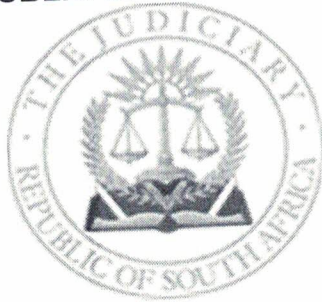
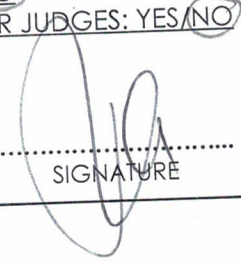


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 060951/2023

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	<u>REVISED.</u>
<u>26 June 2023</u> DATE	
 SIGNATURE	

In the matter between:

ROAD ACCIDENT FUND

Applicant

And

FISHER MA N.O. ANA SAMUEL MARRIME

First Respondent

**THE SHERIFF OF THE HIGH COURT
FOR THE DISTRICT OF PRETORIA EAST**

Second Respondent

CASE NO: 061046/2023

ROAD ACCIDENT FUND

Applicant

And

POSHOLI MICHAEL SEBAKI

Applicant

**THE SHERIFF OF THE HIGH COURT
FOR THE DISTRICT OF PRETORIA EAST**

Respondent

JUDGMENT

MAKUME, J:

- [1] The Road Accident Fund in both matters seek an order on an urgent basis staying the writ of execution issued against it and to stay the sale of the goods attached by the sheriff in both matters. The sales in execution are to take place tomorrow the 27th June 2023.
- [2] The basis for a request to stay execution is that the first Respondents in both matters that is Mr Posholi in Case Number 23/061046 and Samuel Marrime in Case number 23/060951 are illegal immigrants in South Africa and are not entitled to receive compensation for injuries sustained in motor collision.

BACKGROUND FACTS

- [3] Mr Posholi a citizen of Lesotho was involved in an accident in the year 2009. His attorneys Raphael & David Smith Inc lodged a claim on his behalf with the Applicant for compensation.
- [4] It is common cause that the claim was settled and the Capital amount R684 000.00 was paid out by the Applicant during or about January 2019. Prior to that and on the 27th November 2018 the first Respondent costs were taxed and allowed in the sum of R283 745.01. That amount remains unpaid.

- [5] On the 28th March 2023 the Sheriff served a writ of execution and attached certain movable property of the Applicant.
- [6] On the 13th June 2019 the first Respondent attorneys filed a notice of sale in execution to take place tomorrow the 27th June 2023.
- [7] On the 23rd June 2023 the Applicant launched this application and had it served electronically on the Respondent calling on the Respondent to file their Answering Affidavits by 15h00 on Saturday the 24th June 2023 and to be at Court on Monday the 26th June 2023 at 10h00.
- [8] the first Respondent filed his Answering Affidavit on the morning of the 26th June 2023.
- [9] the background facts in the second matter being that of Samuel Marrime case number 2023/060951 are that he is a citizen of Mozambique he also was involved in an accident and his attorney lodged a claim with the Applicant on the 10th May 2018 and issued summons on 30th May 2019. The merits were settled on the 25th May 2022 and the Capital was paid.
- [10] A bill of costs was taxed and allowed in the amount of R628 958.01 which remains unpaid. As a result, on the 8th March 2023 the first Respondent attorneys had a writ of execution served on the Applicant in terms of which the Sheriff made an attachment of movables at the Applicants' premises.

[11] A date of sale of sale in execution was filed and served on the Applicants on the 13th June 2023. The sale in execution is destined to take place on Tuesday the 27th June 2023.

[12] I asked both Counsel to address me on the issue of urgency which they did although they also referred to the merits. In the view that I hold as regards urgency of these matters I deem it not necessary to delve into the merits of the application.

URGENCY

[13] An Applicant who approaches the Court on an urgent basis must make out a case for urgent relief on the papers in sufficient particularly, the affidavit in support of the application must contain the reasons for urgency and why urgent relief is necessary.

[14] In both matters the Applicant knew as far back as March 2023 about the attachment and that a day will come in which the sale in execution of their property will take place and yet they waited until Friday the 23rd June 2023 which is two Court days before the sale to bring this urgent application. Urgency is self-created.

[15] The Applicant in both matters has dealt with the issues of urgency in a flimsy and unconvincing manner. It is that should the sale of the assets take place the Applicant will not be in a position to conduct its daily business and that this will impact on a large number other claimants.

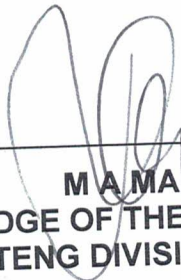
- [16] The Applicant does not explain how the sale will impact other claimants. In my view the Founding Affidavit in both matters are devoid of any explanation and reason for urgency.
- [17] Secondly the Applicant has failed to comply with the provisions of paragraph 9.2.4 of the Practice Directive in that it has not explained why this application could not have been set down last Tuesday the 20th June 2023. That Rule is specific it requires an Applicant who seek a hearing on an urgent basis to file papers by 12h00 on a Thursday for a hearing the next Tuesday.
- [18] The Applicant did not do that and chose its own restructure periods and time and giving the Respondent very little time to deal with the application.
- [19] On a question by the Court the Applicant indicated that it is able to pay the amounts claimed on condition the amount be held in Trust by the Sheriff pending the outcome of a full court decision about compensation to illegal persons in the Country.
- [20] The first Respondent is opposed to that and indicated that the attorneys have incurred disbursements however, should the full bench find in favour of the Applicant they as attorneys undertake to refund the money to the Applicant subject of course to their other legal rights.
- [21] The Applicant is in a financial position to pay the taxed cost and it should do so immediately in order to avoid the sale in execution of the property.

[22] the Applicant has failed to demonstrate that the two applications are urgent. In the result I make the following order:

ORDER

1. Both applications are struck off the roll for lack of urgency.
2. The Applicant is ordered to pay costs of both applications on an attorney and client scale.

Dated at Johannesburg on this 26 day of June 2023



M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

DATE OF HEARING	:	26 JUNE 2023
DATE OF JUDGMENT	:	26 JUNE 2023
FOR APPLICANT	:	ADV AMEERSINGH
INSTRUCTED BY	:	THE STATE ATTORNEY
FOR RESPONDENT	:	ADV JORGE
INSTRUCTED BY	:	RAPHAEL AND DAVID SMITH INC