

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No:

In the matter between:

PAUL NEL

Applicant

and

ROAD ACCIDENT FUND

Respondent

APPLICANT'S PRACTICE NOTE: URGENT COURT

- (a) On Roll: Friday 7 May 2021
- (b) Appearances: for Applicant:
BP Geach SC 083 680 6578 geach@geach.co.za
for Respondent: Unknown
- (c) Nature of application: Mandamus obliging the Respondent to accept delivery of Applicant's RAF1 claim form
- (d) Issue: Is the Respondent entitled
(1) to set strict additional requirements for the lodging of a claim under Act 56 of 1996 as amended and
(2) to refuse to accept the lodgement of a claim and delivery of a claim form
- (e) Need to read papers: Yes
- (f) Urgency: Yes. The claim will otherwise prescribe on 7 May 2021 (24h00)
- (g) Duration: Not more than 15 minutes (even if opposed)

BP GEACH, SC

Applicant's Counsel

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APPLICANT'S HEADS OF ARGUMENT

1.

This application is, with respect, urgent because the third party claim of the Applicant will become extinguished by prescription in terms of section 23(1) of the Road Accident Fund Act, No 56 of 1996, at midnight on 7 May 2021, the relevant collision having occurred on 8 May 2018.

2.

On 5 May 2021 the Respondent refused to accept the lodgement of the Applicant's claim under the Act. In doing so, the Respondent relied upon its own Directive dated 8 March 2021 (with effect from 1 April 2021) which prescribes requirements over and above those stipulated in section 24 of the Act and Regulation 7(1). The Respondent is not entitled to set such additional requirements for the lodging of a claim. It has no power to do so by way of Management Directive. By the same token, the Respondent has no right to refuse to accept delivery of the Applicant's claim form. It may object to the validity of the claim, but it cannot decline to accept the lodgement of the claim by refusing to take delivery of the claim form.

3.

The Respondent apparently now insists on strict compliance by claimants with its own Management Directive as a prerequisite for accepting lodgement of claims. However, in addition to anything else, it is trite that substantial compliance with the prescribed

formalities suffices.

“In respect of the submission of a claim this Court, in *Pithey*, [*Pithey v Road Accident Fund* [2014] ZASCA 55; 2014 (4) SA 112 (SCA) para 19] held: ‘It has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory and that the prescribed requirements concerning the completeness of the form are directory, meaning that substantial compliance with such requirements suffices. As to the latter requirement this court in “*SA Eagle Insurance Co Limited v Pretorius*” reiterated that the test for substantial compliance is an objective one.’ This approach is confirmed by the terms of the form which says in part 20 that substantial compliance is required in regard to inter alia the medical report”.

ROAD ACCIDENT FUND v BUSUKU (Case no 1013/19) [2020] ZASCA 158 (1 December 2020) par [14]

4.

The Applicant has a right to lodge a claim with the Respondent and is required to do so within the prescriptive period. In the present case the Applicant’s completed RAF1 claim form and accompanying documents were simply not accepted by Respondent. It flatly refused to take delivery thereof. The Respondent is not entitled to do so.

5.

The Applicant seeks an order that the Respondent accept delivery forthwith on 7 May 2021 before close of business of Applicant’s documents embodying his claim for compensation under and in terms of Act 56 of 1996 as amended; and to acknowledge in writing receipt of same. The written acknowledgement of receipt is a procedural requirement (*PROTEA ASSURANCE CO LTD v SOUL 1991 (3) SA 43 (E) at 45*).

6.

It is submitted that a punitive cost order is warranted if only to ensure that the Applicant is not out of pocket (*SWARTBOOI AND OTHERS v BRINK AND OTHERS 2006 (1) SA 203 (CC) par [27] at 213-4; NEL v WATERBERG LAND-BOUWERS KO-OP VERENIGING 1946 AD 597 at 607*).

BP GEACH, SC

Applicant’s Counsel

5 May 2021

Section 24 of the Act

24. Procedure.—(1) A claim for compensation and accompanying medical report under section 17 (1) shall—

- (a) be set out in the prescribed form, which shall be completed in all its particulars;
- (b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.

(2) (a) The medical report shall be completed on the prescribed form by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.

(b) Where a person is killed outright in a motor vehicle accident the completion of the medical report shall not be a requirement, but in such a case the form referred to in subsection (1) (a) shall be accompanied by documentary proof, such as a copy of the relevant inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's death, a copy of the relevant charge sheet from which it can clearly be determined that such person's death resulted from the accident to which the claim relates.

(3) A claim by a supplier for the payment of expenses in terms of section 17 (5) shall be in the prescribed form, and the provisions of this section shall apply *mutatis mutandis* in respect of the completion of such form.

(4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the form referred to in subsection (1), and if a question is not applicable, the words "not applicable" shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

(5) If the Fund or the agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.

Regulation 7(1)

A claim for compensation and accompanying medical report referred to in s 24(1)(a) of the Act, shall be in the Form RAF 1 attached as annexure A to these Regulations, or such amendment or such substitution thereof as the Fund may from time to time give notice of in the gazette.'