FURTHER SELECTION OF RECENT RAF JUDGMENTS

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20 July 2019

Judgment of Weiner AJA (Maya P and Wallis JA concurring) judgment in *P M obo T M v Road Accident Fund* (1175/2017) [2019] ZASCA 97 (18 June 2019):

"The RAF is an organ of state, established in terms of s 2 of the Road Accident Fund Act 56 of 1996 (the Act). It is thus bound to adhere to the basic values and principles governing the public administration under our Constitution. Section 195(1) requires, inter alia, that '[a] high standard of professional ethics must be promoted and maintained'; and that '[e]fficient, economic and effective use of resources must be promoted'.[19]

[35] In cases involving the disbursement of public funds, judicial scrutiny may be essential. A judge is enjoined to act in terms of s 173 of the Constitution to ensure that there is no abuse of process. Judges in all divisions have expressed concern that in many RAF cases, there is an abuse of process. Settlements are concluded where, for example, the substantial damages agreed to bear no relation to the injuries sustained.[20] In this case the judge had a legitimate concern that the only reason for the settlement was the lack of preparation of the RAF's case and that there may, in truth, as appeared to be the case from the evidence she heard from a passenger in the vehicle, have been no negligence on the part of the insured driver and thus no liability on the part of the RAF.

[36] Concern has been noted that to require a Judge to scrutinize every settlement in a RAF case would cause delays in the administration of justice. However, it is not every case that will require this form of judicial scrutiny. When a Judge expresses concern over the terms of a settlement, the court must ensure that those concerns are addressed by the parties to prevent an abuse of process and the unjustified disbursements of public funds.

[37] The agreement also lacked protection for the minor child, which the court, as upper guardian, is entitled to insist upon. In addition, the clause dealing with costs is unintelligible and unenforceable. On these grounds alone, a court would have been entitled to refuse to make the agreement an order of court.

[38] This court is indebted to the amicus curiae, Advocate Zietsman, who was asked to assist the court. He did so by filing heads of argument and making oral submissions at the hearing, for which we thank him."

Judgment of Van Niewenhuizen J in Van der Walt v RAF Appeal Tribunal and others (18332/2018) [2019] ZAGPPHC 231 (6 June 2019):

[29] "Litigation in respect of decisions taken by the appeal tribunal has increased at an alarming rate. I had no less than four opposed review applications in the opposed motion court in one week. In each application the reasons furnished by the appeal tribunal pertaining to their decisions were dismally inadequate.

[30] Firstly, the reason may, most probably, be attributed to the wording of regulation 3(12) supra, that requires the appeal tribunal to notify the Registrar of its “findings”. As stated in Minister of Environmental Affairs & Tourism v Phambili Fisheries supra mere findings, without explaining why a decision was taken will not necessarily suffice.

[31] Secondly, the appeal tribunal consists of medical practitioners who are not au fait with the intricacies of administrative law.

[32] In order to curtail the flood of litigation at the expense of the tax payer, I would propose that the medical practitioners who form part of an appeal tribunal be provided with a guideline in respect of the requirements for the furnishing of adequate reasons.:.."

SCA dismisses R1m RAF claim - M obo T M v Road Accident Fund

The SCA has dismissed an application relating to a crash settlement, saying the court cannot act as a mere rubber stamp. A **Cape Times** report says in 2014, Patronacia Maswanganyi had alleged negligence by a driver involved in a crash with her child's father, in which the father was killed. Maswanganyi – on behalf of her minor child – had set out to claim R1m from the Road Accident Fund (RAF). On the day the matter was to be heard, the parties requested that it stand down as they were attempting to settle. Later that same day, Maswanganyi and the RAF agreed on a damages settlement. But the judge was not satisfied that the agreement should be made an order of court, and said she had noticed that – according to the pleadings and certain witness statements – there was no indication that the insured driver was negligent at all. The Limpopo High Court (Polokwane) found the deceased had attempted to overtake a bakkie and had collided with an oncoming vehicle driven by the person Maswanganyi had alleged was negligent. 'The appellant alleged in her founding affidavit that the *lis* between the parties had been settled and that there was no basis, in fact or in law, for a hearing or a trial to take place,' the SCA judgment read. **'As the full court in this matter held, a court cannot act as a mere rubber stamp of the parties.'**

WASTE OF PUBLIC MONEY

Judgment of Daffue J in McEwan v Road Accident Fund (5181/2014) [2019] ZAFSHC 79 (20 June 2019):

[5] There is one aspect that I must deal with now and that is the RAF and its attorneys' apparent preference to waste money. I have expressed myself in this regard in no uncertain terms on numerous occasions, but nothing is done about this unacceptable state of affairs that continues unabatedly. I mentioned above that the RAF had thrown in the towel in respect of the merits. This happens on a weekly basis in the majority of cases. The RAF is seldom ready to tackle the merits head on insofar as no pre-trial preparations are undertaken. No proper investigations are undertaken and witnesses are seldom consulted and/or subpoenaed. If it were otherwise, cases will be settled long before the trial dates. It and its attorneys have no understanding of the enormous and unnecessary amounts of legal costs being wasted in the process. They drag out litigation as long as possible, only to concede the merits at the trial. I should not be understood to say that all cases should be settled. Fraudulent claims are filed from time to time and the RAF must be cautious. When two vehicles are involved in a collision, both drivers are often to be blamed and an apportionment of damages should be applied in accordance with the degree of negligence to be found. However, the so-called 1% cases – the claims of passengers and dependents to whom no negligence can be attributed – are on a different footing.

[6] In casu, plaintiff averred in her particulars of claim that the RAF had conceded liability on the merits as long ago as 14 August 2014. In its plea the RAF not only denied that plaintiff was a passenger in the vehicle which left the road and overturned, but also that it had accepted liability as alleged. Five years later concessions were made without the matter proceeding on trial.

[7] More pertinent to the present dispute is the attitude of the RAF and its attorneys pertaining to the reports of the experts that plaintiff intended to call. A week before the start of the quantum trial plaintiff's attorneys requested the RAF's attorneys in writing to admit the reports of Drs Sagor and Cronwright, orthopaedic

surgeon and plastic and reconstruction surgeon respectively. They did not want to do that notwithstanding the fact that Dr Sagor and the RAF's expert agreed fully with each other and the RAF did not file a report of a plastic and reconstruction surgeon at all. After filing of the orthopaedic surgeons' joint minutes, the plaintiff's request was repeated, but to no avail. The RAF and its attorneys were well aware that these experts had to fly in from Cape Town and that thousands of Rands of public funds could be saved if that could be prevented. Eventually, not a single question was put to these two experts in cross-examination when they confirmed their reports under oath and explained pertinent aspects.