THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no:1150/2023

In the matter between:

NEWNET PROPERTIES (PTY) LTD	
t/a SUNSHINE HOSPITAL	**FIRST APPELLANT**
THE PARTIES CITED IN ANNEXURE "A" TO THE	
NOTICE OF MOTION IN THE MAIN APPLICATION	**SECOND APPELLANT**

and

THE ROAD ACCIDENT FUND	**RESPONDENT**

Neutral citation: *Newnet Properties (Pty) Ltd t/a Sunshine Hospital v The Road Accident Fund* (1150/2023) [2025] ZASCA 19 (14 March 2025)

Coram: MOCUMIE, NICHOLLS and SMITH JJA, MUSI and MODIBA AJJA

Heard: 24 February 2025

Delivered: 14 March 2025

Summary: Civil procedure – principle of finality of court orders – whether the Road Accident Fund is entitled to compel a judgment creditor to provide information in terms of s 24 of the Road Accident Fund Act 56 of 1996 after competent court orders had been granted without rescinding or appealing same – suspension of court order in terms of rule 45A – whether requirements for interim interdict have been established

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ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Baqwa J, sitting as court of first instance):

1 The appeal is upheld with costs, including the costs of two counsel where so employed.

2 The order of the high court is set aside and replaced with the following order:
'The application is dismissed with costs, including the costs of two counsel where so employed.'

JUDGMENT

Smith JA (Mocumie and Nicholls JJA, Musi and Modiba AJJA concurring):

Introduction

[1] The appellants appeal against the judgment and order of the Gauteng Division of the High Court, Pretoria, per Baqwa J (the high court), delivered on 28 August 2023. The high court order directed the appellants to furnish certain information to the respondent, the Road Accident Fund (RAF), in terms of s 24 of the Road Accident Fund Act 56 of 1996 (RAF Act) and allowed the latter, within a stipulated time, either to apply for rescission of the judgments or a declaratory order. On 19 October 2023, the high court granted the appellants leave to appeal to this Court and directed that its order is not suspended in terms of s 18(2) of the Superior Courts Act 10 of 2013.

[2] The first appellant is Newnet Properties (Pty) Ltd, trading as Sunshine Hospital. The second appellant comprises some 90 suppliers who were collectively cited as the second respondent in the high court. The appellants have lodged third party supplier claims with the RAF in terms of s 17(5) of the RAF Act.

[3] The RAF, which was the applicant in the high court, was established in terms of s 2(1) of the RAF Act. The object of the RAF is the payment of compensation in

accordance with the RAF Act for loss or damage wrongfully caused by the driving of motor vehicles.[1] Its functions include 'the investigation and settling, subject to this Act, of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or driver thereof, or the identity of both the owner and the driver thereof, has been established.'[2]

[4] The facts of this appeal implicate one of the most fundamental principles of our law, namely, the finality of court orders. The appellants contend, *inter alia*, that the high court's order undermines that principle. Although the appellants impugned the high court's order on several grounds, I choose to deal only with the two most substantive issues, which, in my view, are dispositive of the appeal. They are: (a) whether the RAF was entitled to an order directing the appellants to furnish it with information in terms of s 24 of the RAF Act after judgment had been granted against it; and (b) whether the RAF made out a case for the suspension of the writs of execution issued pursuant to the judgments obtained by the appellants.

The facts

[5] The factual background against which these issues must be considered is as follows. In March 2023, the sheriffs for Pretoria East and Centurion East served writs of execution on the RAF in respect of some 400 judgments which the appellants had obtained against it. The judgments all related to claims submitted by suppliers in terms of s 17(5) of the RAF Act. That section provides for claims by third party suppliers who have incurred costs in respect of accommodation, services rendered or goods supplied to a person who has suffered loss or damages wrongfully caused by the driving of a motor vehicle. The sheriffs attached the RAF's assets and published a notice of the sale in execution.

[6] Faced with the daunting prospect of the sale of its assets and tools of trade, which it requires for the performance of its statutory functions, the RAF approached the high court for an order, *inter alia*, staying the writs and ordering the appellants, through their instructing attorneys, to furnish it with identity documents of all injured

[1] Section 3 of the RAF Act.
[2] Section 4(*b*) of the RAF Act.

persons as well as accident report forms (where none were submitted) in support of their claims. The suspension of the writs would operate as an interim interdict pending the filing by RAF of applications for rescission or declaratory relief.

The RAF's contentions

[7] In the founding affidavit, deposed to by the RAF's Acting Regional General Manager, the RAF said that according to its records, it had not been furnished with the identity documents of injured persons in respect of the writs. It asserted that the appellants were obliged to furnish the information in terms of s 24 of the RAF Act and that their failure to comply with this statutory provision meant that their claims had not been lodged properly.

[8] Third parties or suppliers are only entitled to claim under s 17(5) of the RAF Act in respect of services rendered to persons who have been injured as a result of the negligent driving of a motor vehicle. Unfortunately, as widely reported and uncontroverted by the appellants, there has been widespread abuse of these claims. Some supplier claims are being lodged on a fraudulent basis on behalf of persons who have not been injured in a motor vehicle accident.

[9] There are also instances where both the injured person and the supplier have claimed in respect of the same goods and services, resulting in duplicate claims. It is for this reason that suppliers are required, in terms of s 24, to provide in the RAF supplier claim form, details of the accident, including the time and place, the South African Police reference number and a copy of the accident report form. To mitigate the possibility of fraudulent or duplicate claims, the supplier is also obliged to provide the identity document of the injured persons or, where applicable, the death certificate. The RAF requires this information to enable it to verify whether claims fall within the ambit of the RAF Act. It is not obliged to pay claims in circumstances where a supplier has failed to provide the requisite documents and information.

[10] While asserting that the supplier claims, which relate to the writs of execution issued against it, were not accompanied by the injured persons' identity documents or numbers, the RAF did not provide any facts in support of this assertion. It instead chose to rely on anecdotal and generalised averments. It mentioned – 'by way of

example (but this is a general pattern)' – three suppliers who the RAF contended did not provide identity documents or identity numbers in respect of the injured persons. These were the Hartebeespoort Emergency Rescue Unit (Hartebeespoort Unit), Dr Johann Schutte & Associates (Dr Schutte) and SWIFT EMS Private Ambulance Service (SWIFT). The RAF stated that it had made several unsuccessful attempts to obtain the information from the appellants' attorneys.

[11] The RAF asserted further that it has a prima facie right, as custodian of public funds, to take all reasonable steps to prevent fruitless and wasteful expenditure of those funds. It would suffer irreparable harm if the attached assets were sold at a public auction since it requires those assets, which include tools of trade, to perform its statutory functions. The harm which the appellants would suffer, if any, would be insignificant and temporary because their claims would be settled as soon as they furnish the requested information. The balance of convenience was consequently firmly in the RAF's favour, or so it argued. It also had no other alternative but to apply for the interdict for it to complete the verification and payment of outstanding claims. It was on this precarious factual basis that the RAF sought the far-reaching relief against the appellants.

The appellants' contentions

[12] The appellants, in their answering affidavit, deposed to by a director of their attorneys, raised various points which, if they were upheld, would have been dispositive of the RAF's case. First, they pointed to the fact that s 24 of the RAF Act deals with pre-summons stage requirements and can thus find no application after judgment has been pronounced. Second, some of the writs of execution were issued in pursuance of judgments obtained by agreement, and third, in some instances, the RAF had already paid the claims either in part or in full. In any event, the RAF has not disputed that all the writs relate to judgments obtained after due process had been followed.

[13] In response to the examples on which the RAF relied, the appellants further stated that in the case of Hartebeespoort Unit, the judgment was granted by agreement between the parties as long ago as 2008. The RAF has already settled the judgment debt and only the taxed costs remain outstanding. Regarding the claims of

Dr Schutte, three of those had already been paid in full and one in part. And regarding the claims of SWIFT, the RAF had been duly furnished with the identity numbers of all the injured persons involved in this claim. Those identity numbers were restated in the answering affidavit. The RAF was unable to gainsay these averments in its replying affidavit. It is of course trite that any material factual dispute must be resolved based on the facts put up by the appellants, together with those facts admitted by the RAF.

The high court's order and findings

[14] The high court's order differed in certain material respects from that sought by the RAF in its notice of motion. Instead of quoting the order verbatim, it would, in my view, be more helpful if I summarised and explained the salient features thereof. In this way, those aspects of the order with which the appellants have taken issue would become clearer.

[15] In terms of the high court order: (a) the appellants were directed to provide the RAF with the identity numbers and documents of all the injured persons mentioned in the annexures to its notice of motion, within ten days of the order; (b) on receipt of that information, the RAF must reconcile the respective suppliers' claims and thereafter send a report to the sheriff who must then, within five days, pay the outstanding amounts into the trust accounts of the appellants' legal representatives; and (c) the writs of execution were stayed pending the finalisation of that process, alternatively the institution of an application for the rescission of the court orders or for declaratory relief. The appellants were ordered to pay the costs of the application, including that of a senior counsel.

[16] The high court's reasoning and conclusions are encapsulated in the following *dictum* in its judgment:

'Orders granted by consent are not impervious to judicial scrutiny and this court has an inherent power to regulate its own process by staying or interdicting [the] execution of writs pending the delivery of documents and information sought in terms of section 173 of the Constitution in line with the values enunciated in section 195 of the Constitution. See *Maswanagayi obo Machimane v Road Accident Fund.*'

Analysis and discussion

The principle of the finality of judgments

[17] The centrality in our law of the principle of finality of court judgments has been emphasised in a long line of authorities.[3] It is an incident of the rule of law and one which our courts have consistently enforced. The principle is also reinforced by s 165 of the Constitution, which provides that an order of court binds all persons to whom it applies and organs of state to which it applies.

[18] This Court in *Firestone South Africa (Pty) Ltd v Gentiruco AG*[4] (*Firestone*) said that: 'once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter, or supplement it. The reason is that it thereupon becomes *functus officio*: its jurisdiction in the case having been fully and finally exercised, its authority over the subject-matter has ceased.'[5] The Court recognised that there are certain exceptions to the rule, such as variations in a judgment or order which are necessary to explain ambiguities, to correct errors of expression, to deal with accessory or consequential matters which were overlooked or inadvertently omitted, and to correct orders for costs made without having heard argument thereon. The list of exceptions is not exhaustive and the court has discretionary power to vary its orders in other appropriate cases. It stressed, however, that the 'assumed discretionary power is obviously one that should be very sparingly exercised, for public policy demands that the principle of finality in litigation should generally be preserved rather than eroded.'[6]

[19] In *Molaudzi v S*[7], the Constitutional Court, dealing with the principle of finality in the context of the doctrine of *res judicata*, cited *Firestone* with approval and held that:

'[W]here significant or manifest injustice would result should the order be allowed to stand, the doctrine ought to be relaxed in terms of sections 173 and 39 (2) of the Constitution in a manner that permits this Court to go beyond the strictures of rule 29 to revisit its past decisions. This

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[3] *Minister of Justice v Nicko Ntuli* ZACC 7; 1997 (6) BCLR 677; 1997 (3) SA 772 para 22.
[4] *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A).
[5] Ibid at 306 F-G.
[6] Ibid at 309 A–B.
[7] *Molaudzi v S* [2015] ZACC 20; 2015 (8) BCLR 904 (CC); 2015 (2) SACR 341 (CC).

requires rare and exceptional circumstances, where there is no alternative effective remedy.'[8] The Court further cautioned that the inherent power to regulate process, does, however, not apply to substantive rights but only to adjectival or procedural rights.

[20] Having regard to the aforementioned legal principles, there can be little doubt that the high court's order offends the principle of finality of court orders. By directing the appellants to comply with pre-summons procedures despite the existence of valid court orders against the RAF, the high court has impermissibly reopened the *lis* between the parties. The order envisages that the RAF would be entitled, upon provision of the information by the supplier, to take the view that the information does not comply with the prescripts of s 24 and that the claim is accordingly not acceptable. The anomalous situation may then arise that the RAF may refuse to pay the claim despite an extant court order and without having to apply for rescission of judgment. That such a state of affairs, albeit judicially sanctioned, would have grievously unfair consequences for a judgment creditor is self-evident.

[21] Section 24 of the RAF Act prescribes the procedure which a supplier should follow when claiming compensation in terms of s 17(5). The prescribed form (RAF Form 2) requires the supplier to provide extensive information pertaining to the accident, including the personal particulars of the claimant. A claim that does not comply with the prescripts of s 24 is not acceptable as a valid claim.

[22] The purpose of this provision is obvious. It enables the RAF to verify the claim against its internal records and, if necessary, the RAF may require the supplier to provide further information. However, s 24(5) provides that if the RAF does not object to the claim within 60 days of its lodgement, 'the claim shall be deemed to be valid in all respects'. This Court held in *Road Accident Fund v Busuku*[9] that the effect of this provision is 'to convert a claim which might otherwise be unacceptable under the Act, as provided in s 24(4)(*a*), into one deemed to be valid in all respects.'[10] It is thus axiomatic that the RAF cannot rely on s 24 of the RAF Act to compel suppliers to provide information after judgment has been taken against it.

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[8] Ibid para 45.
[9] *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA).
[10] Ibid at para 20.

[23] This, however, does not mean that the RAF is left with no legal remedy. A litigant who is dissatisfied with an adverse court order may either appeal or, in appropriate circumstances, apply for the order to be rescinded. In the latter case it may apply for the operation of the court order to be suspended pending the finalisation of the rescission application. It is, however, not entitled to an order compelling the successful party to comply with pre-litigation procedures in order to verify the validity of a claim, and if the claim is invalid, to bring a rescission application. This is exactly what the RAF sought to achieve in its notice of motion and it is, regrettably, also the effect of the high court's order.

[24] What complicates matters even further is that considerable time has lapsed between the granting of the orders and the institution of the application by the RAF. At least one of the court orders was granted more than 15 years ago; and as alluded to already, some were obtained by agreement and others had already been settled by the RAF, either fully or in part. Thus, insofar as the high court order has the effect of reopening the *lis* between the parties in circumstances where the underlying causa of the orders has not been impugned, it is untenable and cannot stand.

The Rule 45A relief

[25] In terms of rule 45A of the Uniform Rules of Court, a court may 'suspend the execution of any order for such a period as it may deem fit.' It is established law that apart from the provisions of rule 45A, a court has inherent jurisdiction, in appropriate circumstances, to suspend the operation or execution of an order. That discretion must be exercised judicially.

[26] This Court held in *Van Rensburg NO and Another v Naidoo NO, Naidoo NO v Van Rensburg NO*[11] that '[a] court will grant a stay of execution in terms of Uniform Rule 45A where the underlying causa of a judgment is being disputed, or no longer exists, or when an attempt is made to use the levying of execution for ulterior purposes. As a general rule, courts will suspend the execution of an order where real and substantial justice compels such action.'[12]

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[11] *Van Rensburg NO and Another v Naidoo NO, Naidoo NO v Van Rensburg NO* [2010] ZASCA 68; [2010] 4 ALL SA 398 (SCA); 2011 (4) SA 149 (SCA).
[12] Ibid para 52.

[27] It is trite that an applicant seeking relief under rule 45A must establish the usual requisites for an interdict, namely, a prima facie right; a well-grounded apprehension of irreparable harm to the applicant if the relief is not granted; that the balance of convenience favours the granting of the order; and that the applicant has no other satisfactory remedy.

[28] The high court found that the RAF succeeded in establishing a prima facie right as custodian of public funds which has the statutory obligation to manage and avoid fruitless, irregular and wasteful expenditure. This finding is, however, not borne out by the established facts. In my view, the RAF has failed to show that the appellants irregularly obtained the orders. The fact that the RAF has no proof that it was furnished with identity numbers for the implicated claims does not mean that the court orders sought to be executed are susceptible to recission. They were granted properly and are valid until set aside. Since s 24 is no longer available to the RAF to contest a claim after judgment, to establish a *prima facie* case, the RAF ought to demonstrate that it has prospects of success when impugning the orders in a recission application.

[29] In seeking the interim relief pending the institution of rescission proceedings, the RAF has not put up any facts to show that the underlying causa of the judgments is being disputed or that real and substantial injustice would follow the refusal of such relief. It instead relied on anecdotal averments based on unsubstantiated and generalised examples. The high-water mark of those averments is that the required information will assist the RAF in establishing whether its internal processes have been complied with. According to the RAF, it will then be able to decide whether to pay the supplier claims. While the RAF is to be commended for re-visiting its internal processes, it cannot be at the expense of litigants against whom there is no evidence of fraud.

[30] It was common cause that the RAF did not object to the claims filed by the appellants in terms of s 24 of the RAF Act. Those claims are consequently deemed in terms of s 24(5) of the RAF Act to be valid. In its founding affidavit, the RAF mentioned only a few injured persons who had allegedly not provided identity numbers. The appellants firmly rebutted those allegations in their answering affidavit.

[31] There is no evidence that the claims were lodged fraudulently or that there is a legal basis on which the RAF intends to apply for the orders to be rescinded. On the contrary, the RAF itself disavowed any suggestion of fraud on the part of the claimants. In its replying affidavit it says that 'it is not the RAF's case that the second and third respondents' claims are fraudulent. Instead, I refer to risk areas to demonstrate the real risks that the RAF is currently facing regarding claims which have not been verifiable due to non-compliance with the RAF Act.'

[32] Furthermore, the interim relief sought by the RAF was based on vague references to contemplated applications for rescission or declaratory relief without committing to any timeframes. The appellants point to the fact that almost 17 months after the granting of the high court order, the RAF has still not applied for rescission, and neither is there any indication as to when it intends to file those applications. I am accordingly of the view that the RAF failed to establish a prima facie right.

Was the application bona fide?

[33] The appellants argued that the application was an abuse of the court process and was intended by the RAF to place it in a position where it can indefinitely avoid compliance with extant and valid court orders. This criticism is unnecessarily harsh and unjustified. The RAF, as an organ of state, is obliged to litigate responsibly and fairly. Therefore, even though the appellants stopped short of applying for a punitive costs order based on that assertion, it is necessary to address this criticism.

[34] There is no basis for a finding that the RAF acted maliciously in bringing the application or that it did so for the ulterior purpose of avoiding its legal obligations. The institutional and systemic problems that have been plaguing the RAF for years, which have drained its resources and as a result of which it is battling to meet third-party claims, have been well documented and were not disputed by the appellants. One can also not overstate the depth of the problem posed by improper and fraudulent claims and the challenges they present to the already overburdened RAF functionaries.

[35] It is in the face of these formidable challenges that the RAF must perform its extensive statutory functions. One can therefore understand why the high court was inclined to come to the RAF's assistance by fashioning a remedy which, in its view,

would have done justice between the parties. Unfortunately, the order, however well-intended, was not founded on any legal principle, neither was it underpinned by the established facts. I am nonetheless satisfied that in bringing the application the RAF was motivated only by the desire to obtain information that would have enabled it to perform its statutory function as custodian of public funds by verifying the appellants' claims. I am consequently not persuaded that it acted with ulterior motives.

Findings and order

[36] In summary then I find that: (a) the order directing the appellants to provide information to the RAF in terms of s 24 of the RAF Act is incompetent because it offends the principle of finality of court orders; and (b) the RAF has failed to make out a case for relief in terms of rule 45A. The appeal must therefore succeed. There is no reason why costs should not follow the result.

[37] In the result I make the following order:

1 The appeal is upheld with costs, including the costs of two counsel where so employed.

2 The order of the high court is set aside and replaced with the following order:
'The application is dismissed with costs, including the costs of two counsel where so employed.'

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J E SMITH

JUDGE OF APPEAL

Appearances

For the appellants:	J G Cilliers SC and M van Rooyen
Instructed by:	Kritzinger Attorneys, c/o Podbielski Mhlambi Inc, Pretoria
	Claude Reid Inc, Bloemfontein
For the respondent:	R Tshetlo and Z Ngakane
Instructed by:	Malatji & Co Attorneys, Sandton
	Honey Attorneys, Bloemfontein.