

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**Road Accident Fund and Another v Vusumzi Mdeyide**

**CCT 10/10**

**Decided on: 30 September 2010**

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**MEDIA SUMMARY**

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*The following media summary is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Thursday 30 September 2010, the Constitutional Court handed down judgment in the case of *Road Accident Fund and Another v Vusumzi Mdeyide*. The case deals with the limitation of the right of access to courts, protected in section 34 of the Constitution, by a statutory prescription period.

Mr Mdeyide, who is blind, illiterate and innumerate, was involved in a motor vehicle collision. His claim for compensation in terms of the Road Accident Fund Act (RAF Act) was lodged with the Road Accident Fund (RAF), three years and three days after the date of the collision.

In the Eastern Cape High Court the RAF pleaded that Mr Mdeyide's claim had prescribed since the RAF Act stipulates that the right to claim compensation prescribes three years after the date upon which the cause of action arose. The High Court declared that provision of the RAF Act unconstitutional due to the fact that it imposed a complete bar to claims outside of the prescription period, no matter how unusual or exceptional the claimant's particular circumstances. The matter was then referred to this Court for confirmation of the order of constitutional invalidity.

Previously, in 2007, in a case before this Court involving the same parties, this Court decided that Mr Mdeyide's mental capacity had been given insufficient attention by the High Court and remitted the matter back to it. The High Court found that Mr Mdeyide was of sound mind and reinstated its original order. It, therefore, referred the matter back to this Court for confirmation. The RAF appealed against the High Court order and was supported by the Minister for Transport, who was permitted to join the proceedings.

The RAF and the Minister submitted that if the RAF Act limits the right of access to courts, the limitation is reasonable and justifiable as there could be a severe, adverse administrative and financial impact on the Fund if the prescription period were to be relaxed. Mr Mdeyide argued that prescription only commenced on 17 September 1999, when he first consulted with his attorneys and became aware that he had a right to claim compensation from the Fund, because a provision of the Prescription Act delays the commencement of prescription until the creditor acquires knowledge of the identity of the debtor. Alternatively, he argued that the RAF Act is unconstitutional because it violated the right of access to courts, as it differs from the Prescription Act by not requiring knowledge of the identity of the debtor for prescription to commence.

In the majority judgment by Van der Westhuizen J the Court held that the provisions of the Prescription Act could not apply to the RAF Act as the two Acts were created for different purposes; the former to apply generally and the latter to apply to claims against the RAF based on road accidents. The identity of the debtor, the RAF, is fundamentally different to that of the identity of debtors in cases covered by the Prescription Act.

Van der Westhuizen J further held that the challenged provision limits the right of access to courts, but that the limitation is reasonable and justifiable under section 36 of the Constitution. He also held that the prescription of claims is well known in law, for good reasons. He held, further, that the fixed time period in the RAF Act is related to a legitimate government purpose, to ensure the continued existence and maximum efficiency of a compensation fund for those injured in road accidents and that relaxing the time period could seriously affect the efficiency, functioning and financial viability of the Fund. Moreover, the time period of three years is much longer than the periods previously found to be unconstitutional by this Court and generous enough to provide for flexibility. The High Court's order was, thus, not confirmed and the appeal was upheld.

In a dissenting judgment by Froneman J it was held that the challenged provision of the RAF Act is unconstitutional as the prescription period is too inflexible to be justified and, thus, potentially affects the most socio-economically disadvantaged individuals in society.