IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 113968/2023

DELETE WHICHEVER IS NOT APPLICABLE

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

11 July 2024 [redacted]

In the matter between:

ROAD ACCIDENT FUND	**APPLICANT**
and	
LYTON, A	**FIRST RESPONDENT**
TAKAWIRA, T	**SECOND RESPONDENT**
GUDZA, N	**THIRD RESPONDENT**
LEFASO, GM	**FOURTH RESPONDENT**
CHIKWANA, T	**FIFTH RESPONDENT**
MALEFANE, L	**SIXTH RESPONDENT**
MUSEKIWE, I	**SEVENTH RESPONDENT**
CHITANGO, B	**EIGHTH RESPONDENT**
MUFUNDISI, T	**NINTH RESPONDENT**
OLADIPUPO, OJ	**TENTH RESPONDENT**
HASTINGS, R	**ELEVENTH RESPONDENT**

OLUWADARE, JA	**TWELFTH RESPONDENT**
SUCHA, C	**THIRTEENTH RESPONDENT**
THE SHERIFF, PRETORIA EAST	**FOURTEENTH RESPONDENT**
THE SHERIFF, CENTURION EAST	**FIFTEENTH RESPONDENT**

JUDGMENT

MOTHA, J:

Introduction

[1] For lack of urgency, this application was previously struck off the roll. Following its re-enrolment, it now serves before this court and involves thirteen foreign nationals who lodged claims, issued summons and obtained court orders against the Road Accident Fund (RAF). Having received writs of execution, the RAF refused to effect payment arguing that plaintiffs were illegal foreigners, and sales in execution should be suspended pending the outcome in the matter of *Adam Mudawo v Minister of Transport and another*[1], a full court judgment. The application for leave to appeal has been heard and dismissed. Consequently, the judgment stands. Accordingly, I am bound by the decision of the full court which held that:

> "The provisions of the substituted RAF1 claim form prescribed by Government Notice R2235 published in the Government Gazette 46661 dated 4 July 2022 issued by the Minister of Transport (first respondent) in terms of section 26 of the Road Accident Fund Act, 56 of 1996, is reviewed and set aside to the extent that both part 6.1 (substantial compliance injury claims) and part 12.1 (substantial compliance death claims) thereof require that, if it a claimant is a foreigner, proof of identity

[1] case number 2022/011795 ZAGPPHC 26 March 2024

must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident.

The provisions of the RAF Management Directive dated 21 June 2022 titled Critical Validations to Confirm the Identity of South African Citizens and Claims Lodged by Foreigners, is reviewed and set aside to the extent that:

In respect of foreign claimants, it requires that proof of identity must be accompanied by documented proof that the claimant was legally in South Africa at the time of the accident;

In respect of foreign claimants, they are required to provide copies of their passports with an entry stamp and where they have left South Africa, the passport must have an exit stamp and should the foreign claimant still be in the country, that proof of an approved visa must be submitted before the RAF is prepared to register such claimants' claims;

It is required that copies of the passport of foreign claims claimants may only be certified by the South African police service..."[2]

[2] In view of our system of *stare decisis*, this court is bound by the full court judgment. In *casu*, the parties have not only lodged their claims but also settled some heads of damages, with payment as the only outstanding issue. It, therefore, stands to reason that if illegal foreigners are permitted to lodge claims without the afore-mentioned documents, they, certainly, are permitted to be paid, otherwise why embark on the exercise?

[2] Supra the order at para 51

The parties

[3] As already mentioned, the respondents are foreign nationals and are all represented. However, before this court, there are five respondents, namely: the first, seventh, eighth, ninth and tenth.

[4] First Respondent, Alfred Lyton, was injured in a motor vehicle accident on 10 August 2017. He is represented by Roets Van Rensburg Inc.

[5] Seventh Respondent, L Musekiwe, was involved in a motor vehicle accident and is represented by Slabbert and Slabbert Attorneys.

[6] Eighth Respondent, Bonito Chitango, was involved in a motor vehicle accident on 1 March 2011. She is represented by Gary Stuart Garden Attorneys.

[7] Ninth Respondent, Tamukanaho Mufundisi, was involved in a motor vehicle accident on 29 November 2019. He is represented by Gary Stuart Garden Attorneys.

[8] Tenth Respondent, Omobolaji Johnson Oladipupo, was involved in a motor vehicle accident on 25 December 2017. He is represented by Gary Stuart Garden Attorneys.

[9] Fourteenth Respondent is the Sheriff, Pretoria East, appointed in terms of Section 2 of the Sheriff's Act, 90 of 1987.

[10] Fifteenth Respondent is the Sheriff, Centurion East, appointed in terms of Section 2 of the Sheriff's Act, 90 of 1987.

Factual background

[11] The genesis of this matter is notice R2235 published in the Government Gazette 46661 and promulgated by the Minister of Transport on 4 July 2022. At paragraph 9.3 of the founding affidavit, the applicant writes:

> "...an RAF1 claim form for the lodgement of claims in terms of the provisions of the RAF Act. Part 6.1 and Part 12.1 of the said form prescribed that if the claimant is a foreigner, the claimant is required to submit proof of identity, accompanied by documentary proof that the claimant was legally in the Republic of South Africa at the time of the accident, giving rise to the claim."

[12] The facts are encapsulated in the founding affidavit at paragraph 9.2, as follows:

> "The First to Thirteenth Respondents are foreign nationals who have suffered damages as a result of injuries sustained in motor vehicle collisions and have prosecuted claims against the RAF. The First to Thirteenth Respondents all obtained court orders against the RAF for damages suffered. The First to Thirteenth Respondents are currently executing those court orders by way of warrants of execution issued under Rule 45 of the Uniform Rules of Court. The warrants are being executed by the Fourteenth and Fifteenth Respondent by way of selling the Applicant's moveable assets on public auction..."

[13] Therefore, without compliance with the Management Directive dated 21 June 2022, the respondents will not be paid. To the extent that it relates to foreigners, it reads as follows:

"The following applies to all lodgments received or pre-assessed from the date of this directive: In instances where the claimant or injured is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident. A copy of the foreign claimant's passport showing the entry stamp and/or exit stamp must be submitted. Where the passport does not have any stamp, the RAF will not be lodging such a claim. Where the passport document does not have an exit stamp, proof that the claimant is still in the country must be produced. In this instance the passport copy indicating approved Visa must be submitted. Copies of passport must be certified by SAPS."

[14] As hinted at the beginning of this judgment, this matter has been put to bed in the *Mudawo* matter, where the full court said:

"We find nothing in the text of the Act, the context of the RAF scheme as a whole and the purpose of the Act which leads us to conclude that the words "any person" in section 17 of the Act should be restrictively interpreted so as to exclude illegal foreigners.

We find that the administrative actions of the RAF in prescribing the Management Directive of 21 June 2022 and that of the Minister in publishing the new RAF 1 form on 4 July 2022, insofar as those actions, in the way they have been formulated and are to be enforced to exclude claims by illegal foreigners, offend against the provisions of section 17 of the Act."[3]

Issues

[15] The founding affidavit sets forth the issues at paragraph 5.2 as the following:

[3] Supra para 46 to 47

"The Applicant seeks an order suspending the operation and the execution of the court orders granted by this court ["**the court orders**"] in favour of each of the First to Thirteenth Respondents and the warrants of execution ["**the warrants of execution**"] issued by each of the First to Thirteenth Respondents pursuant to the court order, pending the determination of the review application in the matter of **Mudawo v Road Accident Fund** under case number 2022/011795 ("**the review application**"). A list of the orders and writs can be seen in **Annexure "RES1"** hereto. Due to the voluminous nature of the documents and not to burden the papers, the writs of execution and court orders are not attached hereto but a copy of each will be available to the court during the hearing of this application."

[16] With the dismissal of the leave to appeal, the argument advanced no longer holds. There is no reason to interdict the fourteenth and fifteenth respondents from carrying out the enforcement of the warrants of execution. This is not the applicant's first rodeo in dealing with these matters. There are several cases in which the applicant has come a cropper. In the matter of *Maphosa v RAF*[4] the court held:

> "The RAF1 form in effect when the plaintiff lodged his claim, did not stipulate a requirement to prove the legality of the plaintiff's residency in the Republic. If such a requirement existed, it would, for the reasons stated above, be contrary to the provisions of the Act, "ultra vires," and unenforceable."[5]

[17] The same is true of the matters before this court. All these matters were lodged and settled without these requirements. To illustrate this point, I will look at these matters individually.

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[4] Case number 2022/1093 March 2024

[5] Supra Para 96

[18] The first respondent was injured on 10 August 2017. Summons was served on 30 April 2018. Following the separation of merits from quantum in terms of Rule 33(4), an order of 100% merits for the plaintiff was granted, on 9 November 2021. On 7 February 2023 an order for past and future loss of income was made. The RAF's resistance commenced upon the receipt of the writ of execution and when auction was to take place on 7 November 2023.

[19] The 8th Respondent's timeline is as follows: The Applicant settled this matter with the 8th Respondent on 1 July 2022. On numerous occasions, the Applicant was requested to make payments without success. On 14 March 2023, the Applicant's Senior Manager at Support Services informed the attorneys' office that payment was requested. The 8th Respondent's passports and mortality affidavit was transmitted to the Applicant on numerous occasions. On 17 July 2023, a proposed draft order was sent to the Applicant, setting out the terms of the settlement reached. On 17 July 2023, the Applicant transmitted a confirmation letter, agreeing to the terms of the draft order. On 20 July 2023 the 8th Respondent's matter was enrolled on the settlement roll. On this day, Madam Justice Neukircher (J) made the settlement an order of court. The said court order was served on the Applicant on 21 July 2023. On 11 September 2023, a warrant of execution was issued. On 12 October 2023, the warrant of execution was served on the Applicant by the sheriff. The RAF started to contest the matter in November 2023.

[20] The 9th Respondent's timeline is as follows: The matter was enrolled for trial on 8 November 2022, and it became settled on the proverbial steps of the court. A court order was granted and served on the Applicant on 17 November 2022. Despite numerous requests the Applicant failed to make payments and the RAF contested the matter in November 2023 after receiving a writ of execution.

[21] The 10th Respondent's timeline is as follows: The Applicant settled this matter by way of an offer and acceptance on 21 October 2022. On numerous occasions, the Applicant was requested to make payments without success.

The 9th Respondent's passport and mortality affidavit was transmitted to the Applicant on numerous occasions. On 21 July 2023, a proposed draft order was sent to the Applicant, setting out the terms of the settlement reached. On 30 July 2023, the Applicant transmitted a confirmation letter, agreeing to the terms of the draft order. On 11 August 2023 the 10th Respondent's matter was enrolled on the settlement roll. On this day, Justice Baloyi-Mbembele (AJ) made the settlement an order of court. The said court order was served on the Applicant on 21 August 2023. On 11 September 2023, a warrant of execution was issued. On 12 October 2023, the warrant of execution was served on the Applicant by the sheriff. Again, the RAF contested the matter in November 2023.

[22] The seventh respondent did not provide the full record save to say they are in the same position as the rest of the respondents.

Discussion

[23] Counsel for the applicant argued for a stay of execution in terms of Rule 45A. He submitted that it was in the interest of justice to suspend the execution. He relied on *Gois v Van Zyl.*[6] He correctly pointed out that the court should not have regard to the merits of the dispute. At this point it is apt to refer to *Van Rensburg NO and Another v Naidoo NO and Others, Naidoo NO and Others v Van Rensburg NO and Others* [7] where the court said:

"Apart from the provisions of Uniform rule 45A a court has inherent jurisdiction, in appropriate circumstances, to order a stay of execution or to suspend an order. It might, for example, stay a sale in execution or suspend an ejectment order. Such discretion must be exercised judicially. As a general rule, a court will only do so where injustice will otherwise ensue.

[52] A court will grant a stay of execution in terms of Uniform rule 45A where the underlying *causa* of a judgment debt is being disputed, or no longer exists, or when an

[6] 2011(1) SA148
[7] (155/09, 455/09) [2010] ZASCA 68; [2010] 4 All SA 398 (SCA); 2011 (4) SA 149 (SCA) (26 May 2010)

attempt is made to use the levying of execution for ulterior purposes. As a general rule, courts acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such action[8]."

[24] The applicant does not place the *causa* in dispute, all it requires are documents. Under these circumstances if I stay the execution, I would not have exercised my discretion judicially. Having considered all the elements of an interim interdict as a guide, namely: the prima facie right even if open to some doubt, well-grounded reasonable apprehension of irreparable hand imminent harm to the right, the balance of convenience must favour the granting of the interdict, and there must be no adequate alternative remedy, I come to the conclusion that the RAF fails on all fronts. It is simply playing for time. As was stated by my brother Twala J, in the matter of the *RAF v Sheriff of the High Court, Pretoria*[9], that:

"The only purpose to be served by this application is to delay the respondent from receiving his compensation for the loss and or damages he suffered as a result of the driving of a motor vehicle as provided by the Act."[10]

[25] This application is unmeritorious and only serves to waste the taxpayer's money on some wild goose chase.

Costs

[26] It is trite that costs follow the results, and I see no reason to depart from that path. However, I do not view these matters as deserving the attention of two counsel nor scale C. There is nothing complicated about these matters save for the fact that the applicant is unyielding and bent on litigating its way into bankruptcy. In the result I make the following order:

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[8] Supra para 51 to 52
[9] 0114226/2023
[10] Supra para 24

Order

a) The application is dismissed

b) The applicant is to pay the costs of the first, eight and tenth respondents on a party and party scale B.

c) The applicant is to pay the costs of the ninth respondent on an attorney and client scale B.

M.P. MOTHA

JUDGE OF THE HIGH COURT, PRETORIA

APPEARANCES:

For the Applicant:	Adv T Pillay instructed by Malatji & Co Attorneys
For the First Respondent:	Adv BP Geach SC instructed by Roets van Rensburg Attorneys
For the Second Respondent:	Adv JRF Ernst instructed by HW Theron Inc.
For the Third Respondent:	Adv Keet instructed by Badenhorst Attorneys
For the Sixth Respondent:	Adv FHH Kerhahn and Adv G Jansen instructed by Shyama Morar Attorneys
For the Eighth to Tenth Respondents:	Adv M Snyman and FHH Kerhahn instructed by Gary Stuart Garden Attorneys
Date of hearing:	27 May 2024
Date of judgment:	11 July 2024