

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

Case No: 106/2018

In the matter between:

NELSON NEO THEMBA

Plaintiff

and

THE ROAD ACCIDENT FUND

Defendant



NOTICE IN TERMS OF RULE 16A

KINDLY TAKE NOTICE that the following constitutional issue have been raised in this matter:

1.

The Plaintiff will be raising and pursuing a constitutional issue in the abovementioned matter.

The constitutional issue concerned is clearly and succinctly described below.

2.

2.1 The ROAD ACCIDENT FUND caused to be published an 'Internal Communique' dated 12 August 2022 titled 'Process to Assess Past Medical Expenses' to be used for the assessment of claims pertaining to 'Past Medical Expenses'.

2.2 This Internal Communication calls upon and requires all regional managers in the employ of the ROAD ACCIDENT FUND to ensure that staff working with the assessing of claims for past medical expenses to reject the medical expenses claimed if the

Medical Aid has already paid the medical expenses'. The Internal Communication further provides that 'the regions must use the prepared template rejection letter to communicate the rejection'; and that the reason for the rejection (as per the Internal Communique) shall then be, 'that the claimant has sustained no loss or incurred no expenses relating to the past medical expenses claimed' and 'therefore there is no duty on the RAF to reimburse the claimant'.

3.

- 3.1 The Plaintiff will review the above document, to the extent that it is unconstitutional, in that the 'Internal Communique' dated 12 August 2022 titled 'Process to Assess Past Medical Expenses', distinguishes between those claimants with medical aid and claimants without medical aid, despite the fact that they have all suffered damages by way of past medical expenses caused by or arising from motor vehicle accidents as envisaged in the Act; and notwithstanding the fact that they all equally seek compensation from the Respondent under and in terms of the Act.
- 3.2 The impact of the 'Internal Communique' dated 12 August 2022 titled 'Process to Assess Past Medical Expenses' is that the Respondent in terms thereof will not be accepting liability and will not be paying for claims in respect of past medical expenses where a road accident victim has medical aid and where the medical aid covered such medical expenses occasioned by the accident. Never before has such a limitation existed with regard to claims of this nature; and nowhere in the Act or any other law or regulation is the Respondent exempted from paying such costs under circumstances where the medical aid has covered such costs.
- 3.3 The 'Internal Communique' dated 12 August 2022 titled 'Process to Assess Past Medical Expenses' constitutes a novel barrier to the compensation of a claim for compensation for past medical expenses under the Act. This has serious implications for claimants who have medical aid, wishing to be compensated for past medical expenses under the Act. This is because the Plaintiff have a contractual obligation to

reimburse his medical aid for past medical expenses covered or paid for by them, once he is successful with his RAF claim. The decision of the Respondent to reject a claim for past medical expenses means that the Respondent will not be paying past medical expenses, whilst the Plaintiff is under a contractual obligation to repay the medical expenses to his medical aid.

3.4 The net result of this decision/directive of the Respondent is that the Plaintiff will be out of pocket.

3.5 This aforesaid decision/directive of Respondent overlooks and disregards the common law principle that private insurances, such as medical aid, are irrelevant to the liability of the Respondent under the Act and represent a collateral matter or something transacted between other parties.

3.6 The decision of the ROAD ACCIDENT FUND ACT to repudiate the claim for past medical expenses has the result that claimants such as the Plaintiff are precluded from receiving compensation for their past medical expenses. The adverse effect in this decision cannot be overstated.

3.7 The relevant Constitutional rights encompass equality, human dignity, freedom and security of the person, health care and social security, just administrative action and access to courts, which rights accrue equally to those with medical aid and those without medical aid.

4.

The aforesaid prescripts pertaining to medical aid claimants who are denied their claim for past medical expenses is unconstitutional and inconsistent with the Constitution. They are unlawful.

5.

The Plaintiff seeks a court order declaring unconstitutional and invalid the following in prayer 1-2 of the Notice of Motion:

1. *In terms of section 172(1)(a) of the Constitution of the Republic of South Africa, it is declared that the provisions of 'The Internal Communique' dated 12 August 2022 titled 'Process to Assess Past Medical Expenses', issued by the Respondent, is inconsistent with the Constitution and invalid.*
2. *In terms of Section 172(1)(b) of the Constitution, the provisions The Internal Communication' dated 12 August 2022 titled 'Process to Assess Past Medical Expenses' are set aside and/or in terms of the Promotion of Access to Administrative Justice Act are reviewed and set aside.*

6.

The aforesaid Internal Communication is unconstitutional, invalid and accordingly unenforceable because it unfairly discriminates against those claimants with medical aid under the Act and unconstitutionally violate the Plaintiff's rights under sections 9, 10, 12, 27, 33 and 34 of the Bill of Rights as well as the Equality Act No 4 of 2000 and/or offend the Principle of Legality and the Rule of Law. Consequently, it must be reviewed and set aside.

TAKE FURTHER NOTICE that in terms of Rule 16A:

1. Any interested party in these constitutional issues may, with the written consent of all the parties to the proceedings, given not later than 20 days after the date of this notice, be admitted as amicus curiae upon such terms and conditions as may be agree upon in writing by the parties.
2. The written consent contemplated above shall, within 5 days of its having been obtained, be lodged with the registrar and the amicus curiae shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

3. The terms and conditions agreed upon in terms of subrule (2) may be amended by the court.
4. If the interested party contemplated in subrule (2) is unable to obtain the written consent as contemplated therein, he or she may, within 5 days of the expiry of the 20-day period prescribed in that subrule, apply to the court to be admitted as an amicus curiae in the proceedings

THE REGISTRAR is hereby requested to place a copy of this notice on the designated notice board for a period of 20 days.

DATED AT MBOMBELA ON THIS 20 DAY OF OCTOBER 2022

(Signed) RJ KRIGE

(with the right of appearance in accordance with
Section 4(2) of the Right of Appearance in
Courts Act 62 of 1995

DU TOIT-SMUTS ATTORNEYS

Attorneys for the Plaintiff &
Intervening Applicant
LAW CHAMBERS, VAN NIEKERK
STREET, MBOMBELA
TEL: (013) 745 3200

Email: dschutte@dtisa.co.za

Ref: RJ KRIGE/TR3/15(THE1112)

TO: THE REGISTRAR OF THE HIGH COURT, MBOMBELA

