



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

CASE NO: 2016/19982

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

E LABUSCHAGNE

DATE: 21 JULY 2023

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

RUELE, LISBETH

First Respondent

THE SHERIFF, PRETORIA EAST

Second Respondent

MALEPE ATTORNEYS

Third Respondent

THE LEGAL PRACTICE COUNCIL

Fourth Respondent

JUDGMENT

- [1] The RAF brought an urgent application seeking the suspension of a court order dated 15 February 2021 and all writs of execution issued pursuant thereto, pending the finalisation of an application to rescind the court order. The application further sought to interdict the second respondent from proceeding with the execution of a warrant of execution against the applicant's movable assets.
- [2] The urgency of the application lies in a sale of execution scheduled for 25 July 2023.
- [3] The suspension application is based on Rule 45A, read with section 173 of the Constitution. The Rule is invoked to stay court orders when substantial justice require such a stay or when injustice would otherwise be done if the order were to be enforced (**RAF v Strydom** 2001(1) SA 292 (C)).
- [4] The respondent obtained a judgment in this division under case number 19982/2016 before Basson J for payment of the amount of R5 368 308.00 in respect of loss of earnings. General damages had been settled in the amount of R500 000.00.
- [5] The aforesaid judgment was obtained by default. At the time that the generals were settled, the defendant also conceded the merits one hundred percent in favour of the plaintiff (the current first respondent).

- [6] The RAF brought an application to suspend the aforesaid order during 2021 and on 6 October 2021 an order was granted by Davis J, which order states in part:

“2. The operation and execution of the court order dated 15 February 2021, attached to this notice of motion as annexure RAF1, the warrant of execution dated 26 August 2021 attached to this notice of motion as annexure RAF2 and the warrant of execution dated 13 August 2021 is suspended, pending the institution of an application by the applicant to rescind the court order dated 15 February within 20 days of this order and the finalisation of the application.”

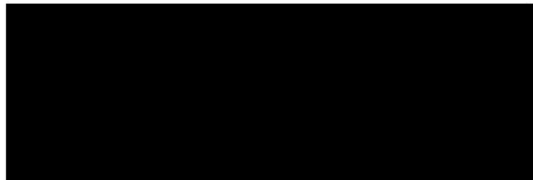
- [7] The next day Mr Malepe, the attorney for the first respondent proposed to the RAF that the matter be retried. On 1 November 2021 the RAF, in response to the request accepted the proposal and requested a Rule 42 abandonment of the judgment.
- [8] By virtue of the aforesaid agreement, the RAF did not proceed to bring the application to rescind the order of Basson J.
- [9] The agreement to retry the matter explains why there was no rescission application as envisaged in the order of Davis J and why there were no further execution steps from November 2021 until June 2023.

- [10] In the light of the scheduled sale in execution on 25 July 2023, this application is therefore in my assessment urgent. Mr Malepe is the third respondent in these proceedings. The first respondent has since appointed different attorneys. Mr Malepe has not filed papers disputing the contentions advanced on behalf of the RAF.
- [11] In June 2023, the RAF brought an application for rescission of the order of Basson J, which application is still pending. This urgent application was brought shortly thereafter seeking a suspension of the order pending finalisation of that rescission.
- [12] The RAF made its own assessment of the first respondent's claim for loss of earnings in anticipation of the retrial and paid her the amount of R2 156 050.00 on 21 September 2021.
- [13] The first respondent has therefore received payment from the RAF of approximately R2 656 050.00. As the parties had agreed to the retrial of the matter, the interests of justice favour the stay of the order of Basson J dated 15 February 2021 pending finalisation of the rescission of that judgment.
- [14] I am satisfied that the RAF has made out a case for the suspension. This is not an instance where the RAF has been supine and where a judgment debt has remained unpaid for a long time. The first respondent has already received a substantial amount of money. This is a consideration in favour of

the granting of the stay. To refuse the stay and to permit the sale in execution to proceed would amount to an injustice, on the facts as stated.

[15] I therefore make an order in the following terms:

1. The forms, service and time periods prescribed by the Uniform Rules of Court are dispensed with in terms of Rule 6(12) and the matter is heard on the basis of urgency.
2. The operation and execution of the court order dated 15 February 2021 under case number 19982/2016 and all writs of execution issued pursuant thereto are suspended pending the finalisation of the application brought by the applicant to rescind the court order dated 15 February 2021.
3. The second respondent is interdicted from proceeding with the execution of the warrants of execution against the applicant's movable assets.
4. The first and third respondents are directed to pay the costs of this application jointly and severally, the one paying the other to be absolved.



E. LABUSCHAGNE

**ACTING JUDGE OF THE HIGH
COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES

Applicant's Counsel: Adv. T Pillay

Instructed by: Malatji and Company Attorneys.

First and Third Respondent's Counsel: Adv. Malatji

Instructed by: Malepe Attorneys.