

“ROAD ACCIDENT FUND’S CONTROVERSY WITH DEFIANCE OF COURT ORDERS, LEAVING CLAIMANTS HANGING”

Board Notice 271 of 2022 (thereafter “271 Notice”) was published in the Government Gazette on 06 May 2022 and introduced by the Road Accident Fund to revise the claims process for road accident victims South Africa. It required claimants to provide additional documentation for both death and injury claims. The effect of this is that the RAF continues relying on the 271 Notice and disregarding court rulings on not to rely on the notice as it is invalidated. The notice posed a burdensome lodging process to claimants and sparked outrage from stakeholders such as claimants and legal practitioners.

Claimants faced the possibility of their claims being prescribed due to the required documentation by the new RAF 1 with the Notice 271 within the required time frame and the implementation and enforcement of these peremptory for the lodgment of claims with the Road Accident Fund.

The prejudice and unfair claim process was acknowledged by the Gauteng High Court , Pretoria in the *Legal Practitioners Indemnity Insurance Fund (NPC) and Others v Road Accident Fund and Others (046038/2022) [2024] ZAGPPHC 294 (20 March 2024)*, It was held that the Board Notice 271 falls outside the RAF’s remit and that it should be set aside. It was further ordered that Board Notice 271 of 2022 is declared unlawful and is reviewed and set aside.

In Mlami v Johnstone and Another (955/202) [2024] ZAECMKHC 40 (9 April 2024), the applicant was dissatisfied with the RAF’s refusal to accept his lodgment documents, and launched an urgent application for an order compelling the RAF to accept them.

- (a) The RAF purportedly relied on Board Notice 271 of 2022 in its refusal to accept the documents.

It was ordered by the court that,

- (a) the RAF’s decision and conduct , purportedly relying on Board Notice 271 of 2022, in refusing to accept the lodgment documents were declared unlawful;
- (b) The RAF immediately cease relying on Board Notice 371 of 2022 to refuse lodgment of claims.

The Road Accident Fund is currently deemed to be under legal obligation to comply with the court’s ruling, which deterred the RAF from relying on Board Notice 271. The Road Accident fund has been ordered to inform affected claimants and allow them to resubmit their claims. Ongoing concerns about the RAF’s delay and reluctance to make full compliance remains a problem in this regard. The RAF must strongly focus on aligning its administrative processes with legal standards and ensuring claimants have fair access to compensation (*Risk Management Column article (May 2024)*).

Relevant legal precedents and legislation highlight the legal principles and importance of administrative compliance with court orders:

- (1) **Section 165 of the Constitution:** Mandates that the court orders are binding on all persons and organs of state and this principle fundamental to ensuring the rule of law and proper governance.
- **Application to the Road Accident Fund:** The RAF's continued application of procedures under invalidated Notice 271 could be interpreted as a breach of its constitutional obligations under section 165, undermining the judiciary's authority.
- (2) **Promotion of Administrative Justice Act (PAJA):** PAJA ensures that administrative actions taken by public bodies, such as the RAF, must be lawful, reasonable and procedurally fair. Public participation and consultation are required for major policy changes.
- **Application to the RAF:** The introduction of Notice 271, without adequate consultation, violated the procedural fairness requirement of PAJA. The court found that the RAF's administrative actions were unlawful, leading to the invalidation of the notice.

To address the issue of the RAF's non-compliance with the court's invalidation of the Board Notice 271 of 2022 effectively and ensure compliance with legal mandates, a structured way forward is needed and the *"SA Attorney Journal- De Rebus"* recommends a strategy below:

1. **Immediate compliance with court orders:** The RAF must promptly adhere to the court's rulings, which have declared Board Notice 271 invalid and unconstitutional. Failure to comply risks further legal action, including potential contempt of court proceedings.
2. **Engage in transparent Communication:** The RAF should prioritize clear communication with claimants and stakeholders regarding changes in the claims process by issuing public notices clarifying the legal status of Board Notice 271 and the substituted claim forms and providing detailed instructions on how claimants can resubmit their claims and the timelines involved.
3. **Internal review and Reform:** The RAF should conduct a thorough internal review to identify and rectify systematic issues that led to the non-compliance.
4. **Strengthening Legal Accountability:** To avoid future non-compliance, the RAF should establish strong oversight mechanisms within its governance structure.

The way forward for the RAF lies in full compliance with the court order/s invalidating Board Notice 271, greater collaboration with the Department of Transport, and systematic reforms aimed at improving transparency and accountability. Immediate steps to inform affected claimants cease unlawful directives and introduce internal legal safeguards to resolve the current crisis and prevent future legal challenges.

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