



OFFICE OF THE ACTING JUDGE PRESIDENT

GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA
High Court of South Africa, Cnr. Paul Kruget & Madiba Streets, 7th floor
Tel: 012 492 6811 / 012 315 7572

E-mail: AMbelani@judiciary.org.za

9 February 2022

To: **SURITA MARAIS ATTORNEYS**
E-mail: estelle@execmail.co.za
The Minister Of Transport
E-mail: TransportMinistry@dot.gov.za
The Treasury
E-mail: Thandi.Phalane@Treasury.gov.za
The Chief Executive Officer Of The Road Accident Fund
E-mail: CollinsL@raf.co.za; lindelwa@raf.co.za; fanniek@raf.co.za
The Judges Of The Gauteng Division Of The High Court Of S.A
The Registrar Of The Gauteng Division Of The High Court Of S.A
The Pretoria Society Of Advocates
E-mail: manager@ptabar.com
The Johannesburg Bar Council
E-mail: jhbadm@law.co.za
The Legal Practice Council
E-mail: directorgp@lpc.org.za; procforum@lpc.org.za; JohanV@lpc.org.za
The Office Of The State Attorney
E-mail: fhepandelani@justice.gov.za
The South African Association Of Personal Injury Lawyers
The Personal Injury Plaintiff Lawyers Association
E-mail: dj.erasmus@law.co.za
NADEL
E-mail: fazoe@nadel.co.za
BLA
E-mail: info@bla.org.za; gautengsecretary@blaonline.org.za

RE: ADVOCATE KNOETZE obo MALINGA//THE ROAD ACCIDENT FUND

CASE NUMBER: 77573/2018

And

EVERT JOHANNES PETRUS DE GOEDE//THE ROAD ACCIDENT FUND

CASE NUMBER: 54997/2020

PRACTICE DIRECTIVE IN TERMS OF SECTION 14(1)(a) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013

1. I intend issuing a Directive issued in terms of section 14(1)(a) of the Superior Courts Act, Act 10 of 2013, read with section 173 of The Constitution of the Republic of South Africa. The purpose of this Directive is to make provision for the constitution of a Full Court, to sit at first instance, to hear, determine and resolve the legal issue that recently arose in a number of matters where Plaintiffs approach the Court to obtain default judgment against the Road Accident Fund. It is necessary and in the interest of justice that a uniform approach is followed in this Division when Courts deal with the Legal Issue set out below.

2. **Background**

Section 17(4)(1)(a) of the Road Accident Fund Act provides as follow:

‘(4) Where **a claim for compensation** under subsection (1)—

- (a) **includes a claim for the costs** of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him or her, **the Fund** or an agent **shall be entitled**, after furnishing the third party concerned with an undertaking to that effect or **a competent court has directed the Fund** or the agent to furnish such undertaking, to compensate—

- (i) the third party in respect of the said costs after the costs have been incurred and on proof thereof; or
- (ii) the provider of such service or treatment directly, notwithstanding section 19 (c) or (d),

in accordance with the tariff contemplated in subsection (4B)'.

Mojapelo DJP held in *Van der Walt v RAF* (2014/12763) [2015] ZAGPJHC 86 para 13, that a court may not order than an undertaking be issued unless it is tendered by the Road Accident Fund. Mojapelo DJP relied extensively on a decision of the Appellate Division, as it then was, in *Marine & Trade Insurance Co Ltd v Katz NO* 1979 (4) SA 961 (A). In this decision the court pronounced on the nature of an undertaking in terms of in section 21(1C)(a) of the Compulsory Motor Vehicle Insurance Act, Act 56 of 1972. This section provided as follow:

'(1C) Where a claim for compensation under section 21 -

(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to him, the authorized insurer concerned shall be entitled, after furnishing the third party in question with an undertaking to that effect or a competent court has directed him to furnish such undertaking, to compensate the third party in respect of the said costs after the costs have been incurred and on proof thereof;

In *Katz*, Trollip JA explained that the purpose of the provision was to innovate a departure of the common law. He stated:

'Now para (a) of the amendment is designed for the benefit of authorized insurers and has the effect, if invoked, of eliminating the uncertainties and imponderables inherent in having to adjudicate once and for all the quantum for the future loss or damage mentioned therein. Its provisions, however, only apply if the insurer concerned elects to invoke them. That was common cause and flows from the words "the

authorized insurer shall be entitled etc..." The claimant (the third party) cannot himself claim or insist that the insurer shall furnish the undertaking, nor can the trial Court *mero motu* direct the insurer to furnish it. For the election lies entirely with the insurer. The insurer's election must, of course, be conveyed to the claimant. He can do that by furnishing the claimant with the undertaking after the claim for compensation has been submitted under s 25 (1) of the Act. ... if no such undertaking is then furnished, the litigation ensues and the insurer can at the trial furnish it, or tender to furnish it, or otherwise convey his election to the claimant and the trial Court. In that event, if the claimant is successful in the litigation, the trial Court must by its order direct, and the claimant must submit to that direction, that the insurer shall furnish the undertaking to the claimant. The reason and need for the judicial direction is to render the undertaking binding on both parties for the future.'

It is common cause that the majority of orders granted against the Road Accident Fund are currently granted by default. Recently, some Plaintiffs insist on being awarded a lump sum as compensation for their claim for future medical and hospital expenses. It is submitted by these Plaintiffs that in light of the *Katz* decision, a Court is not competent to order that a section 17(4)(1)(a) undertaking be furnished by the Road Accident Fund in the absence of a tender by the Road Accident Fund.

3. **The Legal Issue raised:**

- 3.1. Is it competent for a court to order that a Plaintiff's claim for future medical and hospital expenses be compensated by the Road Accident Fund by way of an undertaking issued in terms of section 17(4)(1)(a) of the Road Accident Fund Act, Act 56 of 1996, where default judgment is granted, and in the absence of a tender to that effect?
- 3.2. Any other matter that may be raised for determination.

You are invited to a virtual judicial management meeting to be held on 18 February 2022 at 08h30 to discuss the process and dates for filing further documents and heads of arguments before I issue a formal directive regarding the constitution of the Full Court which will hear the matter and the date of hearing.

Please confirm in writing on or before 15 February 2022 and furnish this office with the particulars of your representative who will be attending the meeting.

Kind regards,



A.P. LEDWABA

ACTING JUDGE PRESIDENT

**GAUTENG DIVISION OF THE HIGH COURT
OF SOUTH AFRICA**