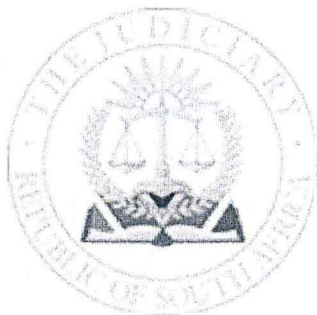




IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

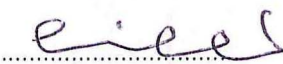
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(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED NO

DATE: 25 JULY 2022.....

SIGNATURE: 

Case No. 72939/2017

In the matter between:

THE ROAD ACCIDENT FUND

APPLICANT

And

LAUREN PLAATJIES

FIRST RESPONDENT

THE SHERIFF CAPE TOWN WEST

SECOND RESPONDENT

IN RE:

LAUREN PLAATJIES

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

MILLAR J

1. This is an application brought by the Road Accident Fund ('RAF') in order to stay the execution of a warrant, issued on 20 June 2022, executed upon its Cape Town offices by the Second Respondent at the instance of the First Respondent ('Ms. Plaatjies').
2. The application was brought as a matter of urgency, having been issued on 24 June 2022 and subsequently set down for hearing in the urgent court on 5 July 2022.

3. Ms. Plaatjies was injured in a passenger motor vehicle accident on 6 September 2013. By all accounts the injuries sustained by her in the motor vehicle accident were serious with the RAF having settled with her general damages in the sum of R650 000.00. When the matter came before court for the determination of the claim for loss of income on 12 November 2021, both Ms. Plaatjies and the RAF were represented before Court. Various medico-legal reports had been filed, pertinently reports by both an Industrial Psychologist as well as an Actuary by both the RAF and Ms. Plaatjies.
4. When the matter was considered by the Court, it accordingly, although only the reports filed on behalf of Ms. Plaatjies were confirmed on oath, did have the benefit of the report filed on behalf the RAF and also such representations as may have been advanced by their representative.
5. The order granted by the Court on 12 November 2021, besides ordering payment of the agreed general damages and past medical expenses, also provided for an award in respect of loss of earnings in the sum of R4 555 800.00. After the deduction of an earlier interim payment, the net amount due to Ms. Plaatjies in terms of that order is R4 607 641.80.
6. The order also provides, besides various provisions relating to costs, that all amounts due to Ms. Plaatjies, both in respect of the capital and also in respect of the costs which were to be taxed, would not fall due for payment before the expiry of a period of 180 days from when the amounts became due.

7. In the case of the capital, the 180-day period commenced on 13 November 2021 and in respect of the costs would commence the day after those costs had been taxed or settled. In both instances, no interest would accrue in respect of any of the amounts due before the expiry of the 180-day period, this notwithstanding the provisions of Section 17(3)(a)¹ of the Road Accident Fund Act 56 of 1996 ('the Act'). Since the order in this regard is directly in conflict with the provisions of the Act and operates solely for the benefit of the RAF, the ineluctable inference to be drawn, absent the court's reasons, is that argument was presented on behalf of the RAF for the inclusion of such a provision in the order.
8. Some 150 days after the granting of the order and on 29 April 2022, the RAF then submitted a request for written reasons for the judgment granted on 12 November 2021. The request was made in terms of Rule 49(1) of the uniform rules of court and presumably, and subsequently confirmed in the present application, only related to that part of the order that had not been agreed, as in the case of loss of income or the issue of the deferred payment argued on behalf of the RAF and subsequently granted in its favour.
9. The Rule provides that when reasons are not given at the time that a judgement or order is handed down, a written request can be made for these within 10 days of the granting of such judgment or order. It is the case for the RAF that it requested the reasons as it intends to apply for leave to appeal in due course

¹ The section 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 sub section (1) shall be payable unless 14 days have elapsed from the date of the court's relevant order.'

against the judgment granted in respect of loss of earnings. Understandably, this course of action was adopted, the RAF being unable, since it was represented at the hearing, to make a case for the rescission of the judgment.

10. Having requested the reasons after the 150-day period as I have indicated, the RAF did nothing further. It allowed the 180-day period to pass on 28 May 2022 and indeed an almost further 30 days passed before it took any action. Notwithstanding non-compliance with the time period set out in Rule 49(1), the RAF did not bring any application for condonation in terms of Rule 27 for the late filing of its request for reasons, seemingly having taken the view that the request for reasons alone was sufficient to stay any further action.
11. The present application was predicated on 2 main basis – the first being that the prospective application for leave to appeal would have prospects of success and secondly, that if the order staying the execution of the warrant, was not granted, the RAF would suffer irreparable harm. I propose dealing with each of these in turn.
12. Firstly, the RAF accepts that the court on 12 November 2021 had before it reports of two separate Industrial Psychologists and Actuaries. Despite the practice directive in this division relating to trials of this type, it is common cause that there were no minutes prepared setting out the points of agreement and disagreement between the respective experts in their fields. Inexplicably the RAF, in the present application, seeks to rely only upon the opinion of the experts briefed by it and in consequence of the amount of the award state that:

'The Applicant's and Respondent's Industrial Psychologist differ substantially, and it is also noted from the reading of the order and cross reference between the amounts ordered for compensation and the reports of records, it does seem as though, the court, in making its order disregarded the reports of the Applicant and based its judgment and findings solely on the reports of the Plaintiff.'

13. It is the case for the RAF that having regard to what was said in the report of the Industrial Psychologist briefed by it and the reasoning set out in the paragraph quoted above, form the basis for a *'good reasonable prospect of success which is good in law'*.
14. Before any application for leave to appeal can be brought, in the first instance, an application for condonation for the late filing of the request for reasons must be brought. If this application is successful, and thereafter once the reasons are available, an application for leave to appeal can be brought. Whether such application would succeed, would depend on whether or not another court *'would come to a different conclusion.'*² The first basis is entirely speculative, dependant on the bringing, sequentially of a number of different applications each of which must succeed before the next can be brought. To my mind, this does not establish a basis for the granting of the relief sought.
15. Secondly, the RAF asserts that:

'28. The applicant is experiencing severe financial difficulties that have been exacerbated by the Covid-19 pandemic and its dire financial state is a

² Section 17 of the Superior Courts Act 2013

matter of public record. The applicants' liabilities continue to grow under a strained economy it has an accumulated deficit and actuarial liability of Billions of Rands. If the applicant's finances are not managed properly, there is a real risk of the of the applicants' finances collapsing. This will undermine the object of the RAF Act and the applicant will not be able to fulfil its statutory object.

29. The collapse of the applicant's finances and the consequent inability of the applicant to fulfil the object of the RAF Act, will threaten the constitutional rights of person that suffer injuries and death pursuant to the driving of a motor vehicle, including their dependants. The rights of such victims and their dependants in terms of Section 9, 10, 11, and 27 of the Constitution will be violated or seriously threatened. The security afforded by claims under the RAF Act ensures the realisation of most of these rights in respect of victims of motor vehicle accidents and their dependants.
30. ...
31. The applicant respects the obligation it has, to pay claims and legal costs as determined by the court. This application does not negate this obligation. This application is not motivated by any desire by the applicant to avoid fulfilling its liabilities as determined by the courts. It is, however, motivated by the applicant's need to be assisted by the courts to manage and fulfil its object and to pay and reasonable compensation, which was determined in a just and equitable manner.
32. The applicant is acutely aware of the plight of claimants that have to wait for the claims to be met. By corollary, the applicant owes these claimants and the public a duty not to pay monies in respect of claims where there is a well-grounded suspicion of possible overcompensation'.

(My underlining).

16. It is self-evident that if the RAF's finances are not properly managed, that this will have dire consequences for it. This is true of any enterprise. It is however somewhat opportunistic for the RAF to link the management of its finances, something peculiarly within its own knowledge and in respect of which no evidence was placed before the court, to the constitutional rights to equality (Section 9), human dignity (Section 10), right to life (Section 11) and health care, food, water and social security (Section 27) guaranteed by the Constitution of the Republic of South Africa 1996.

17. The RAF legislation was not promulgated as part of the constitutional imperative for the progressive realization of rights previously denied to the vast majority of the people in South Africa. This legislation has its genesis in legislation passed in 1942 in order to provide for the payment of compensation to victims (and their dependants) of wrongful and negligent driving. The legislation fulfils 2 purposes – firstly, by providing a central authority which administers the system of Road Accident Fund compensation and secondly, collects and pools the contribution towards the cost of the indemnity from drivers of motor vehicles, through a fuel levy. The persons who benefit directly from the indemnity provided by the Road Accident Fund are such drivers who may drive negligently.
18. The legislature recognized that circumstances may eventuate in which the RAF is unable to pay compensation to victims of negligent driving and in such circumstances, they are not without recourse – Section 21(2)(a) of the RAF Act specifically provides that in such circumstances, a victim would be entitled to prosecute their claim for damages against either the owner or driver of a motor vehicle or the employer of the driver of a motor vehicle who was negligent.
19. It is unfortunate that the RAF has taken the view that 'This application is not motivated by any desire by the applicant to avoid fulfilling its liabilities as determined by the courts. It is, however, motivated by the applicant's need to be assisted by the courts to manage and fulfil its object and to pay and reasonable compensation, which

was determined in a just and equitable manner'. In the first instance, it is one of the most fundamental purposes for which the RAF was established, for it to '*investigate and settle claims*'³. The legislation specifically provides that, absent a specific repudiation of a claim, no litigation may be instituted against the RAF before the expiry of 120 days after a claim has been lodged with it. It is during this period that it is required to conduct such investigations as may be required, call for any further information or documents that may be of assistance and to then make a reasonable proposal for settlement. Absent a proactive and positive engagement by the RAF with a claimant during the 120-day period, a claimant is left with no alternative but to exercise their right to approach the court.

20. The function of the court is to determine disputes between claimants and the RAF – it is not to assist the RAF to '*manage and fulfil its objects and to pay reasonable compensation*'. The RAF like any other litigant when their matter is before the court must exercise their rights to dispute any evidence proffered against them and to lead any evidence that would advance their case. The view expressed by the RAF is indicative of an organization that does not appear to properly appreciate its statutory mandate or how that mandate should be discharged in a constitutionally compliant manner. It is in effect an abdication of its functions as set out in Section 4(1)(b) of the Act.

³ Section 4(1)(b) of the RAF Act.

21. The RAF pays lip service to the plight of claimants who in consequence of RAF's failure to properly discharge its mandate, have to wait years, in the case of Ms. Plaatjies some 9 years to be awarded the compensation to which they are entitled. Then, only to be subjected to further delays.

22. The RAF asserts that it:

'owes these claimants and the public a duty not to pay monies in respect of claims where there is a well-grounded suspicion of overcompensation.'

and that

'The applicant must ensure that the administration of the Road Accident Fund Fuel Levy is not spent fruitlessly, irregularly, wastefully or dispersed where there is a well-grounded suspicion of possible overcompensation.'

23. In the present matter there is simply no basis for any suspicion – the matter came before court. The RAF was represented at the hearing and it had professional medical opinion available to it at the time of the hearing of the matter which it was entitled to place before the court. If it deliberately chose not to instruct its own medical experts to meet with their counterparts and deliberately chose not to lead the evidence of their own medical experts, then their unhappiness and dissatisfaction is entirely of their own creation.

24. To cast any aspersion upon the judgment of the court, without first having had sight of the reasons for the granting of that judgment, particularly where the RAF was represented at the hearing, is most unfortunate. It seems in the present matter to have been done opportunistically with the sole purpose of preventing Ms. Plaatjies having the warrant executed as she is entitled to do.
25. A consideration of the application as a whole creates the distinct impression that it has been prepared from a template and has been brought as a matter of course for no purpose other than to delay the execution of the warrant. The RAF itself concedes this when it states that:
- 'This application follows a series of applications lodged by the applicant against inter alia firms of attorneys who were executing, and are seeking to execute, on a daily basis, against the applicant's assets, including its bank accounts and which conduct had virtually brought the applicant's business to a standstill and threatened to destabilize the applicant's operations.'*
26. The RAF states that the attachment and removal of its assets would '**potentially**' have dire consequences. No evidence was placed before the court as to the actual consequences that would eventuate.
27. On the day when this application was heard, two other urgent applications involving the RAF were enrolled for hearing. In one brought by a claimant who had been unable to obtain payment of an undisputed judgment and taxed costs

for over 2 years, the RAF paid the capital of that claim 2 days before the hearing and entered into an agreement to make payment of the costs – the agreement was made an order of court by me.⁴ In the second matter, the RAF was the applicant as in the present case – in that matter it too reached an agreement to pay – in the second matter⁵ a warrant of execution had also been served at the same RAF branch.

28. When the present matter was called, I enquired from counsel who appeared for the RAF whether or not it was alleged that the RAF was in fact unable to satisfy the warrant. He quite properly conceded that nowhere in the application had the RAF asserted that it was unable to satisfy the warrant.
29. It seems apparent to me that the request for reasons was delivered for no purpose other than to lay a basis to attempt to avoid compliance with the very 180-day provision which the RAF had itself argued should be included in the order of the Court. Furthermore, no basis other than a plea '*ad miseracordium*' was laid for the RAF's contention that its operations would be brought to a standstill if the order sought was not granted.
30. My impression in the present application, having particular regard to what was said by the RAF as quoted in paragraph 27 above, is that the present application was brought for no other purpose than to make an example of any

⁴ De Nysschen, Magda v Road Accident Fund- case number: 79198/18.

⁵ Road Accident Fund v Adv C Cawood obo Lambrechts, & Another - case number: 17841/22.

legal representative who refuses to accede to the demands⁶ of the RAF, even where their client has a legal right to execute and for them not to do so may cause unnecessary hardship to their client. When every legal practitioner is admitted to practice, they are required to appear before court and to take an oath in which they swear that they will uphold the law and will discharge their functions '*without fear or favour*'. It is salutary when practitioners discharge their oath and shameful on the part of the RAF that it would seek to cast this in a negative light.

31. For the reasons set out above, I granted the order that I did, a copy of which annexed hereto marked "X".



A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	5 July 2022
JUDGMENT DELIVERED ON:	5 July 2022
REASONS:	25 July 2022

⁶ See Road Accident Fund v McDonnell (13183/2015) [2022] ZAWCHC 116 and Road Accident Fund v Mokoena (2473/2019) [2022] ZAFSHC 172 both of which would appear to fall into what was characterized as the 'series' of applications.

COUNSEL FOR THE APPLICANT:

ADV. L LEBAKENG

INSTRUCTED BY:

THE STATE ATTORNEY - PRETORIA

REFERENCE:

MR. L EBAKENG

COUNSEL FOR THE FIRST RESPONDENT:

ADV. B GEACH SC

ADV. A LOUBSCHER

INSTRUCTED BY:

SAVAGE JOOSTE & ADAMS

REFERENCE:

MR. J TERBLANCHE

"X" eges
5/7/2022

003-1

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

ON 5 JULY 2022 AT PRETORIA COURT 6E

BEFORE HIS LORDSHIP MR JUSTICE MILLAR

In the matter between:

Case No: 72939/2017

ROAD ACCIDENT FUND

Applicant

and

LAUREN PLAATJIES

2022-07-05

First Respondent

SHERIFF CAPE TOWN WEST

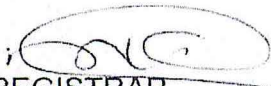
Second Respondent

URGENT COURT 5 JULY 2022 # 12
DRAFT COURT ORDER

IT IS ORDERED THAT:

1. The application is hereby dismissed.
2. The Applicant must pay the First Respondent's taxed or agreed opposed High Court costs on the scale as between attorney and client including the costs of two counsel and the costs of both instructing and correspondent attorneys.

BY ORDER,


REGISTRAR.

For Applicant:
For First Respondent:

The State Attorney Mr LEBOGANG A LEBAKENG
Adv BP GEACH, SC 083 680 6578
Adv A LAUBSCHER 082 658 4112

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