REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 35303/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES

26 AUGUST 2019 **RT SUTHERLAND**

In the matter between

MONIQUE-ELIZABETH PRETORIUS **PLAINTIFF**

and

THE ROAD ACCIDENT FUND **DEFENDANT**

JUDGMENT

Sutherland J

[1] In the course of a case management conference, preparatory to being certified ready to go to trial, a point of prescription of the plaintiff's claim against the RAF was raised. The issue was dealt with the same day. The special plea of prescription was introduced by way of an unopposed amendment.

[2] The basis of the RAF's argument was that the RAF 1 claim form required by section 23 and 24 of the Road Accident Fund Act 56 of 1996 was incomplete and despite an objection to the claim lodged within 60 days of the lodgement of the claim the claim form remained incomplete when the three year prescription date passed.

[3] The relevant statutory provisions are set out below.

[4] Section 23(1) and (3):

> Prescription of claim
>
> (1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.
> (2) ....
> (3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 17 (4) *(a)* or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose."

[5] Section 24(1) – (5):

> "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) ....

(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.

(6) No claim shall be enforceable by legal proceedings commenced by a summons served on the Fund or an agent-

(a) before the expiry of a period of 120 days from the date on which the claim was sent or delivered by hand to the Fund or the agent as contemplated in subsection (1); and

(b) before all requirements contemplated in section 19 *(f)* have been complied with:

> Provided that if the Fund or the agent repudiates in writing liability for the claim before the expiry of the said period, the third party may at any time after such repudiation serve summons on the Fund or the agent, as the case may be.

(Underlining supplied)

[6] The critical facts are these:

6.1 The accident causing the injuries occurred on 11 April 2015

6.2 A RAF 1 claim form was lodged on 24 January 2018. The Form omitted from paragraph 22 the name of the person who the doctor examined. The name of the plaintiff appeared on a covering letter, and documents submitted with the RAF 1 form included hospital records and the plaintiff's identity documents.

6.3 On 8 February the plaintiff amended the RAF 1 form, but did not deal with the omission in paragraph 22 thereof.

6.4 On 28 February 2018, the RAF emailed to the plaintiff's attorneys a letter which is said to be an objection as contemplated by section 24(5). The letter specified the omission and warned that prescription had not been interrupted. The email address was confirmed as being correct.

6.5 When no response was forthcoming, on 28 March 2019, the RAF wrote again. The emailed letter alluded to the objection letter of 28 February and warned again that unless the defect was cured it would be improper to issue a summons.

6.6 On 11 May 2018, a letter of repudiation of the claim was emailed by the RAF to the plaintiff's attorneys.

6.7 On 26 September 2019 the summons was served. The plea alleged non-compliance with section 24 of the RAF Act.

6.8 The matter came before the case management conference Court on 20 August 2019.

[7] On these facts the RAF contends that the claim has prescribed. The Plaintiff's stance was that substantial compliance took place and hence the claim had not prescribed.

[8] The case-law on the issue of omission of information on a RAF 1 form adopts a robust rather than a precious stance towards the determination of the question of validity. What is required is not formal mechanical compliance but substantial compliance. This approach creates space for practicalities to govern the debate and a pragmatic stance to prevail.

[9] The full bench Court of the Eastern Cape Local Division, Mthatha in *Busuku RAF* CA 104/14 (7 August 2018) dealt extensively with the materiality of the omission of prescribed information. The case was an appeal from a single judge, the judgment *a quo* is reported as *Busuku v RAF* 2017(1) SA 71 (ECM). The court *a quo* had held that the omission of information was fatal to the claim. On appeal the decision was upset by a majority judgment and the matter was referred back to the court a quo to determine the plea of prescription afresh.

[10] The Full Court judgment, following *Pithey v RAF* 2014 (4) SA 112 (SCA) at [19] reiterated that substantial compliance is sufficient. In *Pithey v RAF* it was 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 Ltd v Pretorius* 1998 (2) SA

656 (SCA) at 663 D-E, reiterated that the test for substantial compliance is an objective one."

The *Busuku* Judgment goes on to make these observations and remarks which explicate the judicial approach to the controversy:

"[2] The appeal is based on the grounds that the court a quo erred: firstly, in holding that the claim form lodged with the Fund on 30 April 2014, duly accompanied by hospital notes attached thereto and the RAF 4 Serious Injury Assessment Report was, firstly, not in compliance with the provisions of section 24 of the Act and, secondly, in not interpreting the applicable provisions of the Act and Regulation 2 of the Regulations (Government) Gazette No. 770 of 21 July 2008 framed in terms of section 17 (1)(b) of the Act, through the prism of the Constitution relating to the strictures of a fair public hearing before a court of law (section 34); accountability, responsiveness and openness on the part of the government institutions and the interpretation of peoples' rights in such a way that promotes the values that underlie and open and democratic society based on human dignity, equality equally and freedom as provided in ss 1 (d), 34 (1) and 39 (a) of the 1996 Constitution.

"[10] The part of the RAF 1 claim form that is implicated in this matter is the Medical Report section that is evidently not completed. Instead of completing that section as is envisaged in ss 24(1)(a) and 24(2)(a) of the Act the appellant merely annexed the hospital report, in the form of notes made at the time the plaintiff was treated, to the claim for. She later on delivered the assessment report to the respondent.

[11] It is common cause that the appellant did not comply with s 24(1)(a) which provides peremptorily that the claim form "shall be completed in all its particulars", hence the decision of the court a quo that the claim as a whole was invalid and unenforceable in law. What the court a quo did not do was to engage in the enquiry in terms of s 24(2)(a) on whether or not taking into account the hospital notes and the subsequently submitted RAF 4 Assessment Report, those did not provide sufficient information that would satisfy s 24(2)(a) requiring the medical practitioner who treated the appellant for the bodily injuries sustained in the accident or the Medical Superintendent or another medical practitioner upon fully satisfying himself or herself regarding the nature and treatment of the injuries sustained by the appellant. In the event the real question for decision on appeal is whether the enquiry should not have been pursued further on the requirements that are set out in s 24(2)(a) and in respect of which the court a quo made the following remarks at page 14 of its judgment as follows:

> "[25] The requirement by section 24(2)(a), namely that the medical report must be completed by the medical practitioner who treated the plaintiff, strengthens the inference that the hospital notes may not substitute the duly completed medical report under form RAF 1. Regulation 7 of the Regulations specifically requires that the claim and accompanying medical report "...shall be in the form RAF 1 attached as Annexure A to these Regulations..." This requirement rules out the notion that the hospital notes may constitute substantial compliance with the Act and Regulation. Finally, section 17(1)(b) (1A) read with section 26 (1A) and Regulation 3 of the Regulations, prescribe in detail the method of assessment of a serious injury and by whom such assessment shall be carried out, and which assessment must be in the form RAF 4. These requirements militate against the use of hospital notes which simply refer to the hospital treatment received by the plaintiff, in the place of the prescribed forms RAF."

[12] It should be noted that in the above-quoted findings the court a quo also concluded that the requirement of the RAF 4 assessment supported its view that the provision of section 24(2)(a) would only be satisfied by strict physical completion of the medical report section in RAF 1 form.

[13] On appeal before us it was submitted that the enquiries under s 24(1)(a) and s 24(2)(a) are but one composite inquiry if regards is had to a need to address: (i) the intention of s 24(2)(a) that the Fund must be satisfied as to the medical treatment that was received from the hospital at which the patient was admitted pursuant to an accident – *Mphuti v RAF* Case No. 2426/2014 (GT) at para [47]; (ii) the consideration of fairness in dealing with the public – *Boltina v RAF* Case No. 941/2014 (ECP) at para [39]; (iii) that the form must be read as a whole because, the purpose of the form is to enable the Fund to investigate and consider the appellant's claim and decide on its attitude – *Constantia Insurance Co Ltd v Nohamba* 1986 (3) SA 27 (A) at 40 F-G; (iv) and that the court a quo had an obligation to interpret the provisions of the Act and the regulations thereto with due regard to the prescripts of the Constitution.

[22] It appears from the case of *Pithey* and *Allpay*, *supra*, that the method of measuring compliance with statutory provisions merely by investigating whether the language used is peremptory or directory, at the expense of a permissive substantive investigation, is not an end in itself. This is particularly true of the legal instrument such as s 24 of the Act which was intended by the Legislature to advance public interest and benefit. On these considerations it is my view that the court a quo ought to have had regard to the hospital notes and assessment reports that had been submitted to the respondent and placed before it during hearing of the proceedings on the respondent's

special plea and enquired if those still fell short of the information required as envisaged in s 24(2)(a). For that shortcoming the court a quo erred, and the decision is made dismissing the appellant's claim cannot stand."

[11] Thus, a court of first instance is required to enquire into whether, as a fact, the RAF has been prejudiced by the omission of information in the RAF 1 form, in the sense of being denied information it properly requires to assess whether or not it is at risk of liability. Where the hospital records are provided with the RAF 1 form, it is incumbent on the RAF to read such documentation together with the RAF 1 form. A reading of those documents would have revealed that the examination results recorded in the RAF 1 form are correlate with the medical records.

[12] In my view the documentation accompanying the RAF 1 form was adequate to fulfil the needs of an enquiry by the RAF. Therefore the reliance on the omission from paragraph 22 of the RAF 1 form is a mechanical, formalistic technicality which it is illegitimate to invoke. There was substantial compliance in filing the RAF 1 Form.

[13] Accordingly, the matter has not prescribed by reason of the incomplete RAF 1 form.

[14] As to the costs, in my view they ought to be costs in the cause of the trial when it is heard.

The Order

(1) The special plea of prescription is dismissed.

(2) The Costs of the preparation and appearance in respect of the special plea shall be costs in the cause.

ROLAND SUTHERLAND

Judge of the High Court
Gauteng Local Division, Johannesburg

Date of hearing: 20 August 2019

Date of judgment: 26 August 2019

For the Plaintiff: L Lintvelt

of Moss & Associates Inc.

For the Defendant: A Mangano

of Twala Attorneys.