

BUSUKU V ROAD ACCIDENT FUND [2016]

CASE SYNOPSIS

On 9th June 2016, the Eastern Cape Local Division, Mthatha handed down its judgment in the matter of *Busuku v Road Accident Fund**.

Although this case involves a special plea of prescription, which was upheld, Alkema J found that where the RAF Form 1 is submitted in a claim against the Road Accident Fund, but does not include a medical report, the claim has, in fact, not been submitted and there is no claim against the Fund.

The Plaintiff instituted a claim against the Road Accident Fund following a collision with an unknown owner or driver. The Fund responded that the Plaintiff had failed to deliver a medical report as required by Section 24 (1), read with Section 24 (2) (a) of the Road Accident Fund Act No. 56 of 1996 [“the Act”], and accordingly the claim had prescribed. Paragraph 22 of the RAF Form 1 (in the form of a template for the medical report), was absent of any information, apart from the Plaintiff’s personal details. The Plaintiff answered that there had been substantial compliance with the Act as the hospital notes, which contained all the relevant information required by the medical report, had been attached to Form 1.

The Court held that it had repeatedly been recognised that the provisions requiring the submission of the claim form to the Fund, were framed in peremptory terms and therefore required strict compliance, but that the requirements relating to the completeness, or the content thereof, including the medical report, were merely directory. In this instance, the hospital notes were not sufficient; Form 1 could not be substituted by these notes. The absence of the medical report meant that no claim had been submitted. It is only once the claim form has been submitted, that substantial compliance with regard to the completeness thereof becomes an issue.

At paragraph 9 of the judgment, the Court held that: *“The content of the medical report allows for an early investigation in, and assessment of, the quantum of damages. It calls for certain specific information and particularity to achieve this end. The claim and accompanying medical report must, in terms of section 7 of the Regulations read with annexure A thereto, be set out in form RAF1, which form includes the medical report”* .

Adv. Lucille Bütow-Dûtoit

This case may be accessed at:

<http://www.saflii.org/za/cases/ZAECMHC/2016/30.html>

* *Busuku v Road Accident Fund* [Neutral citation: (3055/2014) [2016] ZAECMHC 30 (9 June 2016)]