



OFFICE OF THE CHIEF JUSTICE  
REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA  
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

**06 DECEMBER 2022**

**BEFORE HONOURABLE JUDGE PRESIDENT: LEGODI JP**

CASE NO: 106/ 2018

In the matter between:

**NELSON NEO THEMBA**

**PLAINTIFF**

And

**ROAD ACCIDENT FUND**

**DEFENDANT**



**COURT ORDER**

**AFTER HAVING** read the papers and after having heard counsel of the applicant,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The unopposed application in this matter is hereby postponed to 30 March 2023 before a full court to be constituted by the Judge President.
2. The CEO of the Fund and the chairperson of the Fund are hereby ordered to file affidavits **by not later than 28 February 2023** in which they deal with the followings

2.1 Whether the Fund became aware of a directive which was issued on 01 February 2023 in terms of which the Fund was required to deal with following questions:

2.1.1 For how long does the Fund anticipate that the appeal process if pursued in Discovery case referred to in paragraph of this judgment, is likely to take place before finalization?

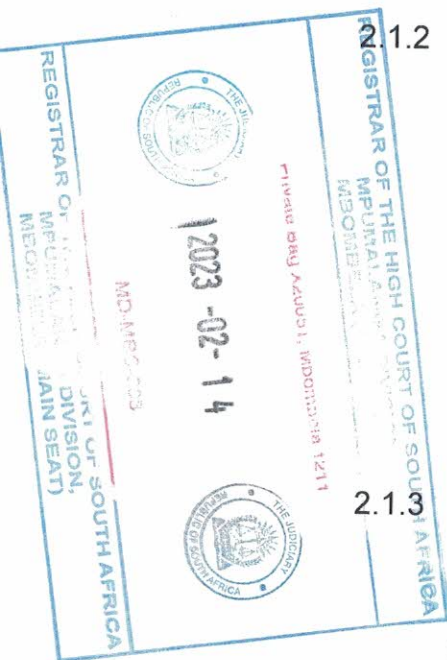
2.1.2 What implications the long period of waiting for the appeal process to be finalised is likely to have on the victims of motor vehicle accidents particularly where there is a need for urgent medical attention and the possible refusal by the medical aid companies to feed the bill for medical expenses of such victims of motor vehicle accidents?

2.1.3 Does the Fund have any workable suggestion to accommodate the victims of motor vehicle accidents and save lives whilst waiting for the finalisation of the appeal process?

2.2 When did the Fund became aware of such a directive and why the Fund ignored the directive aforesaid?

2.3 Who ignored the directive?

2.4 Why failure to heed to the directive should not be the subject of costs enquiry in terms of rule 37A(12)(h) against the person who ignored the directive quoted in paragraph 2.1 above;



2.5 In the affidavits the CEO and the Chairperson of the Board must also directly respond to the explanation needed as per the directive of 1 February 2023 referred to in paragraph 2.1 to 2.3 above and in so doing must also deal with the followings:

2.5.1 Whether it is the intention of the Fund to refuse to pay past medical expenses in every case throughout the country as is happening in Discovery case under the Gauteng Case Number 16179/2022 and in Mawila's matter under case number 15105/2022, pending finalisation of the appeal process in the Discovery Case if such appeal is being pursued.



3. It is noted that in a letter that was penned by one Ms Makgobane Kolobote on 5 December 2022 in connection with this matter being the date on which this matter was case managed and then postponed to 10 February 2022 pending judgment under the Gauteng case number 16179/2022, the Fund sought to have repudiated or rejected the claim herein; For this, it is hereby directed as follows:

3.1 Why the letter of 05 December 2022 was only brought to the attention of the applicant's attorneys and the RAF's attorneys, in particular Mr Siliga and Mkanzi on the morning of the hearing of this matter on Friday 10 February 2023?

3.2 Why the intended repudiation or rejection of the claim regarding medical expenses which has not been placed on record in the form of an affidavit, was not brought to the attention of this court and in time?



3.3 In terms of what legislative frame-work or factual basis has the rejection or repudiation of the claim been noted as per the letter of 05 December 2022?

3.4 Why at the time the purported repudiation or rejection of the claim was brought to the attention of the parties' legal representatives as indicated in paragraph 3.1 above, the Fund through the CEO and or the Board or any other official of the Fund did not deal with the directive of 01 February 2023 referred to in paragraphs 2.1 to 2.3 above?

4. Seen in the light of the Fund's refusal to pay for past medical expenses and seen in the light of the appeal process followed by the Fund in Discovery case, in the affidavits as directed above, the CEO and or the Chairperson of the Fund must also indicate whether it is the intention to appeal and refuse every order that might be made against the Fund for payment of past medical expenses in similar circumstances like in the Discovery matter or Mawila's matter? And if so, whether such stance is likely to or would not endanger lives of the victims of the motor vehicle accidents who might need an urgent medical treatment at any nearest hospital or treatment at the scene by well-trained Emergency Services officials?

5. This order must be submitted by the Applicant's attorneys to the Legal Practice Council, the Council of Medical Schemes, Bonitas Medical Scheme (the Applicant's medical scheme in question) and the South African Private Ambulance and Emergency Service Association, attaching the Rule 16A which was published in respect of this application, which Councils, Scheme and



Association must be requested to publish it to all their members (if any), or to whoever may have an interest in the matter.

6. Any interested or affected party, including *inter alia* Medical Aid Schemes and Emergency Medical Services, impacted by the 'Internal Communique' of the Road Accident Fund titled "Process to Assess Past Medical Expenses", dated 2 August 2022, and/or the Respondent's policy on past medical expenses, may bring an application to be joined in the pending application and/or as *amicus curiae*, which application/s are to be brought on or before **24 FEBRUARY 2023**, and such application or applications shall be heard together with the main application on 30 March 2023 and to this effect the Judge President may issue further directives to ensure that such an application or applications are ready for hearing on 30 March 2023.
7. Any interested or affected party, including **Medical Aid Schemes and Emergency Medical Services**, impacted by the 'Internal Communique' of the Road Accident Fund titled 'Process to Assess Past Medical Expenses' dated 12 August 2022, and/or the Respondent's policy on past medical expenses, and or who may be directly or indirectly affected by the directive, is hereby authorised to provisionally submit and file and serve affidavits, by no later than **24 FEBRUARY 2023**, setting out how their members are adversely affected by the Respondent's directive, policy irrespective of whether there is an intention to join the proceedings as a party or *amicus curia* and the resulting from the attitude of the fund or its refusal to pay past medical expenses might have on daily victims of motor-vehicles accident especially where such victim or victims have to be stabilised and attended to on an urgent basis.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION  
MBOMBELA (MAINY 141)

Private Bag X20051, Mbombela 1214

5



2023-02-14



8. The applicant's attorney is directed to serve this order, via e-mail on the CEO of the Road Accident Fund, the Chairperson of the Board of the Road Accident Fund as well as the Claim Handlers, Senior Claim Handlers and Team Leader tasked to deal with the claim of the Applicant/Plaintiff, and on Makgobane Kolokoto (the author of the rejection letter dated 5/12/2022), and on MR SILIGA (the State Attorneys representing the Respondent) and MR MUKANSI (the Court Monitoring Officer of the Road Accident Fund). who are all each ordered to deliver their affidavits as herein directed on or before **03 MARCH 2023.**
9. The applicant and any other party who might want to intervene or join in the application are hereby directed to file response affidavits regarding affidavits filed in terms of paragraph 8 above **by not later than 10 March 2023.**
10. The applicant, the respondent and any party or person who may apply to be joined or to intervene in the proceedings including those who might want to participate as friends of the court are hereby directed to deliver their written heads of argument **by not later than 17 March 2023.**
11. The costs of this application, including the costs of two counsel and also encompassing the appearances on 5 December 2022, 10 February 2023 and 13 February 2023, are costs in this application.



By Order of the Court

Registrar