



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

CASE NO: 2024/023488

In the matter between:

BEATH MACHEKERA

APPLICANT

and

ROAD ACCIDENT FUND

RESPONDENT

In re:

ROAD ACCIDENT FUND

APPLICANT

And

BEATHA MACHEKERA

RESPONDENT

JUDGMENT

MATSEMELA AJ

1. The applicant in the main application is a quadriplegic, incontinent, and has been cared for at the Ann Harding Cheshire home since 2016. The RAF paid the Ann Harding Cheshire Home until February 2024.
2. On 19 March 2024 Cowen J ordered that the respondent (" the RAF") make payment of fees which the applicant owes to the Harding Cheshire Home from March 2024 onwards.
3. The RAF failed to comply with the order of 19 March 2024. After facing an application for contempt of Court, the RAF belatedly seeks a rescission of the Cowen J Judgment.
4. The respondent has opposed the application by filling an answering affidavit.
5. The RAF has not filed a replying affidavit.
6. The basis of the Cowen J order is the undertaking that the RAF furnished on 25 November 2015 already. The RAF gave a statutory undertaking to pay the expenses of the treatment of injuries and care of the applicant, which arose from a motor vehicle accident that occurred as far back as 19 October 2015. The undertaking is that RAF " shall compensate" the claimant for costs that have been incurred.
7. As stated, the RAF paid for some years, but then reneged. Seemingly the RAF was moved to discontinue payment, on the basis of the recent directive, that a foreigner's claim should not be covered under

the RAF legislation.

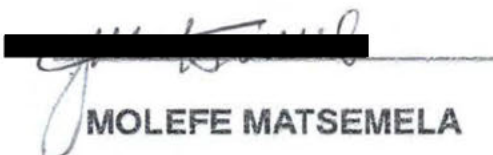
8. The full Bench judgment in the matter of *Road Accident Fund v Mudawu and Others* (0117 95/2022) [2024] ZAGPPHC 655 (9 JULY) is clear that a foreigner 's claims are covered, Also, the memo/ directive by the RAF applies to future claims, not finalised claims. The RAF has clearly given an irrevocable undertaking.

9. Applicant anticipates that because of the *Modawu* judgment, the RAF will not proceed with the application for rescission also, the RAF is clearly bound to continue honouring the undertaking it gave years ago and has implemented. It has waived any rights it may have had not to pay.

10. Counsel for Respondent argues that the rescission application dismissed with attorney and client costs. There is no reason for the indigent applicant to be out of pocket. I agree. I therefore make the following order.

Order

1. The application for rescission dismissed.
2. The Applicant is to pay the costs on an attorney and own client scale.


MOLEFE MATSEMELA

Acting Judge of the Gauteng High Court, Pretoria

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10 H 00 on 3 April 2025

HEARD ON 21 January 2025

FOR THE APPLICANT

ADV AA De WET

INSTRUCTED BY

STEVE MERCHAK ATTORNEYS

FOR THE RESPONDENT

ADV L PETER

INSTRUCTED BY

SCHAAFSMA ATTORNEYS