

REPUBLIC OF NAMIBIA

IN THE HIGH COURT OF  
WINDHOEK



NAMIBIA, MAIN DIVISION,

PRACTICE DIRECTION 61

RULING

<b>Case Title:</b>	<b>Case No:</b>
EMILIE SIMAHO KAVERA                      APPLICANT	HC-MD-CIV-MOT-GEN-2023/00533
and	<b>Division of Court:</b>
MOTOR VEHICLE ACCIDENT	HIGH COURT (MAIN DIVISION)
FUND    1 <sup>ST</sup> RESPONDENT	
ROSALIA MARTINS- HAUSIKU    2 <sup>ND</sup> RESPONDENT	
MINISTER OF TRANSPORT    3 <sup>RD</sup> RESPONDENT	
MINISTER OF HOME AFFAIRS, IMMIGRATION, SAFETY AND SECURITY                                      4 <sup>TH</sup> RESPONDENT	
<b>Heard before:</b>	<b>Date of hearing:</b>
Honourable Justice Miller AJ	15 May 2024
	<b>Delivered on:</b>
	11 June 2024
<b>Neutral citation:</b> <i>Kavera v Motor Vehicle Accident Fund</i> (HC-MD-CIV-MOT-GEN-2023/00533) [2024] NAHCMD 307 (11 June 2024)	
<b>IT IS ORDERED THAT:</b>	

1. The application is dismissed.
2. The Applicant is ordered to pay the costs of the first respondent.
3. The matter is removed from the roll and regarded as finalised.

**Reasons for the Order:**

MILLER AJ:

The relevant facts

- [1] The applicant was married to Markus Namakasha Samundu on 14 August 1994.
- [2] On 20 August 2010, Mr Samundu was killed in a motor vehicle accident.
- [3] The Applicant thereupon submitted a claim for compensation with the first respondent in respect of herself and the minor children born from the marriage.
- [4] The claim submitted by the applicant met with approval. In a letter dated 15 February 2011, the applicant was advised by the first respondent that:

‘The Fund is pleased to inform you that you have been added on as a beneficiary and accordingly a new calculation emerged on which charges in the future loss of support anniversary payment with regard to minor children as previously communicated has changed as a result, and accordingly below is the new future loss of support payment schedule:

1. Kavera E. obo Samundu Theresia, annual payment N\$ 11 524.12 cessation date 01 October 2029.
2. Kavera E. obo Samundu Victoria, annual payment N\$ 10 434.83 cessation date 01 October 2014.
3. Kavera E. obo Samundu Ester, annual payment N\$ 12 084, 39 cessation date 01 October 2022.
4. Kavera Emilie (claiming for herself) annual payment N\$ 16 674.42 as per benefit dated 15 February 2011.’

[5] In a letter dated 27 September 2016 the applicant was informed that:

‘As per your verbally (sic) request, we advise that the Motor Vehicle Accident Fund is investigating allegations of possible fraud in respect of your claim and it is based on those reasons that your annual payment is withheld.’

[6] It is not disputed that the applicant received no further payment from the first respondent and the matter remains pending.

B: Relief claimed

[7] Ultimately, given the history of the matter, the applicant ultimately instituted action against the first respondent and three others, by way of notice of motion. The relief claimed consists of prayers for declaratory orders which reads as follows:

‘1. An order directing the fund and second respondent to disclose findings of investigation relating to annual payment of the applicants benefits under claim number LOS-3257-MIG//CLAIM NR LOI 3257-MIG.

2. An order directing that in the absence of the outcome of investigation undertaken by the fund, the loss of the support to the applicant under claim number LOS-3257-MIG, is invalid and has no force in law.

3. An order directing that in the absence of a reviewable decision by the chief Executive Officer (CEO) to terminate the applicant benefits, withholding benefits under claim number LOS-3257-MIG, is unlawful and invalid.

4. An order directing the fund and second Respondent to resume paying applicants benefits, lawfully due since 2016, including all accumulated arrears, within 60 days of the date of this order or such reasonable time the court deems just.

5. An order directing a further cost order against the fund and second respondent in event that the application is successful.’

The Response to the relief claimed

[8] The first respondent raises the following questions of law in terms of rule 66(1)(c) of the rules of court:

'1. Is the Applicant, in terms of section 32(5)(b) of the Motor Vehicle Accident Fund Act 10 of 2007 ("Act"), obliged to bring these proceedings by way of review?

2. If the answer is yes, has the applicant complied with section 32(6) of the Act, by giving the prescribed notice setting out the grounds on which she is dissatisfied with the action taken by the Motor Vehicle Accident Fund ("Fund")?

3. In the absence of a notice in terms of section 32(6) of the Act, is the Applicant barred from instituting review proceedings against the Fund?

4. Should the application be dismissed for want of compliance with section 32(5)(b) and section 32(6) of the Act?

#### Discussion

[9] Section 35(2)(b) of the Motor Vehicle Accident Fund Act 10 of 2007 ('the Act') in my view, definitively make it plain that in instances where a claimant is concerned with locus standi, procedure or treatment or any aspect in regards to administering the Act, the proceedings are by way of review to the High Court, which must make such order under administrative law it considers appropriate.

[10] The proceedings instituted by the applicant do not seek to review any decision taken but instead seeks declaratory relief. It follows in my view that the action instituted by the applicant must fail.

#### Order

[10] In the result, I make the following order:

1. The application is dismissed.
2. The Applicant is ordered to pay the costs of the first respondent.
3. The matter is removed from the roll and regarded as finalised.

<b>Judge's signature</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>Applicant</b>	<b>Respondent</b>
H Kapalu Of Henry Kapalu & Co Windhoek	N Marcus Of Nixon Marcus Public Law Office Windhoek