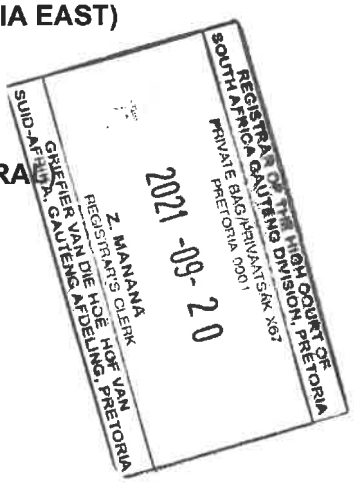
**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

Case NO: 58145/2020

In the matter between:

| | |
|---|---|
| **ROAD ACCIDENT FUND** | Applicant |
| and | |
| **THE LEGAL PRACTICE COUNCIL** | 1st Respondent |
| **THE BOARD OF SHERIFFS** | 2nd Respondent |
| **ABSA BANK** | 3rd Respondent |
| **THAKA F SEBOKA N.O.**<br>**(SHERIFF, PRETORIA CENTRAL)** | 4th Respondent |
| **LANA NEL N.O. (SHERIFF, PRETORIA EAST)** | 5th Respondent |
| **SHOKENG E DHLAMINI N.O.**<br>**(SHERIFF, CENTURION EAST)** | 6th Respondent |
| **MARKS THAPELO MANGABA N.O.**<br>**(SHERIFF, JOHANNESBURG CENTRA** | 7th Respondent |
| **NELSON NTSIBANTSU N.O.**<br>**(SHERIFF, CAPE TOWN WEST)** | 8th Respondent |
| **NOMANDLA NDABENI N.O.**<br>**(SHERIFF, EAST LONDON)** | 9th Respondent |
| **G S NDLOVU N.O.**<br>**(SHERIFF, DURBAN CENTRAL)** | 10th Respondent |
| **AD DANDALA & ASSOCIATES** | 11th Respondent |
| **GODLA & PARTNERS** | 12th Respondent |
| **SITHOMBE ATTORNEYS** | 13th Respondent |
| **K MALAO INCORPORATED** | 14th Respondent |
| **MDUZULWANA ATTORNEYS** | 15th Respondent |
| **ROBERT MUVHIMI** | 16th Respondent |
| **MOTLHOLO KOOS TLHAOLE** | |
| **PHILADIPHIA NOMTHANDAZO MEMELA** | |
| **SIPHO SKHOSANA** | |
| **LINDIWE MACAKA** | |
| **JUSTINE CHEPETE** | |
| **EVIDENCE SHAVA** | |



| | |
|---|---|
| **DVDM INCORPORATED** | 17th Respondent |
| **DE BROGLIO ATTORNEYS INC.** | 18th Respondent |
| **VDS ATTORNEYS** | 19th Respondent |
| **ROETS & VAN RENSBURG** | 20th Respondent |
| **PERSONAL INJURY PLAINTIFF'S LAWYERS ASSOCIATION** | 21st Respondent |
| **ADVOCATE RAF FEE RECOVERY ASSOCIATION** | 22nd Respondent |
| **KHOROMMBI MABULI INCORPORATED** | 23rd Respondent |
| **PRETORIA ATTORNEYS ASSOCIATION** | 1st Amicus Curiae |
| **GENERAL COUNCIL OF THE BAR** | 2nd Amicus Curiae |

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**NOTICE OF MOTION**

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**TAKE NOTICE THAT** the Applicant intends to make application to the above Honourable Court on **TUESDAY, 26 OCTOBER 2021** at 10H00 or as soon thereafter as the matter may be heard for an order in the following terms:

1. Dispensing with the forms, service and time periods prescribed in terms of the Uniform Rules of Court and directing that the matter be heard as one of urgency in terms of rule 6(12) of the Uniform Rules of Court;

2. Condoning the service of this application, in the manner described in the founding affidavit, through publication of this notice of motion;

3. That the order of the Full Court dated 09 April 2021, in terms of which writs of attachment and warrants of execution based on court orders already granted or settlements reached in terms of the Road Accident Fund Act, 56 of 1996, which are not older than 180 days as from the date of the date of the court order or the date of the settlement reached, are suspended, is hereby extended for six months from the date of this order.

4. That this order will be published by the Applicant:

4.1 to all practicing attorneys through the Legal Practice Council;

4.2 by email to all of the Applicant's list of attorneys on its database;

4.3 to the Minister of Transport by service on the State Attorney;

4.4 by publication in 2 national newspapers.

5. Directing any respondent who opposes this application to pay the costs of this application, including the costs of counsel.

6. Further and/or alternative relief.

**TAKE FURTHER NOTICE THAT** the affidavit of **COLLINS PHUTJANE LETSOALO**, together with annexures, if any, will be used in support of this application.

**TAKE FURTHER NOTICE THAT** the Applicant appointed **MALATJI & CO**. attorneys situated at Suite 39, 5th Floor, Katherine & West Building, 114 West Street, Sandton, c/o Ditsela Inc 3A, Guild House, 239 Bronkhorst street, Nieuw Muckleneuk, Pretoria at which address the Applicant will accept notices and service of all process in these proceedings and that the Applicant accepts electronic service at the following addresses: tmalatji@mcinc.africa and seloff@mcinc.africa.

**TAKE NOTICE FURTHER THAT** if you elect to oppose this application you must:

1. Notify the Applicant's attorneys by written notice at the above address or email addresses on or before **16H30 on 27 SEPTEMBER 2021**, failing which the matter will proceed on an unopposed basis;

2. Appoint in the notification referred to in paragraph (1) above an address referred to in Rule 6 (5)(b) of the Uniform Rules of Court at which address you will accept notice and service of all documents in these proceedings;

3. File your answering affidavit, if any, by **14 OCTOBER 2021**.

**DATED AT JOHANNESBURG ON THIS 20TH DAY OF SEPTEMBER 2021.**

**MALATJI & CO ATTORNEYS**
Attorneys for the Applicant
Suite 39, 5th Floor
Katherine & West Building
114 West Street, Sandton
Tel: (011) 072 2600
Fax: 087 220 1074
Email: tmalatji@mcinc.africa
seloff@mcinc.africa
**REF: T. MALATJI/S ELOFF/M00532**
**C/O DITSELA ATTORNEYS**
3A GUILD HOUSE
239 BRONHORST STREET
NEUW MUCKLENUEK
PRETORIA
Tel: 012 051 9953
Email: jones@ditsela.com

**TO:** **THE REGISTRAR OF THE HIGH COURT**
**PRETORIA**

**AND TO:** **BOARD OF SHERIFFS**
contacts@sheriffs.org.za

**AND TO:** **SHERIFF PRETORIA EAST**
shefeast@mweb.co.za

**AND TO:** **SHERIFF PRETORIA CENTRAL**
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**AND TO:** **SHERIFF CENTURION EAST**
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**AND TO:** **SHERIFF JOHANNESBURG CENTRAL**
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**AND TO:** **SHERIFF DURBAN COASTAL**
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**AND TO:** **SHERIFF CAPE TOWN WEST**
admin@sheriffctwest.co.za

**AND TO:** **SHERIFF EAST LONDON**
sheriff.eastlondon@gmail.com

**AND TO:** **TIM DU TOIT ATTORNEYS**
**THIRD RESPONDENT'S ATTORNEYS**
15 TROY STREET
JOHANNESBURG
TEL: 011 274 9816
EMAIL: riaan@timdutoit.co.za

**AND TO:** **AD DANDALA & ASSOCIATES**
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MUSGROVE
DURBAN
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**AND TO:** **K MALAO INCORPORATED**
**FOURTEENTH RESPONDENT**
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LOIS AVENUE
MENLO PARK
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FAX: 086 686 5271
EMAIL: kmalaoinc@gmail.com/
kabelo@kmalaoinc.co.za
REF: KMALAO/URG-APPL/2020

**AND TO:** **MDUZULWANA ATTORNEYS**
**FIFTEENTH RESPONDENT**
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THIRD FLOOR
OFFICE 3A
213 RICHARD STREET
HATFIELD
PRETORIA
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EMAIL: info@mdzulwanaattorneys.co.za
REF: MA0428/RAF/LAW

**AND TO:** **VARIOUS CLIENTS OF SPRUYT INCORPORATED**
**SIXTEENTH RESPONDENTS**
**C/O SPRUYT INC**
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BLOCK B
333 GROVERNOR STREET
PRETORIA
TEL: 012 430 7871
FAX: 012 342 3945
EMAIL: legal29@spruyt.co.za
REF: S SPRUYT/SL1193

**AND TO:** **DVDM INCORPORATED**
**SEVENTEENTH RESPONDENT**
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SINOVILLE
PRETORIA
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REF: Mr Van der Merwe/DS498/HC/sj

**AND TO:** **DE BROGLIO ATTORNEYS INC**
**EIGHTEENTH RESPONDENT**
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2ND FLOOR, PARKDEV BUILDING
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FAX: 011 788 7274
EMAIL: patrick@onlinelaw.co.za /
nicolle@onlinelaw.co.za

**AND TO:** **VDS ATTORNEYS**
**NINETEENTH RESPONDENT**
SEFAKO MAKGATHO DRIVE
BLOCK B, ZAMBEZI OFFICE PARK
ROODEPLAAT
TEL: 012 567 3328
EMAIL: alicia@nkvd.co.za

**AND TO:** **ROETS VAN RENSBURG ATTORNEYS**
**TWENTIETH RESPONDENT**
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PIERRE VAN RYNEVELD
PRETORIA
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**AND TO:** **PIPLA**
**TWENTY-FIRST RESPONDENT**
**C/O SELWYN DROBIS ATTORNEYS**
13 SPIRAL CLOSE
WENDYWOOD
SANDTON
TEL: 061 371 8820
EMAIL: info@drobis.co.za

**AND TO:** **ADVOCATE FEE RECOVERY ASSOCIATION**
**TWENTY-SECOND RESPONDENT**
**C/O DE BRUYN MORKEL ATTORNEYS**
72 DELY ROAD
WATERKLOOF
PRETORA
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EMAIL: corne@dbmlaw.co.za

**AND TO:** **KHOROMMBI MABULI INC**
**TWENTY-THIRD RESPONDENT**
**C/O SHAPIRO LEDWABA**
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PRETORIA
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EMAIL: joshusa@shaprio-ledwaba.co.za

**AND TO:** **ADAMS & ADAMS**
**ATTORNEYS FOR THE FIRST AMICUS CURIAE**
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LYNNWOOD RIDGE
TEL: 012 432 6171
EMAIL: David.scheepers@adams.africa /
Courtney.elson@adams.africa
REF: DBS/COSE/LT4872

**AND TO:** **BERNHARD VAN DER HOVEN ATTORNEYS**
**ATTORNEYS FOR THE SECOND AMICUS CURIAE**
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POSTNET SUITE 316
PRIVATE BAG X06
WATERKLOOF
0145
TEL: 012 346 4243
FAX: 086 584 3261
EMAIL: elmari@bvdh.co.za /
bernhard@bvdh.co.za
REF: A B T van der Hoven/er G.45

**AND TO:** **THE LEGAL PRACTICE COUNCIL**
**FIRST RESPONDENT**
BY EMAIL: info@lpc.org.za;
c/o RW AFRICA ATTORNEYS
EMAIL: andreb@rwafrica.com

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Case No: 58145/2020

In the matter between:

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| **ROAD ACCIDENT FUND** | Applicant |

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| **LANA NEL N.O (SHERIFF, PRETORIA EAST)** | 5th Respondent |
| **SHOKENG DLAMINI N.O (SHERIFF, CENTURION CENTURION EAST)** | 6th Respondent |
| **MARKS NGABA N.O (SHERIFF JOHANNESBURG CENTRAL)** | 7th Respondent |
| **NELSON NTSIBANTSU N.O (SHERIFF, CAPE TOWN WEST)** | 8th Respondent |
| **NOMANDLA NDABENI N.O (SHERIFF EAST LONDON)** | 9th Respondent |
| **G S NDLOVU N.O (SHERIFF, DURBAN CENTRAL)** | 10th Respondent |
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| **PHILADIPHIA NOMTHANDAZO MEMELA** | |
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| **ADVOCATE RAF FEE RECOVERY ASSOCIATION** | 22nd Respondent |
| **KHOROMMBI MABULI INCORPORATED** | 23rd Respondent |
| **PRETORIA ATTORNEYS ASSOCIATION** | First Amicus Curiae |
| **GENERAL COUNCIL OF THE BAR** | Second Amicus Curiae |

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**COLLINS PHUTJANE LETSOALO**

do hereby declare under oath that:

T.J

1.

I am a major male and the Chief Executive Officer of the Applicant. The facts contained herein fall within my personal knowledge and are true and correct.

2.

Where I refer to legal argument, I do so on the advice of the Applicant's appointed legal representatives, which advice I accept as correct.

3.

The details of the parties are as set out in the main application.

**THE PREFATORY APPLICATION, JUDGMENT AND ORDER**

4.

On April 9th 2021, the Full Court, led by Meyer J with Adams J and Van der Westhuizen J concurring, handed down judgement granting the Applicant extraordinary relief in the form of suspending all warrants and execution thereof against the Applicant for a period of 6 (six) months. The rationale underpinning the judgement and order was *inter alia* to enable the Applicant to make payment of claims, which were at the date of the order, already older than 180 days. A copy of the Full Court's judgment and order is attached as Annexure "**RAF 1**". I respectfully ask that the judgment and order be read as if incorporated herein

T.J

The Full Court's order read as follows:

*"[45] In the result the following order is made:*

*(a) The temporary order made by the full court of this division on 9 December 2020, and extended by this court on 16 March 2021, is discharged.*

*(b) All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.*

*(c) The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.*

*(d) All writs of execution and warrants of attachment against the applicant based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order of date of the settlement reached, are suspended from 1 May 2021 until 12 September 2021.*

*(e) The applicant is to take all reasonable steps to:*

*(i) register court orders or written settlement agreements for claims instituted in terms of the RAF Act against the applicant, on its list of payments in order of the date that the court order was granted or the date of the settlement agreement;*

*(ii) ensure that court orders or written settlement agreements for claims in terms of the RAF Act for payment are registered on the applicant's payment list within 30 business days of receipt of the court order or settlement agreement;*

*(iii) ensure that court orders or settlement agreements for claims as set out above that have not been captured on its payment list will be captured in historical chronological order from the date that the court order was granted by the court or the written settlement agreement was entered into;*

*(iv) provide all attorneys on its database of email addresses of attorneys involved in third-party matters against the Road Accident Fund with updated payment lists on a bi-monthly basis from April 2021 onwards.*

*(f) The applicant is to continue with its process of making payment of the oldest claims first by date of court order or date of written settlement agreement a priore tempore.*

*(g) Any party may approach the court during September 2021 to vary, extend or amend this order.*

T.J

*(h) This order and the order made by this court on 16 March 2021 shall forthwith be published by the applicant:*

*(i) to all practicing attorneys through the Legal Practice Council;*

*(ii) by email to all of the applicant's list of attorneys on its database;*

*(iii) to the Minister of Transport and the Minister of Finance by service on the State Attorney;*

*(iv) by publication in two national newspapers.*

*(i) No order is made in respect of each counter application, except that the applicant is to pay the costs of each counter application.*

*(j) The applicant is to pay the costs of each opposing respondent's opposition of the application, including all reserved costs and the costs of two counsel, one of whom a senior counsel, whenever so employed."*

*[our emphasis]*

6.

The Full Court suspended all writs of execution and warrants of attachment, against the Applicant based on court orders already granted or settlements already reached in terms of the RAF Act which were older than 180 days from the date of the court order or date of the settlement reached, from 1 May 2021 until 12 September 2021.

7.

Encompassed in the grant of the moratorium, provision was made for any party to approach the Honourable Court during the month of September 2021 for relief wherein such party may seek an extension, variation or amendment of the order.

8.

8.1 This application is one as envisaged in terms of paragraph 45 (g) of the order, wherein the Applicant will seek urgent relief for an extension of the moratorium against writs of

T.J

execution and warrants of attachment, for a further 6 (six) month period, alternatively for a period which the Honourable Court may deem fair and reasonable under the circumstances.

8.2 The extension is to enable the Applicant to safeguard against potential misappropriation of the Applicant's Fuel Levy as well as the Applicant's assets against a threat of execute writs. I respectfully submit that should the writs be allowed to be executed, the Applicant's internal systems to protect its assets against suspicions of serious impropriety would have been circumvented.

9.

This affidavit will be structured as follows:

9.1 Compliance of the full court's order;

9.2 Litigation;

9.3 Rationale for relief sought

9.4 Urgency; and

9.5 Condonation in respect of service.

**COMPLIANCE OF THE FULL COURT'S ORDER**

10.

Since the granting of the relief by the Full Court, the Applicant continues to make considerable progress in implementing an equitable system by ensuring that payment is made from the oldest claims first by date of court order or by date of written settlement agreement a *priore*

T.J

*tempore.* The Applicant acknowledges that the system being implemented is not perfect and in the process of executing it, there are instances of mismanagement which are still being discovered, however same are corrected on a daily basis to ensure that the system functions optimally and more importantly to prevent a recurrence of the events of the past which were riddled by mismanagement and instances of corruption.

*Registration of orders and settlements and updated payment lists*

11.

The Applicant has a system in place where a list of Requested but Not Yet Paid ("RNYP") claims are emailed to attorneys and they in turn are requested to inform the Applicant if the list is correct or if claims have been omitted from it. In addition if the date of a RNYP is incorrect, the change is made to it as soon as a plaintiff attorney informs the Applicant of the error.

12.

In respect of the loading and/or registration of orders, court orders and settlements are prioritized and the majority of them are loaded within 30days of receipt of the order. There are measures in place to mitigate against the risk of late loading as referred to above by requesting plaintiff attorneys to check the RNYP list and inform the Applicant if their matters do not appear on the list.

T.J

*Payment of claims a priore tempore from 9 April 2021 to 7 September 2021*

13.

The Applicant has made significant progress in continuing to pay claims from oldest to newest in respect of orders older than 180 days and the number of payments over 180 days have gradually started declining over the months. I hasten to add that there still newly requested claims that contribute to the high number of matters of 180 days and over other than for the reasons discussed below. When this happens, it requires of the RAF to have sufficient cash flow to account for these matters within 30 days of the request. These processes in themselves have not been without glitches however; in instances where the implementation appeared to falter, the Applicant acted swiftly by approaching the Honourable Court for relief, which measures will be expanded upon further below.

14.

I point out that as of 9 April 2021 the total number of transactions that were requested not yet paid (RNYP) to plaintiff attorney and sheriffs on behalf of plaintiff attorneys were 25 231 to the value of R14.48 billion of which R13.04 billion were for capital matters and R1.44 billion for cost matters, including interest, sheriff and writ costs.

15.

In the period of 9 April 2021 to 7 September 2021, the Applicant has paid out approximately 12 622 capital transactions to the value of R13.68 billion with a further 10 368 cost transactions to the value of R1.56 billion.

T-J

16.

As at 7 September 2021, the total transactions on the RNYP list for plaintiff attorneys for both capital and costs is at 25 512 to the total value of R13.7 billion with R12 billion being the value of capital transactions and R1.7billion being the value for costs. Newly requested claims contribute to the erratic growth of the RNYP which requires of the Applicant to have sufficient cash flow to account for these matters within 30 days only in the instance where they are 180 days or more in ageing.

17.

Some of these payments on the RNYP that are 180 days and over are not payable for various reasons discussed below and some for which further due diligence has to be done. There are currently 3 301 claim matters which are 180 days and over which are not payable for various reasons. Some payments are suspended because the attorneys have since received payment in duplicate and the monies have not been repaid to the Fund, and this accounts for 724 duplicates for capital and 832 for cost matters. This number continues to grow on daily basis as the Applicant continues to implement financial and due diligence checks through reconciliation process for any historic duplicate payments. Some matters are suspended for payment because there is an investigation pertaining to it due to suspicion of fraud. Lastly, some payments are suspended because the Legal Practice Council (LPC) has since suspended the attorney and the Applicant awaits the appointment of a curator to assume Trust Account matters of such attorneys, this accounts for 65 capital matters and 832 cost matters.

18.

The Applicant has improved its systems and transitioning toward the implementation of better financial controls, due diligence checks and financial management, before payments are

T.J

effected. Reconciliation processes have assisted the Applicant in aiming to address duplicate payments, interest payable on delayed payments and mortality verification checks ahead of any payment, this is also done by running checks on the Department of Home Affairs' database. The Applicant is implementing a system whereby attorneys representing plaintiffs who have passed on, must report the payments due to the appointed executor of the estate and payment is then effected to the estate's trust account.

19.

There have been no successful attachments of the RAF bank account since April 2021. A hold however was placed on the RAF bank account in May 2021, the RAF subsequently attended to the underlying claim which was paid in the normal course of payment operations and that subsequently leading to the release of the hold. Any other potential attachments are attended to as soon as the RAF is alerted of any action from the sheriff. The claims in question are then verified and reconciled between the relevant region and Treasury and processed for payment based on the payment system. Where payment cannot be processed, the RAF is then forced to engage litigation.

*Duplicate payments*

20.

The Full Court on 9 April 2021 made the following finding:

> *"[39] I have referred to the objections raised by attorneys acting on behalf clients who are successful claimants against the RAF. I do not believe that payments should be withheld from successful claimants because of a dispute between the RAF and the attorneys acting for them, or pending the repayment of double payments by attorneys. Such exceptions may cause undue hardships on and be unfair to successful claimants. In such instances, the RAF should approach the court, on a case-by-case basis, if it believes or is advised that it has valid grounds to obtain an order suspending writs of execution and warrants of attachment against it. The order which we propose to make,*

T-J

*therefore, does not provide for any exceptions. The RAF, as it undertook to do, must pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement, on or before 30 April 2021, provided it has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021."*

21.

Duplicate payments are invariably as a result of Sheriffs acting on the instruction of the plaintiffs' attorneys to attach the Applicant's bank account for payment of a claim. Often, payment would be made on a claim before the Applicant's branch office is able to capture the writ on the claims systems. This happens because the information does not timeously come to the attention of the Applicant's Treasury Department to allow due diligence and reconciliation process (which is a manual process) to be done. The Applicant then pays the identical claim in error to the attorney or firm who or which then misappropriates the duplicate payment, possibly for the payment of other claimants without informing or without the consent of the Applicant.

22.

Since the appointment of the Applicant's new management (which was specifically mandated to prevent the collapse of the Applicant and root out maladministration) and before the hearing of the main application before the Full Court, the Applicant discovered that there were duplicate payments made to firms of attorneys to the value of hundreds of millions of Rands. The Applicant was fortunately able to recover roughly R600 million of these duplicate payments and this amount has increased solely as a result of the efforts made by the Applicant to ensure the recovery. A large number of the firms of attorneys that received duplicate payments, had claims that were over 180 days.

T.J

23.

The Applicant continues to run system generated duplicate checks to identify potential duplicate payments. In addition a process of manual verification is also in place to identify duplicates arising from bank attachments. Due to the large amount of duplicate payments, the duplicate checks are conducted again prior to the release of payments.

24.

Since the grant of the Full Court order and the moratorium (9 April 2021), R76 million in duplicate claims has been identified to date. This in turn is further demonstrative of the impact the order the Full Court has had on the Applicant in allowing it the proverbial 'breathing room' to pursue the duplicate claims and make recovery as opposed to staving off writs and warrants.

25.

The Applicant began by sending out letters of demand to firms that received duplicate payments, requesting them to co-operate and make payment of the duplicate payments. In respect of those firms that refused to repay, the Applicant launched an application against 102 firms, however the application proceeded only against 14 firms which at the time had refused to make repayment of the duplicates. The application succeeded before Her Ladyship Justice Basson on 9 June 2021 and a rule *nisi* was granted. On 06 July 2021, Her Ladyship Justice Tolmay J extended the rule *nisi* to 07 October 2021. At this point, there are only 7 firms of attorneys that the Applicant will be seeking a confirmation of the rule *nisi* against. Copies of the order of Basson J and Tolmay J respectively are attached hereto and marked as Annexures "**RAF 2**" and "**RAF 3**" respectively.

T.J

26.

The Applicant continues to implement systems to safeguard against making duplicate payments and where it does pick-up a duplicate payment not previously located, it takes immediate steps to request repayment. The Applicant will relentlessly continue to implement measures within its available resources to achieve the progressive realisation of each of the rights set out in section 27 of the Constitution.

*Suspended payments to firms of attorneys*

27.

Another category of payments which have been suspended is, to firms of attorneys that are under investigation by the Applicant's Forensic Investigating Department ("FID") for suspicion of serious impropriety. Most of these firms of attorneys have claims with the RAF that are 180 days old. The Applicant respectfully submits that where it has prima facie grounds to suspect suspicion of impropriety, the Applicant has a Constitutional duty to suspend payment to a trust account pending the resolution thereof.

28.

The following orders are specifically relevant herein:

*"(a) All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.*

*(b) The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021."*

T.J

[our emphasis]

29.

29.1 The Applicant does not enjoy protection against execution after 30 April 2021 in respect of orders and settlements older than 180 days and in this instance against firms where payments have been suspended due to suspicion of impropriety.

29.2 Some of the firms of attorneys that are under investigation by the FID have issued writs of execution and attached the Applicant's movable assets. Dates for sales in execution were even set.

29.3 The Applicant has instituted applications on an urgent basis to stay the warrants of executions as advised by the Full Court. Judgment in one of these matters is still pending and in only one matter, the Applicant was not successful. The Applicant was unsuccessful in its application for leave to appeal. In turn, the Applicant has on 7 September 2021 filed a Section 18(4) appeal, which it believes will become opposed.

*Applicant's reported surplus*

30.

As a direct result amongst others of the Honourable Court's intervention since November 2020, the Applicant's new systems implemented by the new management since or about late 2019, significant progress has been achieved in turning around the Applicant's state. The Applicant is however still in a parlous financial state which will take further drastic steps in turning this around and to prevent future exploitation of the RAF Fuel Levy. For the first time

T.J

in many years, the Applicant has now reported a historic R 3,2 billion trading surplus for the period ended on March 31st, 2021. I hasten to add that this an unaudited figure.

31.

It is apposite to consider the surplus in the context of the fact that the Applicant has an accumulated deficit of R13.5 billion as reflected in the draft annual financial statements which were due for audit in May 2021. The RNYP claims amount to R14.8 billion in comparison to the fuel levy receivable in the amount of R10.3 billion.

32.

The shortfall between the claims due for payment and the fuel levy receivable highlights the fact that the Applicant continues to be under-funded. The surplus, although unprecedented, does not in any way demonstrate that the Applicant is in a position to make payment of all claims when they are due and payable.

33.

The Applicant will continue to make strides to ensure that the administration and distribution of funds received is under stricter control and the necessary cash flow strategies are implemented to ensure the equitable payment of claims.

**LITIGATION**

34.

34.1 The Applicant was forced to oppose a contempt of court application, launched by the 23rd Respondent brought against the Applicant, myself and ABSA Bank.

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In turn, the Applicant brought a counter-application in which it sought the immediate suspension of writs of execution and was successful.

34.2 Her Ladyship Justice Basson on 11 June 2021, dismissed the application with costs on an attorney and client scale. The 23rd Respondent has filed papers for direct access to the Constitutional Court wherein it seeks to appeal the Basson judgment. The application has been duly opposed by the Applicant.

34.3 In granting the counter-application for the suspension of the writs, Justice Basson issued a rule nisi on 6 July 2021 which was extended by Her Ladyship Justice Tolmay to 23 August 2021. A copy of the Basson J judgment is attached hereto as Annexure "**RAF4**".

35.

On the return date of 23 August 2021, the matter was heard by Her Ladyship Madam Justice Van Der Schyff wherein the Court held that the Applicant had established a prima facie right and held as follows:

> "*[12] The nature of the relief sought is temporary. The RAF desires to finalise its investigation due to the suspicion that the applicant may have made itself guilty of serious impropriety. The RAF's right to approach this court is embedded in its statutory duty to administer and safeguard the RAF's Fuel Levy. The RAF listed the issues that led to the concern and the investigation regarding the applicant. Although the specific cases wherein the applicant acted on behalf of claimants that are being investigated, are not identified, the court has to consider (i) that the applicant did not take the RAF on review to have the decision to suspend payment set aside, and (ii) that the RAF has paid out a significant number of claims since the Full Court granted its judgment. The facts before me support a finding that the RAF follows a cautionary approach to ensure that corruption and wasteful spending are prevented, or at least curtailed. It is not indicative of a hesitancy to comply with the Full Court's order. There is no indication on the facts that the RAF is acting with an ulterior motive as submitted by the applicant.*
>
> *[13] The RAF has satisfied me that there is a well-grounded apprehension of irreparable harm if the order is not granted. Should a process of attachment be allowed, the RAF's administration will be adversely affected. It will have a ripple effect on the RAF's ability to pay out claims in terms of the Full Court's order, and reverse the progress made since the Full Court's order was granted.*

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*[14] The public interest requires the safeguarding of the RAF Fuel Levies. It is likewise in the public interest that the payment system through which thousands of victims of motor vehicle accidents were compensated since March 2021, be preserved. It is to the advantage of the applicant's clients that any impropriety that may exist concerning the levy of fees be sorted out because it will directly impact the amounts they eventually receive. It is thus significant that none of the applicant's clients, who are presumably the parties who are negatively affected by the order, oppose the confirmation of the rule nisi."*

36.

The rule nisi was confirmed by Her Ladyship Madam Justice Van Der Schyff. A copy of the judgment is attached as Annexure "**RAF 5**".

37.

With regards to attorneys that have been suspended by the LPC and where the RAF then suspends payments to the attorneys trust account, as well as where the directors of the firms of attorneys have passed on, the RAF is continuously working with the LPC in finding a solution.

38.

38.1 The Applicant has a right to stipulate the terms and conditions upon which claims for the compensation shall be administered. The Applicant's statutory powers and functions include the investigation and settling, subject to the RAF Act, of claims as set out in the Road Accident Fund Act and the management and utilisation of the money of the fund for purposes connected with or resulting from the exercise of its powers or the performance of its duties. The Applicant has a *prima facie* right, alternatively constitutional duty and obligation to ensure

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that the Road Accident Fund Fuel Levy is not paid under circumstances where there is suspicion of impropriety.

38.2 The attachment or even removal of any of the Applicant's assets threaten the Applicant's safeguards against unconstitutional conduct;

38.3 Any execution or attachment by a firm of attorneys who are under investigation for suspicion of serious impropriety will be invalid, unlawful and unconstitutional.

**RATIONALE FOR RELIEF SOUGHT**

39.

The relief sought by the Applicants finds its touchstone on section 173 of the Constitution of the Republic of South Africa (*"the Constitution"*) as well as the common law. Section 173 provides that this Honourable Court has inherent power to protect and regulate its own process taking into the account the interests of justice. The Constitutional Court has held that applications for extensions of time must be granted if that course is considered by this Court to be in the interests of justice.

40.

I respectfully submit that what has been set out above indicates that it is in interest of justice for this Honourable Court to grant the extension as it will allow the Applicant to continue to do the important work of ensuring that there is there is no constitutional crisis and further that the Applicant fulfils its constitutional obligations to social security and health care as well as the ensuring that the Applicant's fund levy is utilised in a manner that promotes values of constitutionally democracy.

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41.

For the Honourable Court's benefit I point out explicitly the situation the Applicant found itself in prior to the grant of the extraordinary relief, in that:

41.1 writs of execution to the value of R1.8 billion resulting in the scary reality of the value of attachments equating to or even exceeding the monthly fuel levy received;

41.2 fixed allocations to specific attorneys who were favoured in terms of payments received on a monthly basis;

41.3 attorneys who did not have fixed allocations had to wait for more than 300 days for a single payment;

41.4 issuing of writs and bank attachments resulted in an exorbitant amount of duplicate payments;

41.5 sky-high sheriff's costs for example for the period 1 January 2020- 31 March 2021, the average monthly sheriff costs was R1.37million

42.

The grant of the suspension of writs and attachments allowed for the Applicant to overhaul its systems, management and administration (which is still a work in progress), which has resulted in the following:

42.1 the eradication of the fixed allocation system thereby ensuring that no attorney receives any preferent payments;

42.2 ensuring that claims get paid based on their court order date and nothing else;

42.3 the corrupt activity of selling slots for payment could be rooted out as the loading of court orders had to be done so within 30 days of the date of settlement or court order and that order will join the que of payments;

T.J

42.4 a considerable saving on sheriff's fees in that for the period 1 April 2021 to 8 September 2021, sheriffs and writs costs were R113 865.00 per month;

42.5 no bank attachments allowed the Applicant to stop all duplicate payments as well as conduct reconciliation of duplicate payments which resulted in the recovers of R245million in duplicate payments.

43.

The Applicant submits that it must ensure that the administration of the Road Accident Fund Fuel Levy is not spent fruitlessly, irregularly, wastefully or disbursed where there is suspicion of impropriety. The following provisions are applicable in these circumstances:

43.1 In terms of Section 27 (2) of the Constitution, 1996 the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of those rights.

43.2 The Applicant is constitutionally obliged to put measures in place to safeguard its *"available resources"* against fruitless and wasteful expenditure and more specifically contraventions of the Public Finance Management Act, 1 of 1999 ("the PFMA").

43.3 The relevant provisions of the PFMA are *inter alia*:

> *"50 (1) The accounting authority for a public entity must –*
>
> *(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;*
> *(b) act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity;"*
>
> *"51 (1) An accounting authority for a public entity –*
>
> ...
>
> *(b) must take effective and appropriate steps to -*
>
> *(i) collect all revenue due to the public entity concerned; and*
>
> *(ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from*

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*criminal conduct, and expenditure not complying with the operational policies of the public entity"*

*"57. An official in a public entity—*

*(a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*

*(b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*

*(c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due; must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*

*(d) is responsible for the management, including the safeguarding of the assets and the management of the liabilities within that official's area of responsibility."*

*"81. An accounting officer for a department or a constitutional institution commits and act of financial misconduct if that accounting officer wilfully or negligently –*

*...*

*(b) makes or permits an unauthorised expenditure, an irregular expenditure or a fruitless and wasteful expenditure."*

*"83 (1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently –*

*(a) fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55; or*

*(b) make or permits an irregular expenditure or a fruitless and wasteful expenditure."*

44.

It is contended that claimants in the long run would suffer tremendous prejudice if the order for extension is not granted. An impending constitutional crisis will be prevented if the extension is granted and it will ensure that payments are paid in a just and equitable way that

will promote the interests of justice. The extension will promote functional and orderly state administration.

45.

The granting of the extension is also necessary to prevent the Applicant's implosion and resultant constitutional crisis wherein the Applicant will no longer be able to fulfil its constitutional obligation to provide social security and access to health services for claimants and section 21(2)(a) of the Road Accident Fund Act will be triggered. This will lead to a dire situation of thousands of injured uncompensated road accident victims.

**URGENCY**

46.

The Applicant has sufficiently demonstrated that since the grant of the order of the Full Court not only has it to the best of its ability complied with the provisions of the order but has in turn recovered duplicate payments as well as proceeded with litigation aimed at suspending further writs issued in favour of attorneys who are under investigation.

47.

It is further apposite to point out that the various instances of litigation referred to above have demanded time, money and expertise to defend and it was imperative that such litigation does not go undefended as well. The focus of the Applicant and its appointed legal representatives was ensuring that the litigation both instituted as well as defended was done so on a sound and cogent basis so as to not cause such opposition to be frivolous and result in unnecessary legal costs.

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48.

I point out that the Applicant took the decision to appoint a single team of legal representatives who would be tasked with handling the litigation, specifically in respect of the order of the Full Court and the duplicate payments, for the sole purpose of ensuring that there aren't numerous sets of teams trawling through the same documents and therein running up legal costs. This was done with the constitutional prescripts in mind and a protective frugal pocket. Consequently the knock-on effect was that the appointed legal representatives prioritised the pending litigation and allowed the Applicant to do its due diligence as required in terms of the Court Order. This is one of the main reasons why this application was not launched at an earlier stage.

49.

The Applicant has at numerous intervals conceded that its systems still have flaws and that the implementation of the new measures has taken longer than expected. In turn the extent of the corruption, maladministration and administrative backlog was far greater than originally anticipated and despite the FID working tirelessly, the mammoth of a task to completely turn over a new leaf at the Applicant requires a lot more time to achieve.

50.

The humble request for the extension of the moratorium is further set against the backdrop that ultimately the efficient functioning of the Applicant's system and it's cleaning out of the rotten wood, is aimed at benefitting plaintiffs, who admittedly are the ones who have been prejudiced by the previous system. The Applicant is against the wall and it is forced to weigh up the tension that may exist between certain plaintiffs' claims being paid out if the warrants and attachments being allowed versus an extended waiting time for payment coupled with the implementation of a system which pays plaintiffs their claims who proverbially were first in the que.

T.J

51.

The Applicant contends that the grant of the moratorium has been the lifeline that it required for many years which has even resulted in their being money in the bank for plaintiffs to be paid. It is common knowledge that a large portion of the writs and attachments pertained to legal costs and even though the Applicant is still seeking to implement a system where plaintiffs get paid directly, the Applicant should in no way be liable for over-inflated legal costs or where there has been over-reaching. Conversely there is no intention not to pay legal costs where same have been properly incurred for the preparation of a plaintiff's claim. It is merely the fact that a writ or an attachment for legal costs seems almost absurd in circumstances where plaintiffs could be benefitting from those funds.

52.

This application is being launched on an urgent basis, which the Applicant contends is justified however it will allow the respondents and any prospective respondents reasonable time to oppose the relief sought, if any. The extent of the work which the FID was required to do coupled with the parallel sets of litigation being defended has undeniably left the Applicant in a position where it could only launch this application at this stage. What has exacerbated the situation is that the two most senior members of the legal team had contracted COVID; the silk has had a relapse 2 (two) weeks ago and the senior junior has been diagnosed with a serious heart condition that will require surgery during the weekend of the 18th of September 2021.

53.

The moratorium expired on 12 September 2021 and from then on, the Applicant did not enjoy any protection from the writs or warrants and will be forced to on almost every writ or warrant have to consider approaching the court for an urgent stay. The Applicant has been inundated with executions since expiry of the protection. In terms of the Full Court's order the Applicant

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could only approach the Court during September 2021 for relief and the Applicant contends that it has not fallen foul of that order. If the order of the Full Court is not extended, the Applicant will lose all progress it has made and this will take the Applicant back to its position where the fund was prone to corruption and self-help payments through attachments in turn incurring sheriffs' costs that were in Million of Rands.

**CONDONATION**

54.

54.1 This application will be served on all the parties, and the First Respondent (LPC) will be requested to disseminate this application to its database of its members and all practicing attorneys. Further, the Applicant will send this application to all attorneys who represent and have represented claimants for the payment of compensation for damages against the RAF on its database and are part of its mailing list.

54.2 The Applicant's attorneys will create a link through their website in which the application may be accessed by any party. The Applicant will further cause the Notice of motion to this application to be advertised in two national newspapers.

55.

Rule 4(2) of the Uniform Rules states that if it is not possible to effect service personally, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto. The Full Court found in the main application that the steps that were taken by the Applicant to notify the volume of parties that could be affected were adequate to effect their joinder. The Honourable Court is thus requested to humbly condone the above steps that the Applicant will take prior to the leave of the Honourable Court as

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required by the Rules in service by publishing the relief sought to all practicing attorneys through the Legal Practice Council, by email to all of the Applicant's list of attorneys on its database, to the Minister of Transport and Finance by service on the State Attorney and by publication in two national newspapers.

56.

By giving notice to all practicing attorneys through the Legal Practice Council, by email to all of the Applicant's list of attorneys on its database, to the Minister of Transport and Finance by service on the State Attorney and by publication in two national newspapers as many persons as reasonably possible would have received notice of the relief sought;

56.1 The Applicant will request that the LPC immediately send the notice to all legal practitioners so as to ensure that all legal practitioners receive notice;

56.2 The Applicant will request that the firms of attorneys on its database further distribute the notice to all of their clients who may have an interest and thereby notice will have been given to the Applicant's database of over 3 000 firms of attorneys who represent claimants in claims against the Applicant;

56.3 By delivering the notice to the Offices of the State Attorney all relevant departments will receive notice;

56.4 By further giving notice in two national newspapers the Applicant will have given notice to as many persons as possible. There are approximately 189 000 road accident fund matters and service by any other manner is not possible.

57.

The Applicant will respectfully move for an order that condonation be granted in respect of leave for substituted service.

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**CONCLUSION**

Wherefore the Applicant respectfully moves for an order in terms of the notice of motion.

**DEPONENT**

Signed and sworn before me at JOHANNESBURG this 16TH day of SEPTEMBER **2021** after the deponent declared that **HE** is familiar with the content of this statement and regards the prescribed oath as binding on **HIS** conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R 1258, dated 21 July 1972 [as amended].

**COMMISSIONER OF OATHS**

FULL NAMES: **TEBOGO J MALATJI**
CAPACITY: COMMISSIONER OF OATHS
ADDRESS:
DESIGNATION:
AREA:

PRACTISING ATTORNEY (RSA)
FIRST FLOOR, 31 PRINCESS OF WALES STREET
PARKTOWN
TEL: 011 484 4114

# "RAF 1"

**HIGH COURT OF SOUTH AFRICA**
**(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: Yes.
(2) OF INTEREST TO OTHER JUDGES: Yes.
(3) REVISED: Yes

9 April 2021 Judge P.A. Meyer

Case NO: 58145/2020

In the matter between:

| | |
|---|---|
| **ROAD ACCIDENT FUND** | Applicant |
| and | |
| **LEGAL PRACTICE COUNCIL** | 1st Respondent |
| **BOARD OF SHERIFFS** | 2nd Respondent |
| **ABSA BANK LIMITED** | 3rd Respondent |
| **THAKA F SEBOKA N.O. (SHERIFF, PRETORIA CENTRAL)** | 4th Respondent |
| **LANA NEL N.O. (SHERIFF, PRETORIA EAST)** | 5th Respondent |
| **SHOKENG E DHLAMINI N.O. (SHERIFF, CENTURION EAST)** | 6th Respondent |
| **MARKS MANGABA N.O. (SHERIFF, JOHANNESBURG CENTRAL)** | 7th Respondent |
| **NELSON NTSIBANTSU N.O. (SHERIFF, CAPE TOWN WEST)** | 8th Respondent |
| **NOMANDLA NDABENI N.O. (SHERIFF, EAST LONDON)** | 9th Respondent |
| **G S NDLOVU N.O. (SHERIFF, DURBAN CENTRAL)** | 10th Respondent |
| **AD DANDALA & ASSOCIATES** | 11th Respondent |
| **GODLA & PARTNERS** | 12th Respondent |
| **SITHOMBE ATTORNEYS** | 13th Respondent |
| **K MALAO INCORPORATED** | 14th Respondent |
| **MDUZULWANA ATTORNEYS** | 15th Respondent |
| **ROBERT MUVHIMI, MOTLHOLO KOOS TLHAOLE, PHILADIPHIA NOMTHANDAZO MEMELA, SIPHO SKHOSANA, LINDIWE MACAKA, JUSTINE CHEPETE and EVIDENCE SHAVA represented by SPRUYT INCORORATED** | 16th Respondent |
| **DVDM INCORPORATED** | 17th Respondent |
| **DE BROGLIO ATTORNEYS INC.** | 18th Respondent |
| **VDS ATTORNEYS** | 19th Respondent |
| **ROETS & VAN RENSBURG** | 20th Respondent |
| **PERSONAL INJURY PLAINTIFFS LAWYERS ASSOCIATION** | 21st Respondent |
| **ADVOCATE RAF FEE RECOVERY ASSOCIATION** | 22nd Respondent |
| **KHOROMMBI MABULI INCORPORATED** | 23rd Respondent |
| **PRETORIA ATTORNEYS ASSOCIATION** | 1st *Amicus Curiae* |
| **GENERAL COUNCIL OF THE BAR** | 2nd *Amicus Curiae* |



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***Case Summary*: Practice – Warrants of Execution – Suspension of warrants of execution and attachments – Whether writs and attachments should be suspended in the particular circumstances of this case, either in terms of r 45A of the Uniform Rules of Court or the common law or s 173 of the Constitution, 1996.**

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**JUDGMENT**

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**MEYER J (ADAMS and VAN DER WESTHUIZEN JJ concurring)**

[1] The applicant, the Road Accident Fund (RAF), according to the evidence presented in this application by its current chief executive officer, is experiencing severe financial difficulties that have been exacerbated by the Covid-19 pandemic. Its implosion is imminent and will have disastrous consequences for this country since s 21(2)*(a)* of the Road Accident Fund Act 56 of 1996 (RAF Act) will then be triggered. Section 21(1) and (2)*(a)* provides that no claim for compensation in respect of loss or damage resulting from bodily injury or the death of any person caused by or arising from the driving of a motor vehicle shall lie against the owner or driver of a motor vehicle or against the employer of the driver, unless the RAF or an agent is unable to pay any compensation. The RAF seeks extraordinary relief in this application as a step to stabilize its precarious financial position to prevent a constitutional crisis, because it is also constitutionally enjoined to pay reasonable compensation in respect of loss or damage resulting from bodily injury or the death of any person caused by or arising from the driving of a motor vehicle (RAF's application).

[2] The lifeline the RAF seeks from this court is an order - either in terms of r 45A of the Uniform Rules of Court or the common law or s 173 of the Constitution of the Republic of South Africa, 1996 - suspending all writs of execution and attachments based on court orders already granted against it or settlements already reached with claimants entitled to the payment of compensation for damages resulting from bodily injury or death caused by road accidents that are regulated by the RAF Act in terms of a court order or settlement reached with the RAF (successful claimants) for a period of 180 days. Such relief will enable the RAF to make payment of the oldest claims first by date of court order or date of settlement agreement *a priore tempore*. It undertook to use its best endeavours to pay all claims based on court orders already



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granted or settlements already reached older than 180 days, on or before 30 April 2021. It does not seek an order to temporarily stop making payments to successful claimants.

[3] The first respondent is the Legal Practice Council (LPC). The third respondent is ABSA Bank Ltd (ABSA), which bank acts as banker for the RAF. The second respondent is the Board of Sheriffs, and the fourth to tenth respondents are cited in their official capacities as the sheriffs for Pretoria Central, Pretoria East, Centurion East, Johannesburg Central, Cape Town West, East London and Durban Coastal. The eleventh respondent, AD Dandala & Associates, the twelfth respondent, Godla & Partners, the thirteenth respondent, Sithombe Attorneys, the fourteenth respondent, K Malao Inc., the fifteenth respondent, Mduzulwana Attorneys and Legal Consultants, the seventeenth respondent, DVDM Inc., the eighteenth respondent, De Broglio Attorneys Inc., the nineteenth respondent, VDS Attorneys, the twentieth respondent, Roets & Van Rensburg, and the twenty third respondent, Korommbi Mabuli Inc., are all firms of attorneys *inter alia* representing claimants in claims for compensation against the RAF regulated by the RAF Act. Spruyt Inc., also a firm of attorneys, represent the sixteenth respondents (Robert Muvhimi, Motlholo Koos Tlhaole, Philadiphia Nomthandazo, Sipho Skhosana, Lindiwe Macaka, Justine Chepete and Evidence Shava) herein. The twenty first respondent is the Personal Injury Plaintiffs Lawyers Association, and the twenty second respondent is the Advocate RAF Fee Recovery Association. The Pretoria Attorneys Association (PAA) and the General Council of the Bar (GCB) were respectively admitted as the first and second *amici curiae*.

[4] The RAF's application is opposed by the 11th, 14th to 17th, and 19th to 23rd respondents. The 11th and 23rd respondents brought counter applications in which they seek orders for payment against the RAF in respect of court orders that had already ordered the RAF to pay compensation for damages and costs to various of their clients, which amounts are outstanding for more than 180 days. The 17th respondent brought a counter application in which it seeks an order that certain claims of its clients be registered on the RAF's 'Registered Not Yet Paid' (RNYP) list (it is a list of judgments and settlements that still need to be paid) with a date corresponding with the date upon which the order was made and ancillary relief to give effect to such



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order. It further seeks for this court to issue a rule nisi calling on all interested parties why an order in the terms proposed by the 17th respondent to resolve the problem created by the RAF's inability to promptly pay all its judgment creditors due to its present precarious financial position should not be made.

[5] The 19th and 20th respondents brought counter applications in which they sought orders for the RAF 'to make payment, from its very next available funds' of amounts due to successful claimants they represent, whose payments have all been outstanding in excess of 180 days, and to enter upon its RNYP list - in their proper chronological order according to their respective dates of settlement or court order - certain other successful claimants they represent. The 19th respondent further sought an order for the RAF to rectify and remedy short payments made in respect of other of its successful claimants, also 'out of the very next available funds'. The RAF has complied with the relief sought in the counter applications of the 19th and 20th respondents, and they accordingly no longer persist with their counter applications and abide the decision of this court in the RAF's application. They merely seek the costs of their opposition and of their counter applications. Supplementary affidavits have been filed by many of the parties, and the RAF and the 17th respondent wish to amend the relief they seek. We allow all the supplementary affidavits and the proposed amendments.

[6] On 9 December 2020, a full court of this division (Lamont, Ranchod, Kubushi JJ) *inter alia* postponed the RAF's application to a date for hearing before a full court to be arranged with the Judge President. It further ordered this:

'5. The order of His Lordship Mr. Justice Louw stands until the 1st of February 2021 or until a Full Bench hears the matter, whichever is the earliest, namely:

5.1 The Respondents undertake not to execute against the ABSA Bank accounts or any movable assets of the Applicant until the 1st of February 2021;

5.2 The Applicant will register court orders and settlement agreements on its list of payments in order of date that the court order was granted or the written settlement agreement was made;

5.3 The Applicant will take reasonable steps to ensure the court orders or written settlement agreement for payments are registered on the Applicant's payment list within 30 business days of receipt of the court order or written settlement agreement.



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5.4 The Applicant will take reasonable steps to ensure that the court orders or written agreements that have not been captured on its payment list will be captured on its payment list in historical chronological order from the date that the court order was granted by the court or the written settlement agreement was made;

5.5 The Applicant will provide all attorneys on its database of email addresses of attorneys involved in third party matters against the Applicant with updated payment lists on a bi-monthly basis from January 2021 onwards;

5.6 The Applicant undertakes to make payment of the oldest claims first by date of court order or date of written settlement agreement.

6. The applicant shall continue to pay claims from oldest to newest in respect of orders older than 180 days.'

[7] The Judge President of this division allocated Friday, 29 January 2021, for the hearing of the RAF's application and the 17th respondent's counter application before this full court. The *communio opinio* of the legal representatives, my colleagues and myself was that one day would be insufficient to hear the matter. We therefore postponed the matter for a two-day hearing on 15-16 March 2021, as then directed by the Judge President, and we extended the order made by the full court on 9 December 2020 to 16 March 2021. When judgment was reserved on 16 March 2021, we made an order that the temporary order granted by the full court on 9 December 2020 is extended until this court has given judgment or made an order in the matter, and that any attorneys who represent successful claimants that have payment claims older than 180 days against the RAF are to notify it, within 14 days of that order, of the existence of such claims.

[8] The non-joinder of other interested parties is in issue. The RAF caused copies of its application and notices in terms of r 16A of the Uniform Rules of Court to be served on the LPC and requested it to disseminate the application and notices amongst all its members who are practising attorneys, which the LPC did. The LPC is the statutory body for thousands of legal practitioners. Its notices in terms of r 16A were also furnished to the GCB, which is constituted by 14 member societies from every province and together they represent 3 000 advocates, a significant number of whom represent plaintiffs as well as the RAF in in third party litigation against the RAF. The RAF has on its database over 3 000 firms of attorneys who are part of its mailing list and who have represented claimants for the payment of compensation for



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damages against the RAF, or who have acted for the RAF in the past. It also electronically sent its application to all those attorneys whose details it has on its database. It also notified the PAA, which association represents 1 479 attorneys in private practice, mainly in the Pretoria are, but also further afield. Many of its members practice in the field of personal injury which includes third party matters in terms of the RAF Act. On 29 January 2021, this court granted the RAF leave to publish, advertise, and give notice of any relief sought in the RAF's application, or any other amendment, to all practicing attorneys through the LPC, by email to all attorneys on its database, to the Minister of Transport and the Minister of Finance by service on the State Attorney and by publication in two national newspapers. The RAF duly complied with this court's order permitting such substituted service. It *inter alia* gave notice of the relief sought in this application by publication in two national newspapers. A few of the opposing respondents have intervened as a result of these steps taken by the RAF and were joined to the RAF's application.

[9] The Constitutional Court, in *Matjhabeng Local Municipality v Eskom Holdings Limited and others* [2017] ZACC 35 para 94, has held that-

'[t]here may well be a situation where joinder is unnecessary, for example where a *rule nisi* is issued, calling upon those concerned to appear and defend a charge or indictment against them. Undeniably, in appropriate circumstances, a rule nisi may be adequate even when there is a non-joinder in contempt of court proceedings.'

And in *Road Accident Fund v Lana Nel NO and another* ((43873/2020)) para 4, Van der Schyff J said the following:

'In *Insamcor (Pty) Ltd v Dorbyl Light & General Engineering (Pty ) Ltd; Dorbyl Light General Engineering (Pty) Ltd v Insamcor (Pty) Ltd* 2007 (4) SA 467 (SCA) the Supreme Court of Appeal held joinder was necessary, but where the number of affected parties was substantial, the issuing of a rule nisi was sufficient to effect joinder. In those instances, because of the sheer volume of parties that could be affected, the failure to respond could be taken to equate to a waiver of the right to be joined.'

[10] This matter, in my view, is one where the joinder of the many thousands of parties that could be affected by the order of this court, is unnecessary in the light of the steps taken by the RAF to notify as many parties of its application as possible. The steps taken are adequate. The number of affected parties is substantial, and the steps taken by the RAF to notify the sheer volume of parties that could be affected



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were sufficient to effect their joinder. Only the seventeenth to twenty third respondents responded and were joined to these proceedings. The failure to respond by those who were notified can be taken to equate to a waiver of the right to be joined.

[11] The jurisdiction of this court is also in issue. It is not the issue of writs of execution against the RAF out of the offices of the registrars in the various divisions across the country that forms the subject of the RAF's application, but whether or not all writs of execution that had been issued on behalf of successful claimants, and attachments, should be suspended for a fixed period. The writs are served at the RAF's branch offices. All writs countrywide are consolidated at ABSA's head office by its legal counsel, which is in Centurion. ABSA then places a hold on the equivalent available funds. The attached funds are paid by ABSA to the relevant sheriffs' offices. The sheriff holds the funds in trust and makes payment thereof to the firm of attorneys representing the successful claimant. The RAF instituted its application in Pretoria since, it is common cause on the papers, most of the warrants of execution are issued out of the offices of the registrars in Gauteng and most of the attachments of the RAF's movable property, including its right, title and interest in and to its bank account held by ABSA in Johannesburg, occur in Gauteng. Furthermore, the LPC (the first respondent) has its national office in Midrand, ABSA (the second respondent) has its head office in Johannesburg, both within this court's jurisdiction. The fourth, fifth, sixth and seventh respondents are sheriffs for districts within this court's jurisdiction. The thirteenth to twentieth and the twenty third respondents are all firms of attorneys practicing within this court's jurisdiction. Both the twenty first and twenty second respondents are associations seated in Pretoria.

[12] De Villiers JP said in *Steytler NO v Fitzgerald* 1911 AD 295 at 346, that the enquiry into jurisdiction is twofold: '[A] court can only be said to have jurisdiction in a matter if it has the power not only of taking cognisance of the suit, but also of giving effect to its judgment.' There cannot be an issue with giving effect to this court's judgment. Only the first of these issues, therefore, arises: is there a recognised ground of jurisdiction. In relation to the second and eighth to twelfth respondents, and all those other persons who could be affected by this court's order who reside within the areas of jurisdiction of other divisions of the high court, the RAF contends that the the *causae continentia* principle (the doctrine of cohesion of a cause of action) and s



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21(2) of the Superior Courts Act 10 of 2013 (the Superior Courts Act), find application, which principle extends the jurisdiction of a particular division of the high court.

[13] D Pistorius *Pollak on Jurisdiction* 2 ed (1993) at 26, states:

'. . . where the causae continentia rule is applicable the court may assume jurisdiction in respect of a defendant who is otherwise not amenable to that jurisdiction on any of the recognized grounds of jurisdiction and this may be done to avoid inconvenience'.

The Roman and the Roman-Dutch origin of the rule was discussed at length by Steyn CJ in *Roberts Construction Co Ltd v Willcox Bros (Pty) Ltd* 1062 (4) SA 326 (A). There, it was held, applying the common law *causae continentia* rule, that where one court has jurisdiction over a part of a cause, considerations of convenience, justice and good sense justify its exercising jurisdiction over the whole cause. The partial location of the object of contractual performance (a bridge between two provinces) within the jurisdiction of one court, therefore, gave that court jurisdiction over the whole cause of action. It was held that the rule avoids a multiplicity of proceedings and the possibility of conflicting judgments on the same cause and allows for the more convenient disposition of cases. (Also see *Permanent Secretary Department of Welfare, Eastern Cape Provincial Government and another v Ngxuza and others* (493/2000) [2001] ZASCA 85 (31 August 2001).)

[14] The *causae continentia* rule is now enshrined in s 21(2) of the Superior Courts Act, which provides that '[a] Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the person resides or is within the area of jurisdiction of any other Division'. The same provision was originally introduced into s 19(1)*(b)* of the former Supreme Court Act 59 of 1959, by s 2 of the Supreme Court Amendment Act 41 of 1970.

[15] In *Mossgas (Pty) Ltd v Eskom and another* 1995 (3) SA 156 (W) at 157C-G, Fine AJ said this:

'Section 19(1)*(b)* was enacted to extend the territorial jurisdiction of a Local or Provincial Division over parties not ordinarily susceptible to the Court's jurisdiction where it was sought to join such party to a cause over which the Local or Provincial Division had jurisdiction. By 'cause' is meant an action or legal proceeding, not a cause of action. (See *Spier Estate v Die*



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*Bergkelder Bpk and Another* 1988 (1) SA 94 (C) at 100B.) The aim and purpose of s 19(1)*(b)* was to avoid a multiplicity of actions with all the inconvenience and expense that that would involve and to avoid conflicting judgments on the same cause of action. See *Majola v Santam Insurance Co Ltd and Others* 1976 (1) SA 874 (SE) at 876H and 877I.

The difficulty which would arise when defendants who are liable to a plaintiff on the same cause of action and are resident in different jurisdictions is thus averted by the enactment and proper application of this section. There is in my view no basis for limiting its application and the only limitations on its applicability are those to be found in the subsections. See *Majola's* case *supra* at 877C-D.

Once the Local or Provincial Division has jurisdiction in the action or legal proceeding s 19(1)*(b)* can be invoked to join to that cause a defendant not resident within the area of jurisdiction of that Court provided, of course, that the other requirements for joinder and the jurisdictional requisites are present.'

[16] In *PMG Motors Kyalami (Pty) Ltd and another v Firstrand bank Ltd, Wesbank Division* 2015 (2) SA 634 (SCA) para 14, Gorven AJA said the following:

'As regards PMG Westville, the dealerships submitted that if any other court had jurisdiction over all of the dealerships, the doctrine of *causae continentia* could not be invoked. Since the KwaZulu-Natal High Court, Durban, was such a court due to the registered offices of all of the dealerships falling under its jurisdiction, the court below did not have jurisdiction to hear the application. DR Harms in *Civil Procedure in the High Court* points out that the causae continentia 'principle is now enshrined in section [19(1)*(b)*]'. [At A4.19. See also its successor s 21(2) of the Superior Courts Act 10 of 2013.] PMG Westville was a party – 'who is joined ... to any cause to which such provincial or local division has jurisdiction . . . if the said person resides or is within the area of jurisdiction of any other Provincial or Local Division'. [Section 19(1)*(b)* of the Supreme Court Act.]

PMG Westville was joined in the application. The court below had jurisdiction to entertain the application in respect of PMG Kyalami and PMG Alberton. PMG Westville 'resided' within the area of jurisdiction of another local division. This means that s 19(1)*(b)* of the Supreme Court Act applied in the circumstances. I agree with the author Pistorius in *Pollak on Jurisdiction* [D Pistorius *Pollak on Jurisdiction* 2 ed (1993) at 26] that it is not necessary to consider issues of convenience when the provisions of s 19(1)*(b)* apply. If one had to have regard to such issues, however, the finding of jurisdiction was amply justified in the present matter. It avoided a multiplicity of applications along with the additional costs and the risk of discordant findings in a situation where the issues were essentially the same for each dealership.'



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[17] The same holds true in the present matter. It is not necessary for us to consider whether the *causae continentia* rule should or should not be applied in this case since s 21(2) of the Superior Courts Act finds application. This court has jurisdiction to entertain this application in respect of the respondents and thousands of interested parties residing in its area of jurisdiction, which is not in issue, but also in respect of the second, eighth to twelfth respondents and the thousands of other interested parties residing within the areas of jurisdiction of other divisions. Also, regarding the question of convenience, this application avoids a multiplicity of applications along with the additional costs and the risk of discordant findings.

[18] I now turn to the pertinent facts. There can be no doubt that the RAF has been beset with financial problems for several years and is presently in a precarious financial position. Many reported judgments chronical the RAF's tardy and wasteful litigation and poor administration. The Minister of Transport took the drastic step late in 2019 to appoint a new management team for the RAF. Its current CEO was appointed as Acting CEO in September 2019 and appointed permanently in August 2020. His mandate is specifically to turn around the RAF's parlous state. Before his appointment he was in the full-time employment of the Department of Transport as a Director General: Finance and he was the Department of Transport's Chief Financial Officer. He deposed to the RAF's affidavits in this application and has been frank with this court. The RAF accepts that its systems and processes have in the past been antiquated and that its employees are a major part of the problem. Its systems are plagued with corruption and during 2020 (since the appointment of the RAF's new management) it engaged in large investigations and disciplinary hearings. Matters of *inter alia* corruption are now being investigated by the National Prosecuting Authority, the Hawks and the Special Investigation Unit. The CEO specifically states:

'To continue with old structures that were in place before my appointment would increase the Applicant's exposure to claimants on a virtually daily basis whilst at the same time increasing the Applicant's factual insolvency. The urgent relief sought in the Applicant's application is to immediately stabilize the Applicant's operations and financial position. The Applicant respectfully submits that the relief sought is extremely urgent.'

[19] In *Law Society of South Africa and others v Minister for Transport and another* 2011 (1) SA 400 (CC) paras 52 and 55, Moseneke DCJ said that 'urgent steps must be taken to make the Fund sustainable so that it can fulfil its constitutional obligations



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to provide social security and access to healthcare services' and that it is a 'legitimate government purpose to make the Fund financially viable and its compensation scheme equitable'. The RAF's new management team has embarked on a five-year turn-around plan from 2020 to 2025. Its plan or strategy has five main priorities which are the reduction in legal costs, the revision of the structure and business process, integrated claims assessment systems, rehabilitation network and the revision of the supply chain management structure. Should the RAF continue with its past model then projections show that its deficit will only increase substantially and ultimately lead to its collapse. The RAF's CEO tells us that the proposals that are currently being considered may lead to the RAF in the immediate future turning to a cash positive position. This, according to him, will require drastic and exceptional measures, and the order it seeks in this application will alleviate the situation in the immediate short term.

[20] If the situation is not so alleviated for the immediate short term, so states the CEO, the RAF's implosion will be imminent due to attachments against its essential assets (including its bank account) to obtain payment on behalf of successful claimants. Its policy and avowed intention is to pay *a priore tempore* claims first as a result of its precarious financial position. There are between 2 500 and 3 000 firms of attorneys who institute claims against the RAF governed by the RAF Act countrywide. Of those firms only approximately 100 cause such execution steps to be taken against the RAF. The execution steps bring the RAF's operations to a standstill, causing it irreparable damage and is debilitating any progress made to bring stability to the RAF's operations and financial position. The vast majority of attorneys appreciate the financial constraints within which the RAF operates and accept the delays that the RAF imposes on the processing of claims. They do not issue writs of attachment and wait until paid. In the present application, according to the RAF, it seeks to prevent a Constitutional crisis where it can no longer fulfil its constitutional obligations to provide social security and access to healthcare services and s 21(2) of the RAF Act will automatically be triggered.

[21] In *Mabunda Incorporated and others v Road Accident Fund; Diale Mogashoa Inc. v Road Accident Fund* (15876/2020) [2020] ZAGPPHC (27 March 2020) paras 3.6 to 3.8 and 3.18-3.19, Davis J noted as follows:



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'3.6 . . . As an example, in 2005 there were 185 773 claims lodged which resulted in legal costs of R941 million. In 2018, when there were only 921 010 claims, the legal costs had ballooned to R8,8 [billion]. In 2019 the legal costs have increased to R10,6 [billion].

. . .

3.7 Prof Klopper's conclusion was that, should the RAF change its litigation model and properly deal with and settle all meritorious claims expeditiously, it could save up to R10 billion of public funds.

3.8 The current CEO for the time being of the RAF is also the deponent to its answering affidavits. He is in the full-time employment of the Department of Transport as a Director General: Finance and is the Department's CFO. He was seconded to the RAF as its Acting CEO with a mandate from the Minister to *". . . turn the RAF Financial woes around by inter alia cutting its legal costs incurred by the RAF"*. He commenced acting in his position on 9 September 2019.

. . .

3.18 The Acting CEO reported that the RAF's strategic plan for the five year period 2020-2025, in compliance with the Government's Medium-Term Strategic Framework ("MTSF"), and with due regard to presentations made by the Minister of Transport in a public forum, was presented to the Fund's Board at a Strategic session held on 16 and 17 January 2020. On 31 January 2020 the Board approved the plan. In the meantime, the Chairperson of the Board had signed a revised Board Performance agreement. Therein, five priorities requiring attention were identified. These were (a) a reduction in legal costs, (b) revision of the structure and business process, (c) integrated claims assessment system, (d) rehabilitation network and (e) revision of the supply claim management structure.

3.19 In order to attain the abovementioned objectives, the RAF came to the realization that it must drastically adopt a different model than the previously utilized "counter-productive legal strategy". To continue therewith, was to increase the RAF's exposure to claimants on virtually daily basis whilst at the same time increase its insolvency, all at the expense of the public purse. Should the old litigation model (including the retention of a panel of attorneys) be retained many, including the Board members, had warned that the RAF then risked going down the path envisaged in section 21(2)(a) of the RAF Act, which comes into operation when the RAF becomes unable to pay claims against it. The consequence thereof would be dire for claimants as it would terminate the RAF's position as statutory defendant for claims arising out of driving a motor vehicle and would re-institute the common law position. The "insured driver" as it is now known, would cease to be insured leaving claimants with huge claims against impecunious defendants.'



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[22] The RAF's primary available resources are the revenue generated through the allocation of the fuel levy. It may well be, as some of the opposing respondents contend, that the RAF is under-funded. The RAF Act provides for the funding of the RAF out of the Road Accident Fuel Levy and by means of raising loans. Despite the protestations by some of the opposing respondents, I accept that the RAF cannot apply for a loan at the present time given the country's notorious financial plight and the RAF's precarious financial position. A loan will obviously lead to greater future liability.

[23] The RAF's draft annual financial statement ending 31 March 2020 shows that it had an accumulated deficit of R322 billion. Its total liabilities exceeded its assets by over R300 billion. The fuel levy received from April to September 2020 was R7.9 billion less than expected. The expectations are that over the next 12 months the claims settlements will average R4,3 billion per month. The RAF's fuel levy income is expected to average R3 billion per month and its operational costs will average R178 million per month. The expected deficit is expected to average at about R1,25 billion per month. This will result in the list of unpaid successful claimants to increase from R17,6 billion to R33 billion by September 2021. Payment delays will increase from an average of 187 days to 331 days, possibly averaging 261 days to date of payment.

[24] Litigation costs have increased almost tenfold from 2005 although the total amount of claims has decreased. The projection for 1 October 2020 to 30 September 2021 is even worse should there not be a dramatic change in the system employed by the RAF. During 2020 its position was significantly exacerbated by the Covid-19 pandemic and national lockdown. Its income from the fuel levy declined by 50%. The RAF's new management is implementing far-reaching plans to restructure its payment system, prevent internal corruption and corruption that in some instances involved members of the legal profession, and its historic briefing patterns. Its immediate actions seek to achieve the following aims: to pay claims on a *priore tempore* basis from date of judgment or order or settlement reached and to pay all claims currently in excess of 180 calendar days old by 30 April 2021. It is stated in the RAF's founding affidavit that-

'[t]he RAF has implemented an equitable system of paying claims on the basis that the RNYP (requested, not yet paid) claims will be paid from the oldest to the newest. Based on the RAF's



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available monthly fuel levy, the RAF is able to pay on average claims which are 180 days and older.'

[25] Since the appointment of the RAF's new management in 2019, it has recovered approximately R600 million in duplicate payments. The total of such duplicate payments is about R1,2 billion. Duplicate payments, according to the RAF, occur as a result of the attachments of its right, title and interest in and to its bank account held at ABSA. When there is an execution against the RAF's bank account, the warrant is sent to the RAF's central treasury. However, most of the claims in respect of which the writs were issued have already received attention in the RAF's regional office, which then makes payment to the attorneys in ignorance of the attachment and payment to the relevant sheriff. Payments on the same claim are thus made by the sheriff's office, and by the RAF regional office unbeknown that the claim has already been paid. Since the RAF's new management was appointed, it has implemented a short-term solution to manage potential duplicate payments from occurring. Once a duplicate payment has been discovered and verified, the RAF attempts to recover the duplicate payment from the attorneys' firm involved and suspends all payments of claims of other successful claimants to that firm until the money is repaid. Once repayment is received and the RAF's internal administrative processes completed, its treasury department is informed that that firm of attorneys can be cleared for payments of other claims of successful claimants to that firm of attorneys. The recoveries process often takes long and, according to the RAF, is a reason why amounts owing to other successful claimant clients of such firms of attorneys are only paid after the lapse of periods long exceeding 180 days after the court order or date of settlement.

[26] A large number of attorneys are willing to work with the RAF to solve the current crisis and potential constitutional crisis. This includes, for instance, De Broglio Attorneys (the 18th respondent), which filed an affidavit in these proceedings supporting the RAF's relief for a suspension of attachments. Also, the PAA (the 1st *amicus curiae*) representing 1 479 attorneys, which agrees that urgent relief should be granted whilst making submissions on a refined order. DVDM Attorneys (the 17th respondent) furthermore imply in their answering affidavit that the 180-day period is already an 'unofficial agreement' between the RAF and firms of attorneys across the country. Counsel for the seven 16th respondents, who are represented by Spruit Inc., made the submission to us that the constitutional crisis can spiral out of control (that



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is if the RAF implodes) and that the larger public interest must trump any possible infringement caused by delayed payments.

[27] Most of the opposing respondents argue that the relief which the RAF seeks in this application is unconstitutional, essentially since it will infringe the successful claimants' constitutional rights to equal protection and benefit of the law and access to courts. The RAF, on the other hand, argues that the relief it seeks - either in terms of r 45A of the Uniform Rules of Court or the common law or s 173 of the Constitution of the Republic of South Africa, 1996 - is to prevent a constitutional crisis from occurring if it can no longer fulfil its constitutional obligations to provide social security and access to healthcare services.

[28] Section 9(1) of the Constitution provides that '[e]veryone is equal before the law and has the right to equal protection and benefit of the law'. Section 34 affords everyone 'the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court'. The right to execute an order is incidental to the rights afforded by s 34. As was said by Mokgoro J in *Chief Lesapo v North West Agricultural Bank and another* 2000 (1) SA 409 (CC) para 13:

'An important purpose of s 34 is to guarantee the protection of the judicial process to persons who have disputes that can be resolved by law. Execution is a means of enforcing a judgment or order of court and is incidental to the judicial process. It is regulated by statute and the Rules of Court and is subject to the supervision of the court which has an inherent jurisdiction to stay the execution if the interests of justice so require.'

(Footnotes omitted.)

And Jafta J put it as follows in *Mieni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (Tk) at 452G-H and 453C-D:

'The constitutional right of access to courts would remain an illusion unless orders made by courts are capable of being enforced by those in whose favour such orders were made. The process of adjudication and the resolution of disputes in courts of law is not an end in itself but only a means thereto; the end being the enforcement of rights or obligations defined in the court order.'

[29] Payment of compensation by the RAF under the RAF Act is not only a statutory duty, but a mechanism whereby the state must comply with its constitutional duty in terms of s 12(1)*(c)* read with s 7(2) of the Constitution, to protect road users against the risk of infringement of the right to freedom and security of their persons. In *Law*



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*Society of South Africa and others v Minister for Transport and another* 2011 (1) SA 400 (CC), Moseneke DCJ said the following:

[17] The statutory road accident scheme was introduced only in 1942, well after the advent of motor vehicles on public roads. And even so, it came into effect only on 1 May 1946. As elsewhere in the world, statutory intervention to regulate compensation for loss spawned by road accidents became necessary because of an increasing number of motor vehicles and the resultant deaths and bodily injuries on public roads. The right of recourse under the common law proved to be of limited avail. The system of recovery was individualistic, slow, expensive and often led to uncertain outcomes. In many instances, successful claimants were unable to receive compensation from wrongdoers who had no means to make good their debts. On the other hand, it exposed drivers of motor vehicles to grave financial risk. It seems plain that that the scheme arose out of the social responsibility of the State. In effect, it was, and indeed still remains, part of the social security net for all road users and their dependents.

. . .

[63] The concession that the Minister has made is the correct one. A plain reading of the relevant constitutional provision has a wide reach. Section 12(1) confers the right to the security of the person and freedom from violence on "everyone". There is no cogent reason in logic or in law to limit the remit of this provision by withholding the protection from victims of motor vehicle accidents. When a person is injured or killed as a result of negligent driving of a motor vehicle, the victim's right to security of the person is severely compromised. The State, properly so, recognises that it bears the obligation to respect, protect and promote the freedom from violence from any source.

. . .

[67] For all these reasons, I conclude that the State incurs s 12 obligations in relations to victims of road accidents.'

[30] It is unnecessary for us to decide whether r 45A of the Uniform Rules of Court, which provides that '[t]he court may suspend the execution of any order for such period as it may deem fit', finds application in the present case, because a stay of execution falls within the purviews of a court's common law inherent power to regulate its procedures and also s 173 of the Constitution. Superior courts have an 'inherent reservoir of power to regulate its procedures in the interests of the proper administration of justice': *Universal City Studios Incorporated and others v Network Video (Pty) Ltd* [1986] 2 All SA 192 (A). There, Corbett JA drew a distinction between a court creating substantive law as opposed to procedural law: 'Substantive law is concerned with the ends which the administration of justice seeks; procedural law



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deals with the means and instruments by which those ends are to be attained'. The present case clearly concerns procedural law, not substantive law.

[31] In *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and another* 1979 (2) SA 457 (W) at 462H-463B, Botha J said the following:

'I would sound a word of caution generally in regard to the exercise of the Court's inherent power to regulate procedure. Obviously, I think, such inherent power will not be exercised as a matter of course. The Rules are there to regulate the practice and procedure of the Court in general terms and strong grounds would have to be advanced, in my view, to persuade the Court to act outside the powers provided for specifically in the Rules. Its inherent power, in other words, is something that will be exercised sparingly. As has been said in the cases quoted earlier, I think that the court will exercise an inherent jurisdiction whenever justice requires that it should do so. I shall not attempt a definition of the concept of justice in this context. I shall simply say that, as I see the position, the Court will come to the assistance of an applicant outside the provisions of the Rules when the Court can be satisfied that justice cannot be properly done unless relief is granted to the applicant.'

[32] In *Whitfield v Van Aarde* 1993 (1) SA 332 (E) at 337E-G, Nepgen J said this:

'In my judgment a Court does have an inherent discretion to order a stay of execution. Execution is the process which enables a judgment creditor to obtain satisfaction of a judgment granted in his favour. The effect of holding that a Court is unable to control its own process would be to deprive a Court of what has always been considered to be an inherent power of such Court. Of course, the discretion which a Court has must be exercised judicially, but cannot be otherwise limited, for example by stating that such discretion can only be exercised in favour of a judgment debtor in certain circumscribed circumstances.'

[33] The common law on a superior court's inherent jurisdiction to regulate its own processes has now been subsumed by s 173 of the Constitution (*Oosthuizen v Road Accident Fund* 2011 (6) SA 31 (SCA) para 15), which provides that 'the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa, has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interest of justice'. The court's inherent jurisdiction to regulate its own process is not unlimited but must be used sparingly and only in exceptional circumstances taking into account the interests of justice. (See *Oosthuizen* para 17; *South African Broadcasting Corp Ltd v Director of Public*



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*Prosecutions and others* 2007 (1) SA 523 (CC) para 36; *S v Molaudzi* 2015 (2) SACR 341 (CC) para 34.) In Systems Applications Consultants (Pty) Ltd t/a *Securinfo v Systems Applications Products AG and others* (1371/2018) [2020] ZASCA 81 (2 July 2020) para 25, said the following:

'What must be borne in mind is that the invocation of s 173 must be determined on the peculiar facts of each case, mindful of the fact that the power granted by that provision should be exercised only in exceptional circumstances to avoid legal uncertainty and potential chaos. A fact-specific casuistic approach must therefore be adopted.'

[34] I found that the joinder of the many thousands of parties that could be affected by the order of this court, is unnecessary in the light of the steps taken by the RAF to notify the sheer volume of parties that could be affected was sufficient to effect their joinder and that the failure to respond by those who were notified can be taken to equate to a waiver of the right to be joined. The opposing respondents who were originally cited and those who were joined as a result of the steps taken by the RAF all put forward their defences, essentially of non-joinder, the lack of this court's jurisdiction to entertain the RAF's application, and that the relief sought by the RAF is unconstitutional. Other objections raised by attorneys acting on behalf of successful claimants are a lack of transparency on the part of the RAF, its failure to pay the amounts owing to such clients and costs awards in many instances after the lapse of periods long exceeding 180 days after the date of court order or settlement, and its administration of payments made to such successful claimants via their attorneys. Court orders and such settlement agreements are not always registered within a reasonable period on the RAF's list of payments in order of date that the court order was granted, or the written settlement agreement concluded, or they are not always captured on its payment list in historical chronological order from the date that the court order was granted, or the written settlement agreement reached. The result is that the RAF does not always make payment of the oldest claims first by date of court order or date of the written settlement agreement. Furthermore, the RAF fails to provide all attorneys on its database of email addresses of attorneys involved in claims for compensation against the RAF regularly with updated payment lists.

[35] The invocation of this court's common law inherent power to regulate procedure and of its inherent power in terms of s 173 regulate its process, therefore, must be determined on the peculiar facts of this case. I am of the view that exceptional



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circumstances exist, taking into account the interests of justice, for the exercise of this court's inherent common law and constitutional power to order a temporary suspension for a limited period of 180 days as from the day when argument before this court was concluded on 16 March 2021, of all writs of execution and attachments against the RAF based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order or date of the settlement reached.

[36] I do not agree with the contention of most of the respondents that such relief will be unconstitutional. In the words of Mokgoro J in *Chief Lesapo* para 13, an important purpose of s 34 of the Constitution (access to courts) is to guarantee the protection of the judicial process to persons who have disputes that can be resolved by law and execution is incidental to the judicial process. 'It is regulated by statute and the Rules of Court and is subject to the supervision of the court which has an inherent jurisdiction to stay the execution if the interests of justice so require.'

[37] The granting of such a temporary stay is necessary to prevent the RAF's implosion and resultant constitutional crisis when the RAF will no longer be able to fulfil its constitutional obligation to provide social security and access to healthcare services for road victims and s 21(2)*(a)* of the RAF Act is triggered. No imagination is required to fathom the likely dire situation of thousands of injured uncompensated road accident victims. The social security net for all road users and their dependents will then fall away. There is a significant number of motor vehicle accidents on our public roads countrywide with resultant deaths and bodily injuries. As was said by Moseneke DCJ in *Law Society of South Africa and others v Minister for Transport and another* (supra), the right of recourse under the common law proved to be of limited avail. In many instances, successful claimants will be unable to receive compensation from wrongdoers who have no means to make good their debts and drivers of motor vehicles will be exposed to grave financial risk.

[38] Section 17(3)(a) of the RAF Act provides that no interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order. The 14th respondent argues that the *morae* interest to be paid by the RAF will result in wasteful expenditure should this court grant the



T.J

relief which the RAF seeks. However, the reality is that that is the *status quo* because of the RAF's present dire financial situation. Judgment creditors (successful claimants) must wait to be paid *priore tempore*. Furthermore, the RAF does not move for an order for a stay of payments or the payment of interest. It seeks an order for a stay of attachments to enable it to make payment within its available resources.

[39] I have referred to the objections raised by attorneys acting on behalf clients who are successful claimants against the RAF. I do not believe that payments should be withheld from successful claimants because of a dispute between the RAF and the attorneys acting for them, or pending the repayment of double payments by attorneys. Such exceptions may cause undue hardship on and be unfair to successful claimants. In such instances, the RAF should approach the court, on a case-by-case basis, if it believes or is advised that it has valid grounds to obtain an order suspending writs of execution and warrants of attachment against it. The order which we propose to make, therefore, does not provide for any exceptions. The RAF, as it undertook to do, must pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement, on or before 30 April 2021, provided it has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.

[40] The GCB and some of the opposing respondents propose that this court issue a rule nisi or a structural interdict; one that demands that the RAF provide proper information, a comprehensive detailed rescue plan, and for the relevant ministers and institutions to explain what they have done to resolve the funding crisis. The board of the RAF exercises overall authority and control over the financial position, operation and management of the RAF (s 11(1) of the RAF Act). The Financial Services Board (now the Financial Conduct Sector Authority) exercises financial supervision over the RAF. The RAF submits copies of reports on the business of the RAF to Parliament in terms of s 4 of the Financial Supervision of the Road Accident Fund Act, 8 of 1993 (the FSRAF Act), and s 14(3) of the RAF Act. The RAF Board is subject to the supervision of the Minister of Transport. In terms of the FSRAF Act, the Minister of Finance is required to submit reports to Parliament within 6 months of the end of a



TJ

financial year. The reports by the Minister of Finance and by the CEO of the Financial Sector Conduct Authority are based on returns of assets and liabilities of the RAF in respect of its business in the past and in the future audit years. These returns are to be submitted to an actuary who is required to express an opinion for the benefit of the funding decisions by those who have oversight, including parliament. I have mentioned that the RAF Act provides for the funding of the RAF out of the Road Accident Fuel Levy and by means of raising loans. The fuel levy is administered by the South African Revenue Service. The RAF is funded through a parliamentary process. The Schedules to the Customs and Excise Act 91 of 1964, which provide for the fuel levy, are expressly stated to form part of that Act. Hence, the allocation of those funds to the RAF is a parliamentary prerogative. Ultimately, the fuel levy is paid by the National Treasury to the RAF. Any substantial increase in the fuel levy will obviously have massive inflationary repercussions for the country as a whole.

[41] I am of the view that the circumstances of this case do not warrant the issuing of a rule nisi or the granting of a structural interdict as proposed by some of the opposing respondents. It is possible to craft an order that unambiguously defines the exact period in which the relevant writs of execution and attachments against the RAF are stayed, by when the claims of successful claimants that are older than 180 days must be paid, and the ancillary relief to alleviate many of the problems experienced by attorneys who represent claimants in matters governed by the RAF Act with the RAF. (See *Agri Eastern Cape and others v MEC for the Department of Roads and Public Works and others* [2017] 2 All SA 406 (ECG) paras 39-40.) Such order is along the lines of the draft order which the RAF handed up to us once the matter was fully debated in court, but with amendments in accordance with my findings.

[42] This court must also be cautious not to usurp the functions of the board of the RAF or to interfere in the functions of other branches of government and in the parliamentary prerogative regarding the allocation of funds. In *Doctors for Life International v Speaker of the National Assembly and others* 2006 (6) SA 416 para 37, Ngcobo J said this:

'The constitutional principle of separation of powers requires that other branches of government refrain from interfering in parliamentary proceedings. This principle is not simply an abstract notion; it is reflected in the very structure of our government. The structure of the provisions entrusting and separating powers between the legislative, executive and judicial



T.J

branches reflects the concept of separation of powers. The principle has important consequences for the way in which and the institutions by which power can be exercised. Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the Judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution.' (Footnote omitted.)

[43] Finally, the matter of costs. The RAF and the opposing respondents are *ad idem* that '. . . the general approach of not awarding costs against an unsuccessful litigant in proceedings against the State, where matters of genuine constitutional import arise', should be applied in this case: *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC) paras 23-24. The opposing respondents, however, urge me to order the RAF to pay their costs of opposition, and also the costs of their counter applications where counter applications were instituted. They argue that the relief sought by the RAF is in the nature of an indulgence and their opposition was not unreasonable. As far as the counter applications are concerned, they argue that the institution thereof was necessary since the counter applications concern claims of successful claimants against the RAF which have been unpaid for periods in excess of 180 days and in some instances proposals were made on a proper refined order in respect of the RAF's application. An indulgence granted to the RAF in the main application will result in the counter applications not succeeding at this stage. I agree.

[44] The ordinary principle as far as costs are concerned where an indulgence is sought is that unless the opposition was unreasonable the party seeking the indulgence ought to pay the costs of opposition. In fact, the opposition of the opposing respondents was not only not unreasonable, but helpful - some more than others – and it was only after the matter had been fully debated in this court that the RAF came forward with a considered and substantially acceptable draft order. I agree with the 15th respondent's contention that the RAF's case has undergone a metamorphosis since it was first launched as a matter of urgency on 4 November 2020. The fact that we propose to make no order in respect of each counter application does not mean that they were unsuccessful, since the order we propose to make includes a mandamus for the RAF to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days



T.J

as from the date of the court order or date of the settlement reached, on or before 30 April 2021. The issues raised by the 19th and 20th respondents in their counter applications have been resolved by the RAF since they were instituted, and I consider it fair and just that the RAF should also bear the costs of those two counter applications. Finally, there seems to me to be no reason, and none was advanced, to deviate from the rule that an *amicus curiae* is generally not entitled to be awarded costs: *Hoffmann v South African Airways* 2001 (1) SA 1 (CC) para 63.

[45] In the result the following order is made:

(a) The temporary order made by the full court of this division on 9 December 2020, and extended by this court on 16 March 2021, is discharged.

(b) All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.

(c) The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.

(d) All writs of execution and warrants of attachment against the applicant based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order or date of the settlement reached, are suspended from 1 May 2021 until 12 September 2021.

(e) The applicant is to take all reasonable steps to:

  (i) register court orders or written settlement agreements for claims instituted in terms of the RAF Act against the applicant, on its list of payments in order of date that the court order was granted or the date of the settlement agreement;

  (ii) ensure that court orders or written settlement agreements for claims in terms of the RAF Act for payment are registered on the applicant's



T.J

payment list within 30 business days of receipt of the court order or settlement agreement;

(iii) ensure that court orders or settlement agreements for claims as set out above that have not been captured on its payment list will be captured in historical chronological order from the date that the court order was granted by the court or the written settlement agreement was entered into;

(iv) provide all attorneys on its database of email addresses of attorneys involved in third-party matters against the Road Accident Fund with updated payment lists on a bi-monthly basis from April 2021 onwards.

(f) The applicant is to continue with its process of making payment of the oldest claims first by date of court order or date of written settlement agreement *a priore tempore*.

(g) Any party may approach the court during September 2021 to vary, extend or amend this order.

(h) This order and the order made by this court on 16 March 2021 shall forthwith be published by the applicant:

(i) to all practicing attorneys through the Legal Practice Council;

(ii) by email to all of the applicant's list of attorneys on its database;

(iii) to the Minister of Transport and the Minister of Finance by service on the State Attorney;

(iv) by publication in two national newspapers.

(i) No order is made in respect of each counter application, except that the applicant is to pay the costs of each counter application.

(j) The applicant is to pay the costs of each opposing respondent's opposition of the application, including all reserved costs and the costs of two counsel, one of whom a senior counsel, whenever so employed.

**P.A. MEYER**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION**

| | |
|---|---|
| Judgment: | 09 April 2021 |
| Hearing: | 15 – 16 March 2021 |
| Applicant's Counsel: | Adv C Puckrin SC (assisted by Adv R Schoeman and Adv P Motsie) |
| Instructed by: | Malatji & Co Attorneys, Sandton |
| 3rd Respondent's Counsel: | Adv H Cowley |
| Instructed by: | Tim du Toit Inc. Attorneys, Pretoria |
| 11th Respondent's Counsel: | Adv K Korf |
| Instructed by: | AD Dandala & Associates, Durban |
| 14th Respondent's Counsel: | Adv EC Labuschagne SC (assisted by Adv V Mabuza) |
| Instructed by: | K Malao Inc., Pretoria |
| 15th Respondent's Counsel: | Adv BP Geach SC (assisted by Adv F Kehrhahn) |
| Instructed by: | Mduzulwana Attorneys, Pretoria |
| 16th Respondent's Counsel: | Adv PG Cilliers SC (assisted by Adv C Spangenberg) |
| Instructed by: | Spruyt Inc., Pretoria |
| 17th Respondent's Counsel: | Adv AA Lubbe |
| Instructed by: | DVDM Inc., Pretoria |
| 19th Respondent's Counsel: | Adv BP Geach SC (assisted by Adv F DeW Keet) |
| Instructed by: | VDS Attorneys, Pretoria |
| 20th Respondent's Counsel: | Adv BP Geach SC (assisted by Adv F DeW Keet) |
| Instructed by: | Roets & Van Rensburg Attorneys, Pretoria |
| 21st Respondent's Counsel: | Adv N Motala |
| Instructed by: | Selwyn Drobis Attorneys, Sandton |
| 22nd Respondent's Counsel: | Adv D van den Bogert (assisted by Adv R Kayingo) |
| Instructed by: | De Bruyn Morkel Attorneys, Pretoria |
| 23rd Respondent's Counsel: | Mr K Mabuli |
| Instructed by: | Ledwaba Shapiro Attorneys, Pretoria |
| Counsel for 1st *Amicus Curiae*: | Adv JP van den Berg SC |
| Instructed by: | Adams & Adams, Pretoria |
| Counsel for 2nd *Amicus Curiae*: | Adv D Williams SC (assisted by Adv M Hugo) |
| Instructed by: | Bernhard van der Hoven Attorneys, Pretoria |



T.J

**IN THE HIGH COURT OF SOUTH AFRICA**
**(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

**CASE NO: 2020/58145**

**JOHANNESBURG, 09 ~~March~~ April 2021**

**BEFORE THE HONOURABLE JUDGE MEYER**
**AND BEFORE THE HONOURABLE JUDGE ADAMS**
**AND BEFORE THE HONOURABLE JUDGE WESTHUIZEN**

In the matter between:-

**ROAD ACCIDENT FUND** **Applicant**

and

**LEGAL PRACTICE COUNCIL AND OTHERS** **1st to 20th Respondents**

**HAVING** *read the documents filed of record and having considered that matter:-*

**IT IS ORDERED THAT:-**

1. The temporary order made by the full court of this division on 9 December 2020, and extended by this court on 16 March 2021, is discharged.

2. All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.

3. The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.

4. All writs of execution and warrants of attachment against the applicant based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order or date of the settlement reached, are suspended from 1 May 2021 until 12 September 2021.

5. The applicant is to take all reasonable steps to:

5.1 register court orders or written settlement agreements for claims instituted in terms of the RAF Act against the applicant, on its list of payments in order of date that the court order was granted or the date of the settlement agreement;

5.2 ensure that court orders or written settlement agreements for claims in terms of the RAF Act for payment are registered on the applicant's payment list within 30 business days of receipt of the court order or settlement agreement;

5.3 ensure that court orders or settlement agreements for claims as set out above that have not been captured on its payment list will be captured in historical chronological order from the date that the court order was granted by the court or the written settlement agreement was entered into;

5.4 provide all attorneys on its database of email addresses of attorneys involved in third-party matters against the Road Accident Fund with updated payment lists on a bi-monthly basis from April 2021 onwards.

6. The applicant is to continue with its process of making payment of the oldest claims first by date of court order or date of written settlement agreement *a prior tempore*.

7. Any party may approach the court during September 2021 to vary, extend or amend this order.

8. This order and the order made by this court on 16 March 2021 shall forthwith be published by the applicant:

8.1 to all practicing attorneys through the Legal Practice Council;

8.2 by email to all of the applicant's list of attorneys on its database;

8.3 to the Minister of Transport and the Minister of Finance by service on the State Attorney;

8.4 by publication in two national newspapers.

9. No order is made in respect of each counter application, except that the applicant is to pay the costs of each counter application.

10. The applicant is to pay the costs of each opposing respondent's opposition of the application, including all reserved costs and the costs of two counsel, one of whom a senior counsel, whenever so employed.

T.J

**BY THE COURT**

**REGISTRAR**
***/gpm***

# "RAF 2"

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

CASE NO: 21560/2021

PRETORIA 09 JUNE 2021

BEFORE **THE HONOURABLE MADAM JUSTICE BASSON**



In the **matter between**:

| | |
|---|---|
| THE ROAD ACCIDENT FUND | APPLICANT |
| and | |
| ALL FIRMS OF ATTORNEYS LISTED IN ANNEXURE "A1" | 1ST RESPONDENT |
| THE LEGAL PRACTICE COUNCIL | 2ND RESPONDENT |
| THE SHERIFF, PRETORIA CENTRAL | 3RD RESPONDENT |
| THE SHERIFF, PRETORIA EAST | 4TH RESPONDENT |
| THE SHERIFF, CENTURION EAST | 5TH RESPONDENT |
| THE SHERIFF, JOHANNESBURG CENTRAL | 6TH RESPONDENT |
| THE SHERIFF, JOHANNESBURG NORTH | 7TH RESPONDENT |
| ABSA BANK LIMITED | 8TH RESPONDENT |

HAVING HEARD counsel(s) for the parties and having read the documents filed the court reserved its judgment.

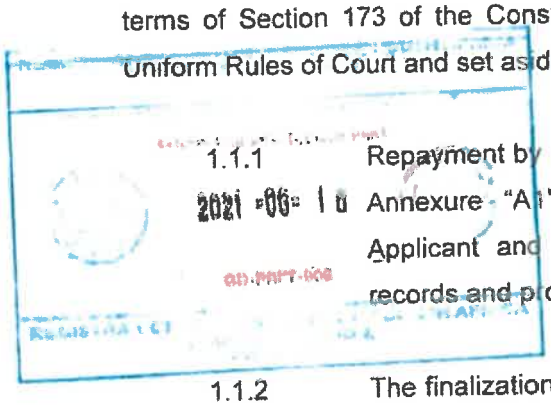
T.J

**THEREAFTER ON THIS DAY THE COURT ORDERS**

**JUDGMENT**

1. A *rule nisi* is issued calling upon all firms of attorneys listed in Annexure "A1" and any other interested parties to show cause, if any, to this court on 6 July 2021 at 10H00, why the following order should not be made final:

1.1 Any writ of execution based upon a court order that compels the Applicant to make payment to a trust account of any of the First Respondents listed in Annexure "A1" or any attachment pursuant thereto is suspended in terms of Section 173 of the Constitution, alternatively Rule 45A of the Uniform Rules of Court and set aside pending:



1.1.1 Repayment by such of the First Respondents listed in Annexure "A1" of all duplicate payments to the Applicant and the reconciliation of the Applicant's records and processes; alternatively

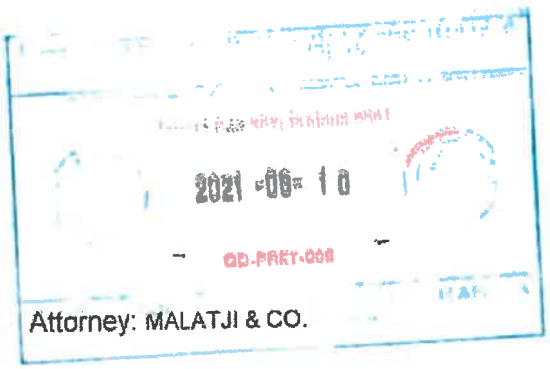
1.1.2 The finalization of an application to be brought by the Applicant within 45 days of the date of this Honorable Court's order in which application the Applicant will seek just and equitable relief.

2. That the order sought under paragraphs 1 to 1.1.2 shall operate as an interim order, with immediate effect, pending the confirmation or discharge of the *rule nisi*.

3. That the Applicant be granted leave to publish this order by publication in two national newspapers.

T.J

4. That the Applicant's costs of this application are to be paid by Erasmus-Els Incorporated t/a Erasmus-Scheepers Attorneys, Shabangu B Attorneys and Associates and AP Phefadu Incorporated, jointly, and severally, the one paying the other to be absolved, including the costs of two counsel, one of whom is a senior counsel.




**BY THE COURT**

**REGISTRAR**
EM

T.J

"RAF 3"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case NO: 21560/2021

ON 06 JULY 2021 BEFORE THE HONOURABLE TOLMAY J



In the matter between:

| | |
|---|---|
| THE ROAD ACCIDENT FUND | Applicant |
| and | |
| ALL FIRMS OF ATTORNEYS LISTED IN ANNEXURE "A1" | First Respondent |
| THE LEGAL PRACTICE COUNCIL | Second Respondent |
| THE SHERIFF, PRETORIA CENTRAL | Third Respondent |
| THE SHERIFF, PRETORIA EAST | Fourth Respondent |
| THE SHERIFF, CENTURION EAST | Fifth Respondent |
| THE SHERIFF, JOHANNESBURG CENTRAL | Sixth Respondent |
| THE SHERIFF, JOHANNESBURG NORTH | Seventh Respondent |
| ABSA BANK LIMITED | Eighth Respondent |

**DRAFT ORDER**

Having heard Counsel for the Applicant, the following is made an order of Court:

IT IS ORDERED THAT

The rule nisi issued on 09 June 2021 under case number 21560/2021 is extended to 07 October 2021, only against firms listed in the amended Annexure A1 attached hereto.

TJ

BY ORDER

THE REGISTRAR

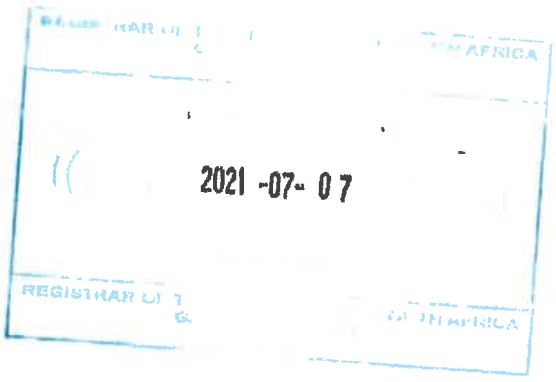
2021 -07- 07

T.J

**AMENDED ANNEXURE "A1"**

AS AT 5 JULY 2021

1. CN Phukubje Attorneys with its business address at 83 Albertina Sisulu Street Corner Von Brandis Street Bradlows Building, Works @ Market 4th Floor Offices 405-407.
2. KG Mashigo Attorneys with its business address at 58 Marshall Street Marshall Street Marshalltown Johannesburg.
3. Maluleka Tlhasi Inc with its business address at 754 Stanza Bopape Street, Eastcliff, Pretoria.
4. Mammile A M Attorneys with its business address at Mammile Law Chambers, 130 Highveld Road, Kempton Park.
5. Mzamo Attorneys with its business address at Suite 2, 3rd Floor, West Wing Suites, 132 Fox Street, Johannesburg.
6. N.T Ntshele Attorneys with its business address at Suite 325, Bank Towers, 190 Thabo Sehume Street, Pretoria, 001.
7. PM Mositsa Inc with its business address at Lapa Building,380 Bosman Street, Pretoria.




T.J

# "RAF 4"



**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

Case No: 24217/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

In the matter between:

| | |
|---|---|
| **KHOROMMBI MABULI INCORPORATED** | APPLICANT |
| and | |
| **ROAD ACCIDENT FUND** | FIRST RESPONDENT |
| **COLLINS PHUTJANE LETSOALO** | SECOND RESPONDENT |
| **ABSA BANK LIMITED** | THIRD RESPONDENT |
| **GAVIN VILJOEN** | FOURTH RESPONDENT |
| **SHOKENG EMILY DHLAMINI** | FIFTH RESPONDENT |

T.J

**JUDGMENT**

**BASSON J**

**THE PARTIES**

[1] The applicant (Khorommbi Mabuli Incorporated) is a legal firm of attorneys acting on behalf of its clients. The first respondent is the Road Accident Fund (the RAF), a Schedule 3A public entity established in terms of section 2(1) of the Road Accident Fund Act[1] (the RAF Act). The second respondent is Mr. Collins Letsoalo, the Chief Executive Officer (the CEO) of the RAF. The third respondent is ABSA Bank Limited (ABSA Bank) and the fourth respondent is Mr. Gavin Viljoen (Viljoen), a branch manager of ABSA Bank's branch in Centurion. The fifth respondent, Ms. Shokeng Dhlamini, is cited in her capacity as the Sheriff, Centurion East. The application before court is opposed by the 1st to 4th respondents.

[2] There are two applications before this court. The first is an application for contempt for an order declaring the 1st, 2nd, 3rd and 4th respondents to be held in contempt of the order of the full bench dated 9 April 2021; that the 2nd and 4th respondents be committed to a term of imprisonment for six months or any other term which this court deems fit; or alternatively, that the 1st, 2nd, 3rd and 4th respondents be "mulcted" with a fine deemed appropriate by this court. Alternatively, and in the event that this court is not prepared to grant the order for imprisonment, the 2nd and 4th respondents are to receive a suspended sentence which shall be wholly suspended on the basis that the 1st and 2nd respondents must, within 72 hours from the date of this order, make payment to the applicant of all claims which are older than 180 days and immediately reinstate the applicant on the Road Accident Fund payment list and that the 5th respondent immediately complies with a warrant of execution which has been served upon it. The applicant further asked for a cost order that the 2nd and 4th

[1] Act 56 of 1996 (as amended).

T.J

respondents jointly and personally be held liable on an attorney and client scale alternatively, such costs to be borne by the 1st, 2nd, 3rd and 4th respondents jointly and severally, the one paying the other to be absolved on an attorney and client scale or any other scale that this court deems fit.

**COUNTER-APPLICATION**

[3] The RAF has also filed a comprehensive counter-application in terms of which it seeks the issuing of a *rule nisi* calling upon the applicant (the 1st respondent in the counter-application) and any other interested party to show cause on 6 July 2021 at 10H00, if any, why any writ of execution based on a court order that compels the RAF to make payment to the applicant's trust account, or any attachment pursuant thereto, should not be immediately suspended in terms of section 173 of the Constitution,[2] alternatively Rule 45A of the Uniform Rules of Court, pending the finalisation of an application to be brought by the RAF within 45 days of the date of this court's order in which application the RAF will seek just and equitable relief including but not limited to requiring the Legal Practice Council to decide whether to investigate and to appoint a *curator bonis* to control and administer the applicant's trust account, alternatively, pending the finalisation of the RAF's investigation to be finalised within six months from the date of this order. The order sought is to operate as an interim order, with immediate effect, pending the confirmation or discharge of the *rule nisi*.

**THE DECISION OF THE FULL BENCH**

[4] On 9 April 2021, the full bench handed down its judgment (*Road Accident Fund v Legal Practice Council and Others* [3] –"the judgment of the full bench") in which it held that all writs of execution and attachments against RAF assets based on court orders already granted or settlements already reached in terms of the RAF Act which are older than 180 days, were suspended until 30 April 2021.[4] The order was granted, *inter alia,* to allow the RAF time to implement systems to make payment equitably. The following paragraphs of the order are relevant to these proceedings:

*"(a)...*

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[2] Constitution of the Republic of South Africa, Act 108 of 1996.
[3] [2021] 2 All SA 886 (GP).
[4] Paragraph 45(b) of the order.

T.J

*(b) All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.*

*(c) The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.*

*(d) All writs of execution and warrants of attachment against the applicant based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order or date of the settlement reached, are suspended from 1 May 2021 until 12 September 2021...."*

[5] The remainder of the order provides for issues such as steps to be taken to register and capture court orders or written settlement agreements on the RAF's payment list and for the RAF to continue with its process of making payment of the oldest claims first by date of the court order or date of the written settlement agreement *a priore tempore*.[5]

[6] The consequence of this order therefore is that all executions against the RAF's assets were suspended until 30 April 2021. Beyond 30 April 2021, the RAF therefore has no further protection against execution in respect of orders older than 180 days. It is this judgment that the applicant claims the four respondents are in contempt of.

*Locus Standi*

[7] All the respondents before court challenged the *locus standi* of the applicant – an attorneys' firm acting on behalf of the claimants in their road accident matters – to bring the application for contempt in its own name.

---

[5] Paragraph 45(f) of the court order.

T.J

[8] The applicant disputed the challenge to its *locus standi* and submitted that it was entitled to launch this application on behalf of its clients who are unemployed indigent claimants who cannot afford to act on their own behalf.

[9] This is not the first time that the applicant has brought an application to have the RAF and the CEO declared to be in contempt of court. The first attempt served before Tlhapi J who dismissed the application on the basis that the applicant did not have the required *locus standi* to bring the contempt of court application. Notwithstanding what Tlhapi J held in that judgment, the applicant again brought an application for contempt in its own name.

[10] This time the applicant argues that it had been authorised by the claimants (the judgment creditors) to bring the contempt application on their behalf and referred the court to the confirmatory affidavits by the judgment creditors attached to the papers.

[11] I am in agreement with what Tlhapi, J held in her judgment: The applicant is a firm of attorneys and not a judgment creditor. It is the judgment creditor that has a direct and substantial interest in the application. A third party cannot bring an application for contempt of court. In her judgment, Tlhapi J held as follows:

> *"[26] As I see it, on a strict interpretation of the Powers of Attorney annexed to the papers, and without analyzing the entire content of the document, I find that the powers do not extend to authorizing the applicant to launch contempt proceedings against the first and second respondents. The personal details of and amounts due to the judgment creditors were available to the applicant at all times. It is the judgment creditors who have a direct and substantial interest, especially where it is alleged that the first respondent has not complied with an order, which directs that court orders and settlement agreements in their favour as judgment creditors be registered for payment, especially the long outstanding ones that are 180 days or older.*
>
> *[27] The importance of the judgment creditor's substantial interest is demonstrated in J Koekemoer and 353 Others supra. The applicants consisted of judgment creditors and the 354th applicant was their attorney of record, who probably had a similar Power of Attorney referred to in this matter. In my view, the importance of the judgment*

T.J

*creditors bringing the application against RAF in their personal capacities, is their entitlement or right to prompt direct payment within the period prescribed in the Road Accident Fund Act 56 of 1996. In the Koekemoer matter the RAF was able to convince the court to allow for a period of investigation to precede payment to the claimants. Albeit in my view, as probably is the case in this application this process of investigation had the potential of prejudice, to those claimants who were not tainted by fraud or duplicate payments and further prejudice in that a system of payment which has no legality presently is being foisted upon them.*

*[28] Again, in the matter of RAF v ABSA Bank Limited and Another case number 52865/2020, Fourie J considered the issue of non-joinder of the third parties in particular, the claimants. The court found that the applicant was aware of the joinder requirement but, had conveniently opted not to comply with it. The court was not in favour of granting a rule nisi to have this lacuna fulfilled because there was more at stake to the prejudice of the claimants. Opportunity was given to the RAF, to launch a fresh application and to cite third parties who would be affected by the order.*

*[29] According to Mr Lazarus the applicants had demonstrated that they had a substantial interest in the order, hence the launch of the application on behalf of their clients. I do not find that such direct and substantial interest, in their capacity as attorneys for the judgment creditors had been established or properly articulated. Alternatively, a further complication is that no confirmatory affidavits from the judgment creditors have been obtained and annexed to the papers. In as much as I would have wanted to deal with the entire application, however, having come to this conclusion I find that it is no longer necessary to deal with the issue of contempt of the order of 14 December 2020, as doing so would render the exercise superfluous and of no consequence. I rely on what was stated in Four Wheel Drive Accessory Distributors Cc v Leshni Rattan N.O 2019(3) SA 451 (SCA) where the following was stated at paragraph 19:*

> *'The court a quo was thus correct in holding that the plaintiff did not prove that it bore any risk in respect of the Discovery. It did not prove an interest in the litigation and consequently, failed to establish locus standi. The court also rightly found that no contract came into being because there was no consensus regarding the terms (and nature) of the agreement. That should have been the end of the matter. Indeed, the court held that the failure to prove locus standi was dipositive of the entire action.'"*[6]

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[6] *Khorommbi Mabuli Incorporated v Road Accident Fund and Others* [2021] ZAGPPHC 162 (12 March 2021).

TJ

[12] None of the individual claimants, who are all judgment creditors against the RAF, and who have a direct and substantial interest in the outcome of this application, have been joined in this contempt application. In this regard I am in agreement with the submission that the applicant does not have the necessary *locus standi* to bring the application on behalf of the judgment creditors and the application for contempt against the 1st, 2nd, 3rd and 4th respondents should be dismissed on this ground alone.

[13] Even if I am wrong on this point, the applicant has not made out a case for contempt of court against any of the 1st to 4th respondents. I will, despite the fact that I am in agreement with the submission that the applicant does not have the necessary *locus standi*, briefly deal with my reasons for concluding that the applicant has, in any event, not proven that any of the respondents are guilty of contempt of a court order.

**ABSA BANK**

[14] Before I turn to the contempt application in more detail, it is necessary to first deal with the position of ABSA Bank and Viljoen in respect of the contempt application against them. The applicant seeks an order declaring them to be in contempt of court of the order granted by the full bench on 9 April 2021.

[15] Apart from disputing the *locus standi* of the applicant to bring the contempt proceedings, ABSA Bank and Viljoen submitted that they ought not to have been joined as respondents to these proceedings and that the contempt proceedings brought against them constituted an abuse of court procedure. To this end they seek an order that the application be dismissed with costs on the scale of attorney and client as against the 3rd and 4th respondents.

[16] ABSA Bank explains at length in its papers the nature of the relationship between it and the RAF. It explains that it provides banking services to the RAF which holds various cheque accounts in ABSA Bank's books and that these cheque accounts are conducted on a credited basis only. In other words, there are no overdraft facilities available on the cheque accounts of the RAF in the books of ABSA Bank. This means that if there are no monies that stand to the credit of these accounts, then ABSA Bank

T.J

can make no payments therefrom. From 2017 up until October 2019, writs were frequently issued by judgment creditors against the RAF as judgment debtor and served on ABSA as a garnishee. ABSA and the RAF would then arrange payments and all writs were paid by ABSA to the Sheriff according to the case number served on ABSA.

[17] Since October/ November 2019 the RAF experienced severe cash constraints and was unable to pay the writs and since February 2020, an agreement between ABSA and the RAF was implemented to block or place an authority hold on the accounts which were attached by the Sheriffs of various bank accounts of the RAF and paid over to the Sheriff within 30 days after the attachments per individual case numbers.

[18] The applicant refers in its papers to the various writs upon which it relies in this application. But, instead of attaching these writs to the papers, the applicant only attaches a few returns of service (but not the actual writs).

[19] ABSA Bank submits that this omission makes it impossible for it to reply to the allegations levelled against it by the applicant and also makes it impossible to ascertain whether the writs relied upon (but not attached) are directed to all the relevant bank accounts or only at certain of the bank accounts held by the RAF in ABSA Bank's books.

[20] In a letter dated 13 May 2021 (addressed by the applicant's attorneys and addressed to ABSA Bank), the applicant confirms that numerous writs were issued against ABSA Bank during the last 12 months but only attaches the returns of service from the Sheriff in respect of these writs. The applicant then demands that ABSA Bank freeze the account of the RAF failing which it will bring a contempt application against it and seek punitive costs orders against both ABSA Bank and the RAF.

[21] I am in agreement with the submission that the served writs cannot remain as a continuing attachment on the bank account (in other words by freezing the account). The process that must be followed is the process of an emoluments order but the RAF

T.J

does not owe ABSA any money on a continued basis to qualify for an emoluments order.

[22] ABSA Bank further reiterates that it can only apply with a writ served on it when there are funds which stand to the credit of the account of the RAF. Except for the amount of R 8 166.50, which was available and is due to the credit of the account of the RAF on 18 September 2020, and which was paid over against the writ under case number 990/2015, all the other writs were returned as a "*no attachment*" return.

[23] The joining of ABSA Bank to these proceedings is misplaced. Not only did the order of the full court granted on 9 April 2021 not order ABSA Bank to do anything or to make any payments, ABSA Bank only manages the RAF's accounts and can only pay out monies over to the Sheriff with regard to judgment creditors' writs if there are funds available in these accounts to the credit of the RAF's account in terms of the provisions of Rule 45(5) and 45(12) of the Uniform Rules of Court dealing with garnishee orders.

[24] Regarding Viljoen: He has no interest and/or responsibility whatsoever in respect of this process. Also, no court order, this application, nor any of the writs relied upon by the applicant, have ever been served on Viljoen personally or at all. In fact, it would appear that the order was served on a one "A Swanepoel". This is fatal as it is well-known that a contempt of court application must be served personally on a respondent.

[25] Viljoen therefore has no knowledge of any wrongfulness. The applicant seems to rely on two email addresses as service upon Viljoen. The first email address is non-existent and he denies having received the second one. Also, Viljoen is the manager of the Centurion Branch of ABSA Bank. He does not manage nor oversee the account of the RAF which falls under a Special Public Sector Department. Moreover, the physical cheque accounts fall under the *domicilium* branch of the Menlyn Branch which also do not fall under his control.

T.J

[26] The onus rests squarely on the applicant to prove that ABSA Bank and Viljoen maliciously and intentionally failed to adhere to a court order that ordered them to perform a specific act or to refrain from performing a specific act. The applicant placed no such facts before the court and as already pointed out, the order of the full bench is in any event not applicable to these two respondents. The contempt application against both ABSA Bank and Viljoen is accordingly dismissed.

[27] Regarding the issue of costs, this is clearly a matter where a costs order on a punitive scale is warranted. Neither ABSA Bank nor Viljoen should have been joined as a respondent to this contempt of court application: They are not party to disputes between the RAF and the claimants and they are also not interested parties.

[28] ABSA Bank had afforded the applicant an opportunity to withdraw this contempt of court application against ABSA Bank and Viljoen with each party to pay its own costs. This offer was rejected by the applicant. This application against these two respondents is frivolous and vexatious and therefore warrants sanction from this court.

[29] In the event, the application for contempt brought against the 3rd and 4th respondents is dismissed with costs on an attorney and client scale such costs to include the costs consequent upon the employment of senior counsel.

**VARIOUS POINTS RAISED**

*The merits of the contempt application and the counter-application*

[30] The merits of the contempt of court application and the RAF's and the CEO's response to the contempt application are intertwined and will be dealt with together.

[31] More specific to the contempt application, it must be emphasised that, in the present matter, the primary order that the applicant prays for in its Notice of Motion is for an order for the committal of the CEO of the RAF (I have already dismissed the application against Viljoen and ABSA Bank.)

T.J

[32] The Constitutional Court *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited*[7] highlighted the far-reaching consequences of being found guilty of contempt of a court order in that such a finding may constitute a criminal offence:

> *"[50] It is important to note that it 'is a crime unlawfully and intentionally to disobey a court order'. The crime of contempt of court is said to be a 'blunt instrument'.Because of this, '(w)ilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence'. Simply put, all contempt of court, even civil contempt, may be punishable as a crime. The clarification is important because it dispels any notion that the distinction between civil and criminal contempt of court is that the latter is a crime, and the former is not."*

[33] In respect of the standard of proof the Constitutional Court made clear that it is the criminal standard of proof namely beyond a reasonable doubt:

> *"[60] In relation to the proper standard of proof applicable in contempt of court proceedings, there are divergent views on which further reflection and clarity are necessary. One view is that the criminal standard of proof –beyond reasonable doubt –applies always. The other view is that the standard of proof is not always of a criminal standard. The minority in Fakie hinted that the material difficulty in separating coercive/remedial orders of imprisonment made in civil contempt proceedings from punitive orders is a challenge which recurs in judgments in many jurisdictions. It opined, and this is endorsed in Pheko II, that the extension of the criminal standard in civil proceedings would have harmful consequences. In the following discussion I reference Fakie more extensively because it is an instructive judgment in which Cameron JA has ably outlined the law on contempt and how courts have dealt with it."*

[34] Returning to the merits of this application,firstly: What are the requirements for a finding of contempt of court and secondly, has the criminal standard of proof – beyond reasonable doubt – been satisfied in this matter? As already pointed out, because the primary relief sought is committal, the criminal standard of proof applies. The Constitutional Court in *Matjhabeng* confirmed that the requirements are –

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[7] 2018 (1) SA 1 (CC).

T.J

*"(a) the existence of the order; (b) the order must be duly served on, or brought to the notice of, the alleged contemnor ; (c) there must be non-compliance with the order; and (d) the non-compliance must be wilful and mala fide".*[8]

[35] At issue in this application is whether the non-compliance of the order was wilful and *mala fide.* The Supreme Court of Appeal in *Fakie NO v CCII Systems (Pty) Ltd*[9] explains what this means:

*"[9] The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).*

*[10] These requirements - that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent."*

[36] As already mentioned, the applicant relies on the decision of the full bench and submits that the refusal of the RAF to compensate claimants displays a "*flagrant disregard and contentious attitude to award the order*" of that court. The applicant claims that the RAF is indebted to 42 of its clients in the amount of R 11 732 000.82 which amount is now due and payable to the claimants to be paid into the trust account of the applicant. Furthermore, the said amounts have been outstanding for a period of more than 180 days from the date of the order of the full bench. The applicant states that it has written several letters to the RAF requesting reasons as to why

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[8] *Ibid* at para 73.
[9] 2006 (4) SA 326 (SCA).

T.J

payments were not forthcoming. The applicant argues that if the relief of payments is not granted, the judgment creditors will be left without any remedy and will be subject to the mercy of the RAF. This, the applicant submits, is a *"recipe for big trouble"*.

[37] In its answering affidavit (which also serves as the founding affidavit in the counter-application), the RAF states that, on 3 February 2021, the RAF informed the applicant (the respondent in the counter-application) that it had handed over the applicant to its Forensic Investigations Department (FID). The applicant has therefore known since February 2021 that payment to its trust account was suspended pending the outcome of an investigation into a suspicion of serious impropriety which decision has not been overturned. In this regard, the RAF submitted that it has a constitutional obligation to suspend payment to a trust account where there is a suspicion of serious impropriety in order to safeguard the RAF Fuel Levy. The RAF points out that its FID has identified various possible irregularities in respect of Bills of Costs submitted by the applicant and explains that this process could not have been completed earlier because the FID is a small department which is currently involved in the re-investigation of over 350 matters that were litigated and settled to determine whether there was a stratagem against the RAF on a massive scale to defraud. Some of the members of this department have also been infected with Covid-19 which resulted in the department having to quarantine.

[38] Attached to the papers of the RAF is a confirmatory affidavit by a member of the RAF's FID in which the following preliminary findings are confirmed –

> *"21.1 Bills of Costs taxed at Thohoyandou have identical items on the bills despite the fact that it was drawn for different claimants and related different accidents;*
> *21.2 On one of the Bills the court order states that the matter is removed from the roll by agreement between the parties and no order as to costs was made. Despite the said court order bill was drawn and taxed;*
> *21.3 Another item of concern is where the attorney appears as counsel and charges excessively high amounts for attending roll call, postponements and removals. In some instances, the attorney charged a full day fee for his appearance;*

TJ

*21.4 Where counsel is briefed the attorney charges a day fee as well as travelling time and travelling disbursements, the attorney would also charge travelling time as well as travelling disbursements;*

*21.5 The team has further noted with concern that counsel charges and is awarded the day fee for attending roll call;*

*21.6 Usually the role of the corresponding attorney appointed is to act as a postbox and should only identify documents. This is however not the case with the correspondent attorneys appointed by the firm. On the day of trial, the instructing attorney, corresponding attorney as well as counsel attend court and all of them charge day fees;*

*21.7 It was further noted that counsel that is briefed in some of this matter is not at the seat of the court;*

*21.8 None of the Thohoyandou bills has a Rule 70 certificate attached which is required in terms of the rules'*

*21.9 We have also noted on one of the bills that the trial date as per the bill differs from counsel's invoice;*

*21.10 The bills have been provisionally analysed, and the First Respondent's FID established trends and patterns on bills receive for payment from other attorneys from the same area that were already under investigation. The First Respondent's FID established possible fraud based on the number of line items claimed on the same day."*

[39] The RAF points out that the investigation is still ongoing and further information supporting or disproving suspicions of impropriety is being collected as soon as possible. Under these circumstances, the RAF cannot make payment to the applicant's trust account until completion of the investigations. Should payment not be suspended, the applicant will continue to receive public funds into its trust account possibly leading to misappropriation, misuse or irregular spending. The RAF acknowledges that it is an unfortunate, but unavoidable, consequence of the RAF's suspension of payment to the applicant's trust account that third parties' (such as the claimants) rights will be impacted but submits that this consequence should be weighed up against its constitutional obligations to safeguard the RAF Fuel Levy.

[40] Returning to the issue of contempt: In order to succeed with its application, the applicant must show, *inter alia*, that the RAF, although it is in a position to make

T.J

payment to the applicant's trust account, may do so without contravening the provisions of the Public Finance Management Act[10] (PFMA) and in circumstances where the RAF is constitutionally obliged to put measures in place to safeguard its "*available resources*" against fruitless and wasteful expenditure.[11] The applicant must further prove that the RAF acted wilful and *mala fide* in suspending payment to the applicant's trust account in circumstances where the applicant is under investigation for suspicion of serious impropriety.

[41] I am not persuaded that the applicant has been able to do so. The court cannot ignore the constitutional duties imposed upon the RAF as well as the duties imposed on the RAF in terms of the provisions of the PFMA to guard against fruitless and wasteful expenditure –particularly in respect of the administration of the RAF's Fuel Levy. The RAF has also placed *prima facie* evidence of possible impropriety identified by its FID systems. This cannot be ignored and in light of this, I am not persuaded that the RAF (or its CEO) is in wilful and *mala fide* disregard of an order of this court.

[42] In the event, the application for contempt against the first and second respondents is dismissed. As in the case of the third and fourth respondents, I am likewise exercising my discretion to dismiss the application with costs on an attorney and client scale including the costs consequent upon the employment of three counsel.

**THE COUNTER-APPLICATION**

[43] The applicant submitted that the counter-application should be dismissed in light of the judgment of the full bench that ordered that all writs of execution and attachments against the RAF based on court orders already granted or settlements already reached in terms of the RAF Act were suspended until 30 April 2021. Beyond

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[10] 1 of 1999.

[11] See, *inter alia,* section 50 of the PFMA which provides for the fiduciary duties of accounting authorities: (1) The accounting authority for a public entity must–

*(a)* exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;

*(b)* act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;"

See also sections 51, 57, 81 and 83 of the PFMA where similar obligations are placed on the accounting authority of a public entity to guard against irregular, fruitless and wasteful expenditure.

TJ

30 April 2021 the RAF therefore has no further protection against execution in respect of orders older than 180 days.

[44] The applicant submitted that the judgment of the full bench left no room for any exceptions to its order. I do not read the judgment of the full court as constituting an obstacle against bringing the present counter-application to further suspend writs of execution and warrants of attachment after 30 April 2021. In my view, the door is left open by the full bench for the RAF to, on a case by case basis, approach the court if it has *valid grounds* to seek an order for a (further) suspension. The full bench held as follows:

> *"[39] I have referred to the objections raised by attorneys acting on behalf clients who are successful claimants against the RAF. I do not believe that payments should be withheld from successful claimants because of a dispute between the RAF and the attorneys acting for them, or pending the repayment of double payments by attorneys. Such exceptions may cause undue hardship on and be unfair to successful claimants. In such instances, the RAF should approach the court, on a case-by-case basis, if it believes or is advised that it has valid grounds to obtain an order suspending writs of execution and warrants of attachment against it. The order which we propose to make, therefore, does not provide for any exceptions. The RAF, as it undertook to do, must pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement, on or before 30 April 2021, provided it has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021."*[12]

[45] I am further in agreement with the RAF's submission that this court can urgently intervene in terms of, *inter alia*, sections 39(2) and 173 of the Constitution to prevent a constitutional crisis and to prevent potential contraventions of the PFMA. If it were to continue with payments into the applicant's trust account in circumstances where the applicant is under investigation for possible serious impropriety, such payments would be unlawful, invalid and unconstitutional. I am further in agreement that, in the

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[12] My emphasis.

I-J

present circumstances, the RAF should be granted the order sought to suspend further execution to ensure it safeguards the RAF's Fuel Levy against suspicion of serious impropriety.

[46] On 18 April 2021 a letter entitled "DUPLICATE PAYMENTS AND CRIMINAL INVESTIGATIONS" was dispatched to all current firms of attorneys that are under investigation for suspicion of serious impropriety. On 7 May 2021 the RAF's attorneys sent a letter to the applicant in terms of which it is stated that –

> *"Your client has not been cleared for payment because of an ongoing investigation by the Forensic Investigation Department, as referred to in our client's answering affidavit in the urgent application proceedings your client launch against the RAF a few months ago. We will let you know as soon as your client is cleared for payment."*

[47] On 10 May 2021, the applicant's attorneys sent a letter to the RAF stating, *inter alia,* that they failed to understand on what basis the RAF is refusing to pay their client on the basis of a purported investigation. The attorneys further stated that it is common cause that their client (the applicant in this matter) has already repaid the duplicate payments it had received and accordingly that payment must be resumed. Payments should accordingly not be withheld from successful claimants because of an ongoing dispute between the RAF and the attorneys representing the claimants. The RAF and the CEO of the RAF are further advised that the applicant intends launching an urgent contempt of court application against both the CEO and the RAF *"who are clearly persistent in portraying a contentious attitude and flagrant disregard" of court orders "and who are hell bent on destroying our Constitutional Democracy and the independence of the judiciary.".*

[48] The RAF submitted that it is clear from this letter, as well as from further letters subsequently sent to the RAF, that it has no alternative but to approach the court urgently and suspend payment to the trust account of the applicant pending the outcome of the investigation into the alleged irregularities. In as far as it is necessary to pronounce on the issue of urgency, I am persuaded that the counter-application is urgent.

***PRIMA FACIE* RIGHT**

[49] I am persuaded that the RAF has a *prima facie* right to the order sought particularly in circumstances where there is a suspicion of impropriety. Although the applicant has repaid duplicate payments, the firm is still under investigation. Any attempt to further execute after 30 April 2021 against the RAF's assets in such circumstances amounts to an attempt to circumvent the RAF systems to safeguard the RAF's Fuel Levy against unconstitutional conduct. In this regard I agree with the sentiments expressed by Fisher J in *Taylor v Road Accident Fund and a related matter*:[13]

> ***"Conclusion***
>
> *[131] While De Broglio might believe that it has served the interests of its clients and itself in achieving a settlement agreement for a grossly inflated amount in circumstances where it has avoided this court's jurisdiction, in fact it has placed them in jeopardy. To the extent that the settlements are unconstitutional they are unenforceable. And if payment is made pursuant thereto this would constitute irregular expenditure by the RAF and potentially make those approving such payments vulnerable to personal scrutiny by the courts. The RAF is a public entity, as contemplated in part A of sch 3 to the Public Finance Management Act ("PFMA") and is therefore subject to the onerous prescripts relating to public expenditure set out in the PFMA. Thus, without further collusion by the RAF in relation to payment, the settlements are, in effect, worthless."*

**REASONABLE APPREHENSION OF HARM**

[50] I am in agreement that should the order not be granted, the RAF will lose the progress it has made since the implementation of systems to safeguard the RAF Fuel Levy against, *inter alia*, wasteful expenses. Should the process of attachment be allowed to continue in circumstances where there exists suspicion of impropriety especially in respect of a trust account, the administration of the RAF in attending to and paying out claims to claimants, will be severely hampered. I am thus persuaded that the RAF will suffer irreparable harm should the interim order not be granted.

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[13] 2021 (2) SA 618 (GJ).

T.J

**BALANCE OF CONVENIENCE**

[51] I have considered the plight of the applicant's clients. It is indeed unfortunate that the individual claimants again have to bear the brunt of serious failings not only on the part of the RAF but on the part of their attorneys. This is indeed unfortunate. On the other hand, this court cannot lose sight of the importance of resolving existing disputes regarding improper conduct on the part of attorneys' firms whereafter the payment to claimants will be restored. As already pointed out, the court cannot lose sight of the fact that the RAF has a constitutional obligation to safeguard the RAF Fuel Levy and to ensure proper administration and oversight of claims lodged with the RAF.

[52] To ameliorate the harm that a claimant may suffer as a result of this court's order, I have imposed a stricter time limit for the finalisation of the investigation proposed by the RAF in the Notice of Motion in the counter-application.

**NO ALTERNATIVE RELIEF**

[53] I am in agreement that the RAF has no other alternative remedy but to seek urgent interim relief in circumstances where the measure of protection that was afforded by the full court no longer exists.

**COSTS**

[54] I have exercised my discretion to grant the counter-application with costs on an attorney and client scale. In exercising my discretion, I have also taken into account the fact that the papers of the applicant are replete with serious and scandalous allegations against the RAF and its CEO. The applicant, *inter alia*, states that the RAF has a "*vendetta*" against it and that it is the RAF's "*modus operandi to silence those who do not agree with it by posing threats of spurious and endless investigations to delay an or avoid payment or frustrate the implementation of Court orders against it*". The RAF is also accused of being involved in "*dirty and selective payment dealings*" and that the refusal to pay is "*designated to frustrate the applicant to a point of misery*". The RAF denies these allegations and denies in particular the allegation that the suspension of payment is for "*malicious and illegitimate reasons*" and states that it does not "*willy-nilly*" (as claimed by the applicant) suspend payments to an attorney's trust account but does so when there is suspicion of impropriety. Then, in reply, Mr.

T.J

Lazarus launched an astonishing personal attack on the CEO. He, *inter alia*, accused the CEO of having lied under oath. This is conduct unbecoming of an officer of this court.

**COURT ORDER: CONTEMPT APPLICATION**

[55] In the event, the following order is made:

1. The application for contempt brought against the first and second respondents is dismissed with costs on an attorney and client scale including the costs consequent upon the employment of three counsel.

2. The application for contempt brought against the third and fourth respondents is dismissed with costs on an attorney and client scale such costs to include the costs consequent upon the employment of senior counsel.

**COURT ORDER: COUNTER-APPLICATION**

[56] In the event, the following order is made:

i. A *rule nisi* is issued calling upon the respondent (the applicant in the contempt of court application) and any other interested parties to show cause, if any, to this court on 6 July 2021 at 10H00, why the following order should not be made final:

1.1 Any writ of execution based upon a court order that compels the Applicant (the Road Accident Fund) to make payment to a trust account of the respondent or any attachment pursuant thereto is immediately suspended in terms of Section 173 of the Constitution, alternatively Rule 45A of the Uniform Rules of Court and set aside pending:

T.J

1.1.1 The finalization of an application to be brought by the Applicant within 30[14] days of the date of this Court's order in which application the Applicant will seek just and equitable relief, alternatively,

1.1.2 Pending the finalisation of the Applicant's investigation to be finalized within 30 days from the date of this Court's order.

2. That the order sought under paragraphs 1 to 1.1.2 shall operate as an interim order, with immediate effect, pending the confirmation or discharge of the *rule nisi*.

3. That the Applicant be granted leave to publish this order by publication in two national newspapers.

4. That the Applicant's costs of this application are to be paid by the respondent, Khorommbi Mabuli Incorporated, on an attorney and client scale including the costs consequent upon the employment of three counsel.

**AC BASSON**
**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**
***Electronically generated and therefor unsigned***

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 11 June 2021.

[14] I have also reduced the time period stipulated in the Notice of Motion for the institution of a further application.

TJ

**APPEARANCES**

| | |
|---|---|
| For the Applicant: | MR. J LAZARUS (ATTORNEY) |
| Instructed by: | SHAPIRO & LEDWABA INCORPORATED |
| For the 1st & 2nd Respondent: | ADV. C PUCKRIN SC<br>ADV. R SCHOEMAN<br>ADV. P NYAPHOLI-MOTSIE |
| Instructed by: | MALATJI & CO INCORPORATED |
| For the 3rd Respondent: | ADV. DJ JOUBERT SC |
| Instructed by: | TIM DU TOIT & CO INCORPORATED |
| Date of hearing: | 3 June 2021 (Virtual hearing) |
| Date of judgment: | 11 June 2021 |

T.J

"RAF 5"

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 24217/21

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 27 August 2021 E van der Schyff

In the matter between:

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| KHOROMMBI MABULI INC | APPLICANT |
| and | |
| ROAD ACCIDENT FUND | FIRST RESPONDENT |
| COLLINS PHUTJANE LETSOALO | SECOND RESPONDENT |
| ABSA BANK (PTY) LTD | THIRD RESPONDENT |
| WILJOEN GAVIN | FOURTH RESPONDENT |
| SHOKENG EMILY DLAMINI | FIFTH RESPONDENT |

JUDGMENT

Van der Schyff J

F J

**Introduction**

[1] During May 2021, the applicant instituted an application against *inter alia* the first and second respondents for contempt of court. The first and second respondents ('the respondents' or 'the RAF') filed a counter application. In the counter application, the RAF sought interim relief with immediate effect. On 11 June 2021, Basson J dismissed the application for contempt of court and granted the RAF interim relief in the form of a rule *nisi.* The RAF complied with the requirements for the confirmation of the rule *nisi.* The court order was advertised in accordance with the directions of the order. The applicant filed a supplementary affidavit. Attached to it was an application to the Constitutional Court for direct access to appeal the judgment of Basson J. Although the applicant and the RAF differ as to whether this court needs to consider the documents filed regarding the applicant's application to the Constitutional Court, they agree that the application is pending. The application to the Constitutional Court does not include an appeal against the rule *nisi.* On 6 July 2021, the rule *nisi* was extended to 23 August 2021. Costs were reserved.

[2] The respondents now seek confirmation of the rule *nisi.* The applicant requests that the rule *nisi* be discharged with a punitive costs order.

**The rule *nisi***

[3] Basson J granted the order in the following terms:

> '1. A *rule nisi* is issued calling upon the respondent (the applicant in the contempt of court application) and any interested parties to show cause, if any, to this court on 6 July 2021 at 10h00, why the following order should not be made final:
>
> 1.1 Any writ of execution based upon a court order that compels the Applicant (the Road Accident Fund) to make payments to a trust account of the respondent or any attachment pursuant thereto is immediately suspended in terms of Section 173 of the Constitution,



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alternatively Rule 45A of the Uniform Rules of Court and set aside pending:

1.1.1 The finalisation of an application brought by the Applicant within 30 days of the date of this Court's Order in which application the Applicant will seek just and equitable relief, alternatively

1.1.2 Pending the finalisation of the Applicant's investigation to be finalised within 30 days from the date of this Court's order.

2. That the order sought under paragraphs 1 to 1.1.2 shall operate as an interim order, with immediate effect, pending the confirmation or discharge of the *rule nisi.*

3. That the applicant be granted leave to publish this order by publication in two national newspapers.'

[4] The rule *nisi* in question was not granted without the court having been fully informed of the applicant's case. Counsel for the RAF submitted that the rule *nisi* was granted by Basson J after she considered the facts that are also before this court. He conceded, however, that a court seized with considering whether to discharge or confirm a rule *nisi* is entitled to revisit the issues *de novo* and afresh on the return date.

**The parties' respective cases**

[5] The RAF's case, in short, is that after the Full Court's judgment in *Road Accident Fund v Legal Practice Council and Others* [2021] 2 All SA 886 (GP), a decision was taken to suspend all payments to the applicant's trust account. The applicant is under investigation by the RAF for possible irregularities in respect of Bills of Costs. The RAF's FID system established possible fraud. As a result, the RAF contends that any payments to the applicant's trust account would be unlawful, invalid, and unconstitutional. The RAF is constitutionally obliged to put measures in place to safeguard its available resources against fruitless and wasteful expenditure,



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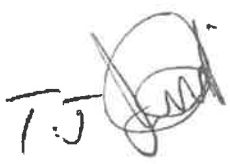
contraventions of the Public Finance Management Act, 1 of 1999, and suspicion of serious impropriety. The RAF claims that since the Full Court's judgment, *supra*, it has paid out substantial claims to several law firms in terms of court orders and settlement agreements as ordered by the court. During March 2021, 51 043 claims, and during April 2021, 25 158 claims were paid out. It also relates how its internal investigations have uncovered numerous instances of corruption and fraud. As a result, the RAF had to implement drastic measures to safeguard its system. The decision was thus taken to suspend payment to specific law firms until investigations into suspicion of serious impropriety are completed.

[6] The applicant's case is that the RAF is shifting the goalposts and that the decision not to pay the applicant's clients' claims out to the applicant's trust account is irregular. Basson J already held that the suspension of the payments does not constitute contempt of court, and I need not revisit that issue. For purposes of this application, it is significant that the RAF informed the applicant that it was not cleared for payment because of an ongoing investigation by the FID, by at least 7 May 2021. The applicant states that it was perplexed by the RAF's decision because it repaid duplicate payments received from the first respondent in the past and expected payment to resume. The applicant claims that the RAF did not make out a *prima facie* case that it is entitled to suspend the payments because the applicant's clients' claims are entrenched in court orders. In addition, the applicant avers that the RAF's decision to suspend payment to it is an administrative decision that cannot take preference over the Full Court's order. The applicant claims that the 30 day-period provided in the rule *nisi* for the RAF investigation to be completed, has lapsed.

**Discussion**

[7] In deciding this application, it is necessary to reflect on the nature of the application. The RAF approached the court for interim relief. RAF seeks an order suspending any writ of execution based upon a court order that compels it to make payments to the applicant's trust account or any attachment pursuant thereto. The RAF was





prompted to launch the application because the applicant threatened to execute the orders obtained.

[8] It is also necessary to consider what this application does not entail. It is not a review application to set aside the RAF's decision to suspend payment pending the finalisation of the investigation alluded to in the papers. The nature of the application and the relief sought, impact on the importance and relevance of the fact that the RAF made allegations of possible fraud and impropriety without attaching supportive documentation to their affidavit, and the RAF's subsequent explanation that the investigation is sensitive and that details will be revealed upon finalisation.

[9] As to whether an administrative decision can trump a court order, I am of the view that the question is simplistic and one-dimensional and, therefore, does not address the true issue. It is trite that a party cannot unilaterally decide not to comply with a court order. However, *in casu*, the Full Court recognised a situation might arise for the RAF of necessity not to consider paying out historic claims. The court expressed the view that such claims had to be dealt with on a case-by-case basis. And this is what the RAF did – it approached the court for relief in one of the matters where investigation revealed the possible existence of impropriety that exceeds the mere receipt of double payment.

[10] Mr. Lazarus, who appeared for the applicant, submitted that the 30-day period within which the RAF was to finalise their investigation, as provided for in the rule *nisi*, has lapsed. Counsel for the respondents submitted that the only effect of the rule *nisi* was to provide for the suspension of payment pending the return date, and that the obligation to finalise the investigation against the applicant 'within 30 days' would only commence once the rule *nisi* was confirmed. The rule *nisi* was granted to allow interested and affected parties to advance any objection against the order being made final while keeping the imminent threat of execution at bay. I agree with the respondents that the order only becomes final once confirmed. The 30-day period will start to run once the order is confirmed.



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[11] Due to the nature of the application and the relief sought, the respondents are not required to establish their right to the relief on a balance of probabilities. It is sufficient if they show that such a right is *prima facie* established, although open to some doubt- *Webster v Mitchell* 1948 (1) SA 1186 (W). In *Reckitt & Coleman SA (Pty) Ltd v SC Johnson & Son (SA) (Pty) Ltd* 1995 (1) SA 725 (T) 7291I-730G, the factors which must be taken into account when a court considers an application for interim relief, were summarised as follow:

'The applicant seeks interim relief. The applicant must therefore establish:

i. A clear right or, if not clear, that it has a *prima facie* right;
ii. That there is a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief ... is eventually granted;
iii. That the balance of convenience favours the grant of an interim interdict; and
iv. That the applicant has no other satisfactory remedy.'

[12] The nature of the relief sought is temporary. The RAF desires to finalise its investigation due to the suspicion that the applicant may have made itself guilty of serious impropriety. The RAF's right to approach this court is embedded in its statutory duty to administer and safeguard the RAF's Fuel Levy. The RAF listed the issues that led to the concern and the investigation regarding the applicant. Although the specific cases wherein the applicant acted on behalf of claimants that are being investigated, are not identified, the court has to consider (i) that the applicant did not take the RAF on review to have the decision to suspend payment set aside, and (ii) that the RAF has paid out a significant number of claims since the Full Court granted its judgment. The facts before me support a finding that the RAF follows a cautionary approach to ensure that corruption and wasteful spending are prevented, or at least curtailed. It is not indicative of a hesitancy to comply with the Full Court's order. There is no indication on the facts that the RAF is acting with an ulterior motive as submitted by the applicant.

[13] The RAF has satisfied me that there is a well-grounded apprehension of irreparable harm if the order is not granted. Should a process of attachment be allowed, the



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RAF's administration will be adversely affected. It will have a ripple effect on the RAF's ability to pay out claims in terms of the Full Court's order, and reverse the progress made since the Full Court's order was granted.

[14] The public interest requires the safeguarding of the RAF Fuel Levies. It is likewise in the public interest that the payment system through which thousands of victims of motor vehicle accidents were compensated since March 2021, be preserved. It is to the advantage of the applicant's clients that any impropriety that may exist concerning the levy of fees be sorted out because it will directly impact the amounts they eventually receive. It is thus significant that none of the applicant's clients, who are presumably the parties who are negatively affected by the order, oppose the confirmation of the rule *nisi*.

[15] The relief sought by the RAF is temporary. The RAF indicated to the Full Court that its investigation would have been completed during May 2020. New concerns arose subsequent to the Full Court's order being handed down, and a limited extension of time to provide the RAF to complete its investigation will not prejudice the applicant. In circumstances where the RAF's decision was not taken on review in a quest to set it aside, and the confirmation of the order is not opposed by any other affected party, the balance of convenience favours the RAF.

[16] I agree with the respondents that no alternative remedy but to seek interim relief exists, in circumstances where the measure of protection that the Full Court afforded no longer exists.

[17] The general principle of costs following the result finds application. As for the costs incurred on 6 July 2021, the order reflects that the parties agreed to address a letter to the Deputy Judge President for an urgent special allocation. The respondents' practice note uploaded on 26 July 2021 reflects that Tolmay J directed the parties to approach the Deputy Judge President for a special allocation due to the voluminous nature of the papers. There is no justification for awarding costs to any party in regard to the 6 July 2021 hearing.



T.J

**ORDER**

In the result, the following order is made:

1. The *rule nisi* issued by Basson J, on 11 June 2021, and extended by Tolmay J on 6 July 2021, in case number 24217/2021, is confirmed.

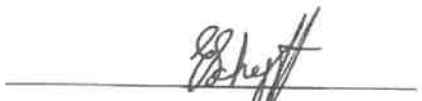
2. Any writ of execution based upon a court order that compels the Road Accident Fund to make payments to a trust account of Khorommbi Mabuli Inc., or any attachment pursuant thereto is immediately suspended in terms of Section 173 of the Constitution, alternatively Rule 45A of the Uniform Rules of Court and is set aside pending:

   2.1. The finalisation of an application brought by the Road Accident Fund within 30 days of the date of this Court's Order in which application the Road Accident Fund will seek just and equitable relief, alternatively

   2.2. Pending the finalisation of the Road Accident Fund's investigation to be finalised within 30 days from the date of this Court's order.

3. Khorommbi Mabuli Inc. is to pay the costs of the application, including the costs of two counsel, except for the costs reserved on 6 July 2021.

4. Each party is to pay its own costs in regard to the hearing of 6 July 2021.



E van der Schyff

Judge of the High Court, Gauteng, Pretoria

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 27 August 2021.

For the applicant: Mr. J. Lazarus



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| Instructed by: | Shapiro & Ledwaba Inc. |
| Counsel for the first and second respondents: | Adv. R. Schoeman |
| With | Adv. P Nyapholi-Motsie |
| Instructed by: | Malatji & Co Inc. |
| Date of the hearing: | 23 August 2021 |
| Date of judgment: | 27 August 2021 |



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