

## **SCA clears practitioners in the *Motswai* decision**

In the January/February 2013 edition of *De Rebus*, we published an editorial which set out the High Court's damning judgment in the case of *Motswai v Road Accident Fund* 2013 (3) SA (GSJ).

The case involved a claim against the Road Accident Fund (RAF) for almost R400 000, including an amount for general damages, plus costs, based on the claimant's alleged 'severe bodily injuries'.

In her judgment handed down in December 2013, Judge Satchwell found that the claimant's attorney, who had signed the particulars of a claim, had fabricated the claim, misrepresented facts to the court and fraudulently set out to enrich himself and his firm from the funds intended to compensate road accident victims. Judge Satchwell also criticised the conduct of the attorneys acting for the Road Accident Fund and the medical professionals who provided medico-legal reports in the matter on the basis that they were effectively complicit in permitting the claim to proceed, and ultimately reaching a settlement, when the claim had no legal or factual basis.

In a recent judgment handed down on 29 August 2014, the Supreme Court of Appeal (SCA) overturned Judge Satchwell's decision. The SCA found that Judge Satchwell's judgment had been prepared on the basis of inferences, which she had drawn from the documents in the court file and informal discussions with the parties' legal representatives. However, she had not followed the correct procedure by not allowing a public hearing of the matter and not giving the claimant's attorney an opportunity to deal with all the issues.

The SCA noted that the claimant's attorney had reasonable explanations regarding the issues for which he was criticised in the judgment.

In addition, the SCA found that Judge Satchwell's judgment had resulted in a grave injustice to the claimant's attorney and that the criticism levelled against him and the other professionals involved in the matter was unwarranted.

Commenting on the powers exercised by judges, the SCA said that, '[t]hrough the authority vested in the courts by s 165(1) of the Constitution, judges wield tremendous power. Their findings often have serious repercussions for the persons affected by them. They may vindicate those who have been wronged but they may condemn others. Their judgments may destroy the livelihoods and reputations of those against whom they are directed. It is therefore a power that must be exercised judicially and within the parameters prescribed by law. In this case it required the judge to hold a public hearing so that the interested parties were given an opportunity to deal with the issues fully, including allowing them to make all the relevant facts available to the court before the impugned findings were made against them. The judge failed to do so and in the process, did serious harm to several parties.'

In the result, the appeal was upheld and the High Court judgment in *Motswai* was set aside.

The *De Rebus* Editorial Committee and staff wish all of our readers compliments of the season and a prosperous new year. *De Rebus* will be back in 2015 with its combined January/February edition, which will be sent out at the beginning of February.