the decision of the President of the Supreme Court of Appeal. In the course of that, it pointed out difficulties the approach in *Bidvest*, and that of the

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[7] *Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others* [2024] ZASCA 80; 2025 (4) SA 122 (SCA).
[8] Ibid para 19.
[9] *Bidvest Protea Coin Security (Pty) Ltd v Mabena* [2025] ZASCA 23; 2025 (3) SA 362 (SCA).
[10] Ibid para 17.
[11] *Godloza and Another v S* [2025] ZACC 24.
[12] *Schoeman v Director of Public Prosecutions* 2025 (2) SACR 561 (SCA) para 88.
[13] See, for example, *Ekurhuleni Metropolitan Municipality v Business Connexion (Pty) Ltd* [2025] ZASCA 41 para 2; *Rock Foundation Properties and Another v Chaitowitz* [2025] ZASCA 82 para 14; *Mohlaloga v S* [2025] ZASCA 115; 2025 (2) SACR 445 (SCA); [2025] 4 All SA 333 (SCA) para 20.
[14] The second judgment, written by Dodson AJ, in which Madlanga J concurred.

majority in *Schoeman*, might present where the President of this Court refuses reconsideration. In such instances, the minority observed, it is not clear how the court will determine whether exceptional circumstances are present, as the matter will not be referred to the court.[15]

[17] Accordingly, with reference to *S v Liesching* (*Liesching I*)[16] *and Liesching II*, the minority interpreted s 17(2)(*f*) as follows: if the President grants an application for reconsideration, the power to decide whether there are exceptional circumstances, is conferred upon her or him, to the exclusion of the court to whom the decision is referred for reconsideration.[17]

[18] The majority disagreed. It held that an appeal against the decision of the President of this Court does not generally engage the jurisdiction of the Constitutional Court. It decided the application on different bases.

[19] This Court is bound by its own decisions and those of the Constitutional Court. Minority judgments of the Constitutional Court, while they have a persuasive effect on us, are not binding. The upshot of this is that the minority judgment of the Constitutional Court in *Godloza* has no effect on the jurisprudence of this Court on s 17(2)(*f*). Thus, until the key holdings in *Motsoeneng* and *Bidvest* are reversed by this Court or overturned by the Constitutional Court, they remain binding authority in this Court.

[20] As mentioned in *Bidvest*, the 'threshold question' we must determine is whether there any exceptional circumstances in the present matter. In *Motsoeneng* it was pointed out that what constitutes 'exceptional circumstances' must be

[15] Ibid para 145.
[16] *S v Liesching* [2016] ZACC 41; 2017 (2) SACR 193 (CC); 2017 (4) BCLR 454 (CC).
[17] Ibid para 146.

considered on the facts of each case.[18] We commence with the order of the two judges dismissing the application for leave to appeal, which reads:

'The application for *special leave* to appeal is dismissed with costs on the grounds that the *requirements for special leave* to appeal are not satisfied.' (Emphasis added.)

[21] Of significance here is the emphasised portions of the petition order, recording that the application for 'special leave to appeal' was refused because the Fund had not satisfied the requirements for 'special leave'. On the face of the petition order, it seems that the two judges were under the impression that the Fund had sought special leave. This was an error. Although the high court comprised a panel of three judges, it sat as a court of first instance. Therefore, the application fell to be considered as one for so-called 'ordinary leave to appeal' under s 17(1), where the requirements are whether there are reasonable prospects of success,[19] or there is another compelling reason why the appeal should be heard.[20]

[22] In contrast, 'special leave' is dealt with under s 16(1)*(b)*, which provides that any decision of a high court 'on appeal to it' lies to this Court 'upon special leave having been granted'. It is trite that the test for the grant of special leave is more stringent than that for ordinary leave: it requires more than reasonable prospects of success.[21] An applicant for special leave must establish special circumstances which warrant a further appeal. In *Cook v Morrison*[22] this Court provided guidelines as to what constitutes exceptional circumstances. Although not an exhaustive list, those circumstances may include that the appeal raises a specific point of law, or that the

[18] *Motsoeneng* para 17.
[19] Section 17(1)*(a)*(i).
[20] Section 17(1)*(a)*(ii).
[21] *Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986 (2) SA 555 (A) at 564F-565E.
[22] *Cook v Morrison and Another* [2019] ZASCA 8; 2019 (5) SA 51 (SCA); [2019] 3 All SA 673 (SCA).

prospects of success are so strong that refusing leave could result in denial of justice, or that the matter is significant to the public or the parties.[23]

[23] The petition judges erred in treating the application as one requiring special leave to appeal and in applying the more stringent test. As explained in *Motsoeneng*, this Court 'effectively steps into the shoes of the two judges'.[24] We must now consider the application on the basis of the alternate grounds set out in s 17(1), that is, whether there are reasonable prospects of success, or there is another compelling reason why the appeal should be heard.

[24] In the present case, the full court reviewed and set aside, in terms of s 8(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), the RAF's decisions to: (a) adopt and implement a certain Management Directive; (b) require the compulsory submission of certain supporting documents for the submission of supplier claims; and (c) publish, adopt and implement the amended RAF 1 claim Form. The full court also declared Regulation 7(1) of the RAF Regulations to be unconstitutional and invalid.

[25] The question of whether the Fund's impugned decisions are administrative actions subject to PAJA is a matter of considerable public importance. Equally so is the full court's declaration of Regulation 7(1) of the RAF Regulations to be unconstitutional and invalid. We view these as weighty issues of law, which ordinarily would warrant this Court's attention. But for the error of the two judges determining the application for leave to appeal on an erroneous basis, leave to appeal would likely have been granted, at the very least on the basis of s 17(1)*(b)*, given the

[23] Ibid para 8.
[24] *Motsoeneng* para 14.

public interest implicated here. We consider that the error of the two judges of this Court as described above, constitutes exceptional circumstances.

[26] For this reason, we are satisfied that the jurisdictional requirement triggering this Court's power to reconsider the petition judges' refusal of the application for leave to appeal was established.

[27] This brings us to the second stage of the inquiry: whether leave to appeal should be granted. The respondents contended that there were simply no prospects of success on the merits. They also submitted that there was no other compelling reason to grant leave to appeal. Regarding the fact that leave to appeal was granted in the *LPIIF* application, the respondents maintained that there was no relevant link between the two matters: the only point of potential commonality between the two was the question of the constitutionality of Regulation 7(1). The respondents pointed out that the various directives, claim instructions, board notice and substituted RAF1 Form that were set aside in the high court order, had all been withdrawn by the Fund. The *LPIIF* application and appeal concerned a newer RAF1 Form, associated documents and board notice.

[28] Moreover, as contended by the respondents, in the high court application the court dealt with the constitutionality of Regulation 7(1) as involving the question whether the Minister could delegate to the Fund her statutory power to prescribe. It was submitted that this contrasted with the high court in *LPIIF*, which had adopted an interpretive approach, without considering the question of delegation. The high court in *LPIIF* had found it unnecessary to rule on the constitutionality of Regulation 7(1). For these reasons too, the respondents submitted, there was no commonality

between the two matters, and therefore, there could be no compelling reason to grant leave to appeal.

[29] In our judgment, the distinction sought to be drawn between the high court application, which is the subject-matter of this application, and the *LPIIF* application, is more apparent than real. It appears from the record in this matter, and from the *LPIIF* judgment, that at the heart of both disputes is the question of the proper allocation of the relevant powers, under the RAF Act and the Regulations, between the Minister, on the one hand, and the Fund, on the other. The answer ultimately lies in the interpretation of the RAF Act. There are other, related, common legal issues between both parties, including whether the impugned conduct is administrative action, and subject to review under PAJA.

[30] Not only are these common issues, but they are also of significant public importance. The Fund, claimants, and service providers, both present and future, have a real interest in achieving certainty about the Fund's power to regulate anew what documents and other information claimants must submit to the Fund for purposes of compliance with the relevant statutory provisions. It would be contrary to the objective of achieving this certainty, and hence contrary to the public interest, if one panel of judges from this Court were to refuse leave to appeal in this matter while an appeal on substantively the same issues is pending before another panel of the Court.

[31] This aspect was not lost on the full court in *LPIIF* when it granted the application for leave to appeal. By then, the President had already issued an order for reconsideration under s 17(2)*(f)*. After considering the RAF's submissions that leave should be granted because of the overlap of issues in the two matters, the full court said:

'[F]ollowing the full court's dismissal of the application for leave to appeal in the *Mautla* judgment, which also dealt with an RAF 1 Form issued by the Minister and a Board Notice published by the RAF (prior in time to the RAF1 Form and the Board Notice at issue in these proceedings), counsel for the applicants for leave submitted that the Supreme Court of Appeal has requested the parties in *Mautla* to argue the question of leave to appeal before that Court, and if necessary, to be prepared to argue the merits. Notwithstanding the concession that there are differences between this matter and *Mautla,* counsel, however, submitted that there are also important similarities, between the two matters, which relate to the interpretation of sections of the Road Accident Fund Act, the ambit of the powers conferred by these sections, such as s 24 (1)(a), and the constitutionality of Regulation 7 *vis a vis* the RAF's powers to publish an RAF 1 Form.

The decision of the SCA, the argument continued, provides a compelling reason for this matter to be placed before the SCA. Counsel's submission was that there is an overlap between *Mautla* and the case before us, at least in so far as both cases concern the proper interpretation of the powers of the Minister and those of the RAF.

We find this argument persuasive. The SCA has not granted leave to appeal . . . But two judges of the SCA have taken the view that the question of leave to appeal warrants argument before that Court.[25] Once that is so, we cannot speculate as to what decision the SCA might ultimately take. Should that Court ultimately entertain the merits, there are different outcomes that may result. The SCA may dismiss the appeal, but determine a remedial regime at odds with that of the High Court, or uphold the appeal. *In either circumstance, it would be deeply inimical to the public interest, given the subject matter at issue and its remedial consequences, if the case before us was not before the SCA at the time that Mautla is heard, so as to permit the appellate court to give a judgment that would determine the position in both cases. We consider this to be a compelling circumstance warranting the grant of leave.* It should not be understood thereby that we consider there to be reasonable prospects of success. We do not. But, as explained, we think that there are

[25] This is obviously an error by the full court. As mentioned, the two judges had dismissed the application for leave to appeal. The decision to refer the application for oral argument was made by the President exercising her powers under s 17(2)(*f*).

reasons of public policy as to why the SCA should be the ultimate arbiter of the matter, given the identity of the powers at issue in both *Mautla* and the present matter.'[26] (Emphasis added.)

[32] We endorse this reasoning by the full court. For all of the above considerations, we conclude that there are compelling reasons to justify the granting of leave to appeal. For these reasons, the order of the petition judges refusing leave to appeal should be varied by way of its substitution with an order granting leave to appeal.

[33] The following order is made:

1 The application for reconsideration is granted.

2 The order dated 15 March 2024 dismissing the applicants' application for leave to appeal is set aside and replaced with the following order:

'1. Leave to appeal is granted to the Supreme Court of Appeal.

2. The costs order of the high court in dismissing the application for leave to appeal is set aside and the costs of the application for leave to appeal in this Court and the high court are costs in the appeal. If the applicants do not proceed with the appeal, the applicants are to pay the costs.'

3 The costs of the application for reconsideration are costs in the appeal.

[26] *Road Accident Fund and Others v Legal Practitioner's Indemnity Insurance Fund and Others* [2024] ZAGPPHC 854 paras 7-9.

T MAKGOKA
JUDGE OF APPEAL

R M KEIGHTLEY
JUDGE OF APPEAL

Appearances:

For applicants:	J A Motepe SC (with T M Makola)
Instructed by:	Malatji & Co Attorneys, Johannesburg
	Honey Inc., Bloemfontein
For 1st to 7th respondents:	J P Van Den Berg SC (with E Van As)
Instructed by:	Adams & Adams, Pretoria
	Lovius Block, Bloemfontein
For the 8th respondent:	F H H Kehrhahn (with S Cliff)
Instructed by:	Mduzulwana Attorneys Inc., Pretoria
	Makubalo Attorneys, Bloemfontein
For 9th respondent	B P Geach SC (with R Hawman)
Instructed by:	Roets & Van Rensburg Attorneys, Pretoria
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