

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



Case number: 097423/23

Date of hearing: 16 January 2024

Date delivered: 30 January 2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
30/1/24	
DATE	SIGNATURE

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

NEUNET PROPERTIES (PTY) LTD t/a

SUNSHINE HOSPITAL

First Respondent

THE SHERIFF, PRETORIA EAST

Second Respondent

JUDGMENT

SWANEPOEL J:

[1] Applicant seeks leave to appeal against my order of 23 November 2023, dismissing its application with costs on the attorney/client scale.

[2] The grounds for leave to appeal are fully set out in applicant's notice of application, and I do not intend to repeat the contents thereof. I have delivered a comprehensive judgment, and I also do not intend to deal with each averment afresh.

[3] However, two submissions made by applicant deserve attention. The first is that in a rule 45 A application such as this, the Court does not delve into the merits of the case. It only has to satisfy itself that there is a live dispute between the parties. Applicant contends that the Court in fact ruled on the merits of the case. The mere fact that applicant contends that there is a dispute between the parties is not, in my view, to be accepted on face value. A Court has to determine whether the dispute is real, and to do so, it has to consider, whether there is a real dispute, at least on a prima facie basis, without attempting to determine the merits of the dispute. That is what I attempted to do. Having considered the alleged dispute, I cannot find that there is a real dispute between the parties.

[4] In argument Mr. Rip SC, acting for the applicant, conceded that it may well be that many of the writs now sought to be stayed are perfectly in order, and that there was no irregularity in the respondent's claim. If that is so, then I cannot see any basis to staying all the writs on the mere suspicion that there may have been overcharging in other cases. Instead of adopting a shotgun approach, there is nothing prohibiting the applicant from investigating each claim individually, and seeking rescission of the judgments found to have been improperly taken, save that it is inconvenient for the applicant to do so. That is not a sufficient basis for the application.

[5] The second issue is that I incorrectly found that the report on which applicant bases its allegation that there has been widespread overcharging is hearsay. Applicant points out that, although the report contains an RAF letterhead, it is a report by the managed care administrator that investigated 29 claims lodged by respondent. Even if that were so, the author of the report is unknown, and there is no confirmatory affidavit confirming the contents, as Mr. Rip properly conceded. The value of the report is dubious, in my view. In any event, I re-iterate the point that even if there has been widespread overcharging, the RAF should properly investigate the claims and deal with each improper claim, and not simply seek to stay all writs, even those properly issued.

[6] I do not believe that another Court would come to a different finding, and consequently, I make the following order:

[6.1] The application is dismissed with costs on the attorney/client scale, including the cost of two counsel where so employed.



**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

COUNSEL FOR APPLICANT:

**Adv. M. Rip SC
Adv. T. Pillay
Adv. A Ngidi**

ATTORNEY FOR APPLICANT:

Malatji & Co

**COUNSEL FOR
FIRST RESPONDENT:**

**Adv. J. Cilliers SC
Adv. M van Rooyen**

**ATTORNEY FOR FIRST
RESPONDENT:**

Podbielski Mhlambi Inc

DATE HEARD:

16 January 2024

DATE OF JUDGMENT:

30 January 2024