HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 011795/2022

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.
DATE: 26 MARCH 2024

SIGNATURE

In the matter between:

ADAM MUDAWO	First Applicant
WENILE SIMON NDLOVU	Second Applicant
BRUCE MTHOKOZI SIBANDA	Third Applicant
OYETUNDE ONENIYI AREO	Fourth Applicant

and

MINISTER OF TRANSPORT	First Respondent
THE ROAD ACCIDENT FUND	Second Respondent

Summary: *Administrative action – policy decision by a Minister effectively resulting in an amendment of as Statutory provision – beyond the powers of a Minister to do so – the use of the words "any person" in section 17 of the Road Accident Fund Act 56 of 1996 (the Act) does not exclude illegal foreigners – neither the publication of an amended RAF 1 form nor the circulation of a Management Directive by the Road Accident Fund may preclude illegal foreigners from claiming compensation under the Act nor prevent such persons from lodging claims.*

ORDER

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1. The provisions of the substituted RAF1 claim form prescribed by Government Notice R2235 published in Government Gazette 46661 dated 4 July 2022 issued by the Minister of Transport (first respondent) in terms of section 26 of the Road Accident Fund Act, 56 of 1996, is reviewed and set aside to the extent that both part 6.1 (substantial compliance injury claims) and part 12.1 (substantial compliance death claims) thereof require that, if a claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident.

2. The provisions of the RAF Management Directive dated 21 June 2022 titled Critical Validations to Confirm the Identity of South African Citizens and Claims Lodged by Foreigners, is reviewed and set aside to the extent that:

2.1 In respect of foreign claimants, it requires that proof of identity must be accompanied by documentary proof that the claimant was legally in South African at the time of the accident;

2.2 In respect of foreign claimants, they are required to provide copies of their passports with an entry stamp and where they have left South Africa, the passport must have an exit stamp and should the foreign claimant still be in the country, that proof of an approved visa must be submitted before the RAF is prepared to register such claimants' claims;

2.3 It is required that copies of the passports of foreign claimants may only be certified by the South African Police Service.

3. The first and second respondents are jointly and severally ordered to pay the applicants' costs of the application, including the costs of two counsel and senior counsel, where utilized, the one paying the other to be absolved.

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J (Mnyovu AJ and Kok AJ concurring)

Introduction

[1] The Road Traffic Management Corporation has reported in public documents[1] that, during the year in which this application had been launched 12 436 people have died in road traffic accidents in South Africa. In addition to this tragic statistic, many more thousands of people are annually injured in road traffic accidents on South African roads. These accidents don't discriminate in respect of the victims thereof between race, gender, age, income or, importantly for this matter, between illegal foreigners and citizens or persons legally in the country.

[2] The Road Accident Fund (the RAF) has an obligation in terms of section 17(1) of the Road Accident Fund Act[2] to "... *compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic* ...".

[3] Until recently "any person" was treated and interpreted by the RAF to include illegal foreigners injured or killed in road accidents which took place in South Africa.

[4] The CEO of the RAF, Mr Collins Letsoalo, contended in papers before us that the Minister of Transport (who is cited as the first respondent in this matter, hereafter "the Minister") has in July 2022 taken a policy decision to exclude illegal foreigners from the benefit of claiming damages against the RAF. The Minister sought to achieve this by publishing a new RAF 1 form[3] inter alia dealing with new requirements of nationality and legal entry into South Africa.

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[1] aa.co.za/road-fatality-numbers-are-a continuing-national-crisis/ and https://www.rtmc.co.za>trafficreports
[2] 56 of 1996 (the Act).
[3] Published by way of R 2255 in Government Gazette 46661 of 4 July 2022.

[5] The publication followed a Management Directive of the RAF dated 21 June 2022 dealing with "*Critical Validations to Confirm the Identity of South African Citizens and Claims Lodged by Foreigners*".

[6] Both the new RAF 1 form (and the strict requirement of full compliance therewith) and the Management Directive have been described by the CEO to be Constitutionally valid on the following basis: "*The management directive and the RAF 1 form do not discriminate against any person on any of the prohibited grounds. These two instruments only require foreign claimants to produce proof that they were lawfully in the Republic when their claims arose. This is clearly intended to ensure that illegal foreigners do not benefit from the social benefit scheme administered by the Fund which was designed and is implemented for the benefit of South African citizens, permanent residents and those who are lawfully in the Republic*".[4]

[7] The applicants seek to have the requirements of the published new RAF 1 form (pertaining to foreigners) and the management directive reviewed and set aside on the basis that the new requirements are unconstitutional and *ultra vires*.

[8] Whilst the general validity and legality of the Minister's publication form the subject matter of an independent review under case no 046038/2022, which was heard by another full court of this Division on 26 – 28 February 2024 (that is a week prior to the hearing of this matter), the current matter is limited to the issue of claims by illegal foreigners.

The parties

[9] The first applicant is a foreign national who had been issued an asylum seeker permit in terms of section 22 of the Refugees Act, 130 of 1998 on 20

[4] Second respondents Heads of Argument par 3.9 and par 2.12 of the CEO's answering affidavit.

August 2020. This entitled him to work and study in the Republic. He was involved in a motor vehicle accident on 26 January 2022 when an oncoming overtaking vehicle collided head-on with the scooter he was driving. The first applicant sustained severe injuries, including multiple facial fractures, a left orbital fracture, a mandible fracture, a de-gloving injury to his nose and a skull base fracture. His asylum seeker permit had lapsed on 20 February 2021 and because he now has no valid passport, stamped to affirm his entry into South Africa nor a valid asylum seeker permit, he cannot satisfy the requirements of the new RAF 1 form nor would the RAF entertain any claim by him in terms of the Act.

[10] The second applicant sustained injuries whilst being run over by a motor vehicle on 23 November 2021. Pursuant to this, the second applicant had lodged a claim with the RAF on 15 June 2022 (that is before the date of the Management Directive and the Minister's publication of the new RAF 1 form). Although the RAF had assigned a reference number to the second applicant's claim (No 19891223 PEF), it now refuses to register his claim due to the fact that he is a foreign national without a passport stamped with his entry into South Africa.

[11] The third applicant was also a pedestrian who was injured in a motor vehicle accident, this time on 8 September 2021. The incident had been reported to the Moffatview SAPS, pursuant to which a claim had been lodged with the RAF on 30 August 2023. Despite his claim having been assigned a reference number (083 02023 495000 RT), the RAF refuses to register his claim. The reasons for this was that applicant is a foreign national in possession of a valid passport but with no stamped proof of entry into South Africa or a valid visa.

[12] The position of the fourth applicant is slightly different from the other applicants in that, although he is similarly a foreign national who had sustained injuries in a motor vehicle accident in the Republic (on 15 March 2020), he had

already obtained judgment in case no 9130/21 in this Division against the RAF for payment of compensation for the injuries sustained and loss of earnings suffered by him. The date of the judgment is 24 July 2023 and the amount of it is R2 612 934.40. No rescission application is pending against this judgment but the RAF has to date failed or refused to pay it. The fourth applicant claims that the reason for this refusal is the fact that although his matter pre-dates the management directive and the Minister's publication, payment is held back because he is a foreign national with only a passport (and no visa). The RAF has not denied this accusation nor has it furnished Adv Tsatsawane SC, who appeared for the RAF in this matter, with any other reasons for its refusal to satisfy the court order in question.

[13] The second, third and fourth applicants were all granted leave to intervene in this matter by various judges prior to the matter being enrolled before this full court.

[14] The first respondent is the Minister. He has withdrawn his initial notice of intention to oppose and has since delivered a notice to abide. The Minister has also declined to deliver an affidavit, nor has he furnished reasons for the policy decision ascribed to him and neither did the record filed in terms of Rule 53 contain any details of such policy decision. The only indication of administrative action by the Minister is contained as follows in the publication of 4 July 2022 itself: "*The Minister of Transport, in terms of section 26 of the Road Accident Fund Act 1996 (Act No 56 of 1996) herewith prescribed the RAF Form 1 (sic) in the Schedule. (Signed) Mr F A Mbalula. Minister of Transport 30/06/2022*".

The new RAF 1 form

[15] The "important information" prescribed as an introduction to the RAF 1 form inter alia warns claimants that "*your attention is drawn to the provisions of*

section 24(4)(a) that any form that is not completed in its full particulars shall not be acceptable as a claim under the Act". Claimants are then warned of the consequences of this as follows: "*Consequently, your submitted form would not interrupt prescription as provided for in section 23 of the Act*".

[16] The portions of the form objected to by the applicants are the requirements that a foreign national must provide proof by way of annexures in the form of a passport with stamped entry stamps and a visa, indicating that the foreigner was legally in South Africa at the time of the accident.

The Management Directive

[17] The Management Directive targeted in this application is that of the RAF dated 21 June 2022. It was issued by the RAF's Acting Chief Operations Officer.

[18] The heading of the Management Directive reads "*Critical Validations to Confirm the Identity of South African Citizen and Claims Lodged by Foreigners*". After dealing with the procedures regarding claims by South African citizens, the Management Directive prescribes the following regarding claimants who are foreign nationals: "*In instances where the claimant or injured is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South African at the time of the accident. A copy of the foreign claimant's passport showing the entry stamp and/or exit stamp must be submitted. Where the passport does not have any stamp, the RAF will not be lodging such a claim. Where the passport does not have an exit stamp, proof that the claimant is still in the country must be produced. In this instance the passport copy indicating approved Visa must be submitted. Copies of the passport must be certified by the SAPS*".

[19] Apart from the evidentiary requirements stipulated by the Management Directive and the new RAF 1 form, some of which may, even for legitimate

reasons, be difficult or impossible to comply with, the outcome sought to be achieved, has expressly been stated by the RAF's CEO, was to exclude illegal foreigners from claiming compensation in terms of the Act for injuries sustained and damages suffered, of whatever nature, due to accidents which had occurred inside South Africa.

The applicants' respective cases

[20] The first and second applicants' grounds of attack and claims for the reviewing and setting aside of the Minister's decision and the publication of the new RAF 1 form as well as the Management Directive were that these decisions offend various Constitutional rights which the applicants claim even illegal foreigners are entitled to. The rights claimed vary from rights to equality, dignity, health care and social security, just administrative action and access to courts.

[21] The assertion of these Constitutional rights were hotly contested and debated, not only in the papers but also in argument before the court, but the direct and more frontal attack was based on the *ultra vires* principle[5]. This has been put as follows in the founding affidavit: "*Neither the [RAF] nor the [Minister] has the authority to make laws and regulations which offend the main Act and exclude persons otherwise entitled to claim from its ambit. This is trite law and principles encapsulated in the doctrine of legality and the Rule of Law*". Later on in the founding affidavit the conduct of the Minister and the RAF respectively are described as constituting "*a remarkable change in the law ... not envisaged by the Act*".

[22] The third applicant made common cause with the first two applicants, but was more concerned about the impossibility to comply with certain of the

[5] The principle that a functionary cannot exercise more power that afforded to him or her by the enabling statute. To do so, would be to act beyond the scope of one's powers.

prescripts. So, for example, would a person with a valid asylum seekers permit (entitling such a person to remain in South Africa pending determination of his or her status) but not being in possession of a passport, be excluded from submitting a claim. The way in which the form has been designed and the manner in which the wording of the Management Directive has been couched, would therefore in some instances even exclude persons who are legally in the country. Examples of other permutations of travel documentation have also been cited.

[23] The fourth applicant's case was that, despite being armed with a court order, payment of that order is being withheld or refused simply because he is an illegal foreigner, even though the new RAF 1 form and the Management Directive were not even in force when his claim had been lodged.

The *ultra vires* review

[24] Section 6(2)(a)(i) of PAJA has statutorily concretised the basis of judicial review under this rubric as follows: "*A court ... has the power to judicially review an administrative action if ... the administrator who took it ... was not authorised to do so by the empowering provision ...*".

[25] The exercise of administrative action, including the exercise of public power must "*happen within the bounds set by the legal framework ...*"[6], in this case, the Act.

[26] The *ultra vires* doctrine "*...demands, of every exercise of public power, a consistent compliance with the bounds set for the exercise of that power as provided for by the applicable law and the Constitution*".[7]

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[6] *Minister of Finance v Afribusiness NPC* 2022 (4) SA 362 (CC) at par [40] (*Afribusiness*).
[7] *Afribusiness* (above) at par [39].

[27] In *Fedsure*[8], the Constitutional Court put it as follows: "*It seems central to the concept of our Constitutional order that the Legislature and the Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law*".

[28] The respondents accepted that their conduct was based on a (new) interpretation of the Act (without any amendment thereto). In addition the RAF's CEO claimed that this interpretation was enforceable due to it constituting "a policy decision" by the Minister. If their interpretation is therefore incorrect, the decisions could not have been taken because to allow them to stand, would in effect amount to an amendment of the Act or a limitation thereof, something neither the Minister nor the CEO was empowered to do. That power resides in the Legislature.

[29] The interpretation of a provision of a statute (in this case section 17(1) of the Act, referred to in paragraph [2] above) comprises of "... *a unitary endeavour requiring the consideration of text, context and purpose*".[9]

[30] The Constitutional Court has determined that the principles of statutory interpretation start with the words used in the text, but that these are three interrelated "riders" to "giving" the words used their ordinary grammatical meaning namely:

> "*(a) that statutory provisions should always be interpreted purposively;*

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[8] *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC) at par [58].

[9] *Betterbridge (Pty) Ltd v Masilo & Others* NNO 2015 (2) SA 396 (GNP) at par [8], referring to *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

(b) the relevant statutory provisions must be properly contextualized; and

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)".

[31] Starting with the text, the ordinary meaning of the words "any person" in the context of the one of the Acts predecessors[10] has been determined as being a phrase with an "obviously wide meaning".[11] The wide meaning is clearly denoted by the grammatical interpretation of the word "any".

[32] Turning to context and purpose, the "primary concern" of the Act, has recently been found by the Supreme Court of Appeal *"... to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver of a motor vehicle. For this reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties to afford them the widest possible protection*".[12]

[33] Although the Act has been described as social legislation, that does not equate to damages claims being "social benefits" in the same manner as say, social grants or unemployment benefits are. Social benefits are those the Government dispenses at its discretion while the social legislative intention of the Act is to protect drivers from delictual claims they could not otherwise satisfy

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[10] The Compulsory Motor Vehicle Insurance Act 56 of 1972.
[11] *Stegen & Others v Shield Insurance Co Ltd* 1976 (2) SA 175 (N) at 177B - C
[12] *Road Accident Fund v Busuku* 2023 (4) SA 507 (SCA) at par [6] (*Busuku*).

and to ensure that those who have suffered delictual damages are not, through the impecunity of the wrongdoer, made to suffer as a consequence.[13]

[34] Similarly, where the Supreme Court of Appeal in *Busuku* referred to the exclusion of certain claims as being "illegal", it referred to fraudulent claims, that is where claims are instituted where there have been no accidents or actual injuries. It did not disqualify illegal foreigners from otherwise valid claims.

[35] I am of the respectful view that this court is bound by the Supreme Court of Appeal's interpretation of the wide application of the Act, which should inform the interpretation of the words "any person" insofar as it relates to illegal foreigners.

[36] Moreover, that wide interpretation of the purpose of the Act, has been confirmed by the Constitutional Court in *Coughlan NO v RAF.*[14]

[37] So, if the text of the Act (using the words "any person") and the purpose of the Act (to provide the widest possible protection to victims of vehicle accidents) are wide enough to include any claimant, whether he is legally in South Africa or not, is there any other context which would lead to a narrower interpretation?

[38] The RAF relied on *Chola v Road Accident Fund*,[15] a judgment of the Johannesburg Court of this Division, in support of its argument that the Minister and the RAF were entitled to interpret the Act as excluding illegal foreigners from claiming against the RAF and that they were therefore entitled to take the

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[13] See for example *Monyamane, Social Security* "benefits" and the collateral source rule, De Jure Pretoria Vol 49 2016 in which article the difference between damages and social benefits (such as child care grants and foster care grants) feature.

[14] 2015 (4) SA 1 (CC) at par [59] with reference also to *Mvumvu & Others v Minister of Transport and Another* 2011 (2) SA 473 (CC) and *Engelbrecht v RAF* 2007 (6) SA 96 (CC).

[15] 4182/2019 (Gauteng Local Division, Johannesburg) 9 May 2023.

administrative actions which they did. In that matter Baqwa J found as follows: "*It is true and it is trite that the Road Accident Fund will be liable to compensate any person who is a victim of a motor vehicle accident within the Republic of South Africa in terms of the ... Act, but I must state at the very beginning of this brief judgment that I accept as submitted by Ms Aamir Singh for the defendant, that "any person" does not include an illegal foreigner .... The requirement to prove legality of entry into the Republic of South Africa is provided for in terms of Regulation 7(1) of the Road Accident Fund Regulations 2008, and in that sense, it is a requirement which has been factored into the so-called RAF 1 in terms of the Act and it came into effect on 1 June 2022. Its provisions cannot therefore be ignored by this court .... Counsel for the defendant submits, as a matter of law, ... the plaintiff is duty bound to prove that he entered the country legally and that "any person" in the Act does not include an illegal foreigner. I am inclined, as already alluded to, to accept the correctness of that submission*".

[39] I have quoted the relevant parts of my learned brother's judgment rather extensively to illustrate how he got to his conclusion. It matters not that Baqwa J's judgment was in respect of a prior RAF 1 form devised by the RAF and which has since been set aside as having been published *ultra vires*, as the power to promulgate regulations resides with the Minister,[16] the current RAF 1 form is in pari materia with the RAF's previous attempts at amending the form, the only difference is that the amendments have this time round been published by the Minister.

[40] It is clear however, that Baqwa J merely accepted the arguments of the RAF and based his judgment on the RAF 1 requirements. This is so because there was not before him, as before us, a direct attack on the decision to exclude illegal foreigners *in toto* from the operation of the Act. Baqwa J was faced with an

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[16] *Mautla & Others v RAF* (29459/2021) [2023] ZAGPPHC 1843 (6November 2023) (*Mautla*)

application for postponement, which he granted. The comments by Baqwa J are therefore obiter in relation to the issues we have to decide and even if those comments were not obiter, we respectfully find that they were clearly wrong.

[41] The fact that the issues relating to claims by illegal foreigners would still have to be decided separately from the issue of a postponement which served before Baqwa J, was dearly foreseen by him as is apparent from the following passage of his judgment: " *I have given serious consideration to the possibility of ordering a separation of issues and making an order in terms of section 17(4), for the issuing of a certificate by the defendant and an order for general damages separate from the loss of earnings but as defendant's counsel submits, the Mudawo case [the present application] is about "capacity to claim by a plaintiff". The fact of the matter therefore is, it is either he has that capacity or alternatively he does not have. This, to use a colloquial phrase, is the postponement granted the million dollar question which has to be answered by the ape court*". It was for that reason that Baqwa J granted a postponement of the matter before him. For the RAF to rely on the judgment of Baqwa J as being determinative of the issues is therefore incorrect.

[42] There are two further indications that the law has not changed and that the Act has always been interpreted to include claims of illegal foreigners. The first such indication is that the RAF itself has, since the promulgation of the Act interpreted the Act as being inclusive of such claimants and it has over the course of more than 25 years paid out such claims without demur[17]. The second is that our courts have also upheld claims of illegal foreigners against the RAF without the RAF appealing or applying for rescission of such orders[18], despite even

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[17] This conduct constitutes *subsecuta observatio* (subsequent observance of a provision in a certain way) which has traditionally been regarded as of assistance in interpreting legislation: L. C. Steyn, Die Uitleg van Wette, 5th Ed at par 157.

[18] *Rumbidza v RAF* (83879/2014) [2015] ZAGPPHC 1071 (2 September 2015) and *Lesoana v RAF* (1135/2011) [2013] ZAFSHC 39 (7 March 2013).

having been represented. Admittedly in these cases the issues mostly related to the absence of work permits and the arguments centered around the validity of a claim for a loss of an illegal income, but that factual circumstance came about as a result of the claimants' status as illegal foreigners.

[43] In *RAF v Sheriff of the High Court, Pretoria and Macamo*[19], a matter which only came before court some four months ago, the facts were as follows: the plaintiff (*Macamo*) was a foreign national who had instituted action in 2019 against the RAF for damages suffered pursuant to a motor vehicle accident which had occurred in the Republic. Due to litigation delinquency on the part of the RAF, its defence had been struck out on 4 October 2021. On 21 July 2022 the RAF made an offer to *Macamo* which was accepted by him. On 26 August 2022 the parties to that action submitted joint submissions on the settlement offer and the acceptance thereof, in accordance with this Division's Practice Directives. On 18 April 2023 the accepted settlement offer was made an order of court. Due to non-payment of the order, it was included in a list of unfulfilled execution orders which has led to a proposed sale in execution on 7 November 2023. The RAF applied to have the sale stayed, claiming that the order had erroneously been granted. The RAF claimed that since there had not been compliance with the Management Directive of 21 June 2022, no offer of settlement should have been made alternatively, insofar as it had been made, it had been done without authority. Twala J referred to the issue of the RAF's attempted exclusion of illegal foreigners with reliance on Section 4(1)(a) of the Act appearing to be in breach of the Constitution's equality provisions but in the end found that the Management Directive did not have such retrospective effect that it invalidated the authority to settle. The application for a stay was refused. Although both

[19] (011̈4226/2023) [2023] ZAGPJHC 1336 (20 November 2023).

parties relied on different parts of this judgment, it was not conclusive of the issue to be determined in this matter.

[44] The reference to Section 4(1)(a) of the Act briefly needs attention. This is the section which empowers the RAF to issue directives dealing with the internal administration of the RAF and the manner in which claims "shall be administered". These directives do no acquire the force of law and cannot impermissibly conflict with the provisions of the Act.[20]

[45] In a last-ditch attempt, the RAF argued that, in allowing illegal foreigners to claim from the RAF in terms of the Act, would offend against the provisions prohibiting the "aiding and abetting" of illegal foreigners.[21] In my view the entertainment of the enforcement of a delictual claim provided for in the Act cannot be interpreted as "aiding" or "abetting" an illegal foreigner to contravene either the Immigration Act or the Refugees Act.[22] The RAF is obliged to compensate victims of motor vehicle accidents as provided for in section 17 of the Act and the discharge of such obligations cannot be interpreted to constitute "aiding" and "abetting". The proposition that it would do so, needs only to be stated to illustrate its absurdity.

Summation and conclusion

[46] We find nothing in the text of the Act, the context of the RAF scheme as a whole and the purpose of the Act which leads us to conclude that the words "any person" in section 17 of the Act should be restrictively interpreted so as to exclude illegal foreigners.

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[20] *Mautla* (above) at paras [47], [57] and [69].
[21] Section 42(1)(a)(ix) of the Immigration Act, 13 of 2002 (the Immigration Act).
[22] 130 of 1998.

[47] We find that the administrative actions of the RAF in prescribing the Management Directive of 21 June 2022 and that of the Minister in publishing the new RAF 1 form on 4 July 2022, insofar as those actions, in the way they have been formulated and are to be enforced to exclude claims by illegal foreigners, offend against the provisions of section 17 of the Act.

[48] Neither the Minister, nor the RAF, are in law permitted, either by way of a "policy decision" or by way of a novel interpretation of the Act, to amend or limit the ambit of the Act. To do so would be beyond their powers.

[49] The impugned decisions therefore fall foul of section 6(2)(a)(i) of PAJA and they are to be reviewed and set aside to the extent necessary.

[50] Having reached the above conclusions, we find it unnecessary to deal with the Constitutionality arguments relating to the attempted exclusion of illegal foreigners as claimants against the RAF.

Costs

[51] We find no cogent reasons to depart from the customary rule that costs should follow the event. Having regard to the complexity of the matter and the public interests involved, we are of the view that the employment of multiple and senior counsel was justified. Having regard to the absence of an explanation as to why the fourth applicant has not been paid and the failure to deal with his accusations that non-payment was an *ex-post facto* attempt at making the exclusion of illegal foreigners also applicable to him, despite an order of this court, we find, in the exercise of our discretion, that he should not be excluded from the order for costs.

Order

The following orders are made:

1. The provisions of the substituted RAF1 claim form prescribed by Government Notice R2235 published in Government Gazette 46661 dated 4 July 2022 issued by the Minister of Transport (first respondent) in terms of section 26 of the Road Accident Fund Act, 56 of 1996, is reviewed and set aside to the extent that both part 6.1 (substantial compliance injury claims) and part 12.1 (substantial compliance death claims) thereof require that, if a claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident.

2. The provisions of the RAF Management Directive dated 21 June 2022 titled Critical Validations to Confirm the Identity of South African Citizens and Claims Lodged by Foreigners, is reviewed and set aside to the extent that:

    2.1 In respect of foreign claimants, it requires that proof of identity must be accompanied by documentary proof that the claimant was legally in South African at the time of the accident;

    2.2 In respect of foreign claimants, they are required to provide copies of their passports with an entry stamp and where they have left South Africa, the passport must have an exit stamp and should the foreign claimant still be in the country, that proof of an approved visa must be submitted before the RAF is prepared to register such claimants' claims;

    2.3 It is required that copies of the passports of foreign claimants may only be certified by the South African Police Service.

3. The first and second respondents are jointly and severally ordered to pay the applicants' costs of the application, including the costs of two counsel and senior counsel, where utilized, the one paying the other to be absolved.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree

B F MNYOVU
Acting Judge of the High Court
Gauteng Division, Pretoria

I agree

A KOK
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 5 March 2024

Judgment delivered: 26 March 2024

APPEARANCES:

For the First Applicant:	Adv B P Geach SC together with Adv R Hawman
Attorney for the First Applicant:	Roets & van Rensburg Inc., Pretoria
For the Second Applicant:	Adv F H H Kehrhahn together with Adv S Cliff
Attorney for the Second Applicant:	Mduzulwana Attorneys Inc., Pretoria
For the Third Applicant:	Adv M Snyman SC together with Adv F H H Kehrhahn
Attorney for the Third Applicant:	KWP Attorneys, Randburg
For the Fourth Applicant:	Adv P van der Schyf
Attorney for the Fourth Applicant:	Slabbert & Slabbert Attorneys, Pretoria
For the First Respondent:	No appearances.
For the Second Respondent:	Adv K Tsatsawane SC together with Adv C Rip
Attorney for the Second Respondent:	Malatji & Co Attorneys, Sandton c/o Ditsela Inc., Pretoria