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

Case No: 134420/2023

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

21 February 2025

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

THE LEGAL PRACTICE COUNCIL

1st Respondent

THE BOARD OF SHERIFFS

2nd Respondent

THE SHERIFF, PRETORIA CENTRAL

3rd Respondent

THE SHERIFF, PRETORIA EAST

4th Respondent

THE SHERIFF, CENTURION EAST

5th Respondent

THE SHERIFF, JOHANNESBURG CENTRAL

6th Respondent

THE SHERIFF, CAPE TOWN

7th Respondent

THE SHERIFF, EAST LONDON

8th Respondent

THE SHERIFF, DURBAN CENTRAL

9th Respondent

THE PRETORIA ASSOCIATION OF ATTORNEYS	10 th Respondent
THE JOHANNESBURG ATTORNEYS ASSOCIATION	11 th Respondent
MOKODOU ERASMUS DAVIDSON INCORPORATED	12 th Respondent
VAN DYK STEENKAMP ATTORNEYS INCORPORATED	13 th Respondent
MAFORI LESUFI INCORPORATED	14 th Respondent
ALFRED LYTON AND 186 OTHERS	15 th to 201 st Respondent
NOLWANDO DUNGA AND 5 OTHERS	202 nd to 207 th Respondent
YOLISWA ALICIA MTHI	208 th Respondent
PRINCESS QIKANI	209 th Respondent
DVDM ATTORNEYS INCORPORATED	210 th Respondent
PROFESSIONALS UNITY OF SOUTH AFRICA	211 th Respondent
BRITS & BEUKES INCORPORATED	212 th Respondent
JJ MNGUNI	213 th Respondent
SCHUMANN VAN DEN HEEVER AND SLABBERT INC.	214 th Respondent
BLACK LAWYERS ASSOCIATION	215 th Respondent

JUDGMENT

SK HASSIM J

Introduction

[1] The Road Accident Fund (“**the Fund**”) has been the beneficiary of a moratorium on the execution of writs of execution and warrants of attachment since November 2020, save for the period between September 2021 to August 2022. In this application, launched on 21 December 2023, the Fund seeks the suspension of writs of execution and warrants of attachment (referred to hereinafter as **writs and warrants**, respectively). The length of the suspension depends on whether the writ or warrant relates to the payment by the Fund of (i) compensation for bodily injuries (hereinafter referred to as “**the capital claims**”); or (ii) interest on the capital claim (“**interest claims**”); or (iii) legal costs (“**legal costs claims**”). The length of the suspension in respect of capital claims is to be determined by the age of the court order, (or the settlement agreement, whichever is applicable) determining the capital claim. The defining date for the suspension of writs and warrants for interest would be the date the capital claim was paid. In the case of writs and warrants for legal costs, the length of the suspension of the writs and warrants would be dictated by whether the bill of costs was settled internally with the Fund, or had to be taxed, and when these events happened.

[2] The application was opposed by the respondents cited by the Fund ¹, as well as parties who intervened as respondents. Some respondents counter applied amongst others, for a structural interdict.

Historical context

[3] On 24 April 2021, the Full Court, granted under case number 58145/2020, a stay of writs and warrants against the Fund for a fixed period of roughly twenty weeks, namely from 1 May 2021 until 12 September 2021 (“**the Full Court order**”).

[4] The stay of execution related to writs and warrants against the Fund based on orders (“awards”) for the compensation payable (“the capital”/ “capital claim”) under the Road Accident Fund Act, Act No 56 of 1996 (“**the RAF Act**”) which were not older than 180 days reckoned from the date of the court order. For convenience, I will henceforth refer only to court orders. I do not intend thereby to exclude settlement

¹ Being the first to eleventh respondent.

agreements entered with the Fund in respect of the payment of capital. The moratorium from the Full Court protected the Fund from execution to satisfy orders for the capital claim. (paragraph 45 (b) of the Full Court's order).

[5] As far as claims based on court orders older than 180 days reckoned from the date of the court order, the Fund was ordered to pay these claims by a fixed date. This, provided that the claimant's attorney notified the Fund of the existence of such claims.

[6] The Fund had obtained a reprieve of roughly 20 weeks (or four-and-a-half months (4½ months)) from the Full Court on the basis that a stay of execution was necessary to enable it to make payments within its available resources. It applied for several extensions after the Full Court's order lapsed in September 2021. Seemingly, notwithstanding the benefit of the moratorium, the Fund's operations and financial position did not stabilize. The Fund's new management appears not to have succeeded in implementing the then envisaged "far-reaching plans to restructure its payment system" to enable it to promptly discharge its statutory obligation. The application for further extensions on their own show that the Fund was not able to discharge its statutory obligation, notwithstanding the moratorium. Thus, impacting on the State's ability to promptly discharge its constitutional obligations to protect road users against the risk of the infringement of their right to freedom and security of their person. ²

[7] Notably, writs and warrants in respect of legal cost orders or interest on the capital claim, were not covered by the Full Court's order.

[8] The Fund failed to secure an extension of the moratorium when the Full Court's order lapsed. On 12 September 2021 the protection enjoyed by the Full Court order ended.

[9] On 25 August 2022, Van Der Westhuizen J restored the protection for six months in respect of capital awards not older than 180 days as from the date of the

² Cf. paragraph 29 of the Full Court's judgment.

court order, or the date of the settlement (“the Van der Westhuizen J order”). In terms of paragraph 2, attorneys representing claimants whose matters had not been placed on the Requested Not Yet Paid (“RNYP”) list, had to provide to the Fund a list of such claims by a fixed date. In terms of paragraph 4 the Fund was obliged to pay, by a fixed date, claims which were older than 180 days reckoned from the date of the capital award. This was subject to the claimant’s attorney having notified the Fund of the claim by no later than a fixed date. The protection under the order by Van der Westhuizen J lapsed on 23 February 2023.

[10] On 9 March 2023, Swanepoel J reinstated the order issued by Van der Westhuizen J. All writs and warrants against the Fund based on capital awards were suspended until the order had aged 180 days reckoned from the date of the order. The order endured for six months or until the application instituted under case number 58145/2020 was heard by the date arranged with the Deputy Judge President, whichever date was the earlier. The fixed dates referred to in the order by Van der Westhuizen J were adjusted. The claimants’ attorneys were directed to send the notifications contemplated in Swanepoel J’s court order to the Fund’s dedicated e-mail address, namely 4[...]. The Fund was ordered to pay all claims on the RNYP list older than 180 days, by a fixed date.

[11] On 8 August 2023, the ambit of the moratorium was extended. The Fund secured a further six-month suspension of writs and warrants on capital awards. It also secured a suspension of writs and warrants in respect of interest claims not older than 180 days reckoned from the date when the capital claim was paid. Janse van Nieuwenhuizen J suspended such writs and warrants for 14 days. The court order was operative for six-months, thus lapsing on 7 February 2024.

The institution of the present application

[12] This application was issued on 21 December 2023. I highlight the primary aspects of the relief for which the Fund applied.

[13] In the notice of motion, the Fund sought a suspension on the execution of (i) capital and interest orders (“awards”); and (ii) cost orders.

[14] Execution on capital awards had been suspended from time to time since at least 9 December 2020.³ Execution on interest awards have been suspended since 8 August 2023.⁴

[15] The object of the present application is to secure an extension of not only the protection enjoyed under the orders issued by Janse van Nieuwenhuizen J but to extend the ambit of the protection hitherto enjoyed, to include a moratorium on the execution of writs and warrants for legal costs.

[16] In all cases where the Fund fails to place matters on the RNYP list within 30 days of the notification from the claimant's attorney to do so, there would be no impediment to immediate execution (prayer 6).

Synopsis of the primary relief in the notice of motion

[17] The length of the suspension of execution which the Fund seeks in the notice of motion varies depending on whether execution is to satisfy the capital award, interest thereon, or legal costs.

Capital claims

[18] The age of the court order for the capital claim would determine the commencement of the suspension on the execution of capital awards.

[19] In respect of capital awards not older than 180 days reckoned from the date of a court order (or settlement), the Fund applied for execution to be suspended for 180 days (prayer 1).

[20] The relief claimed in prayer 7 of the notice of motion can be confusing.⁵ Nevertheless, in respect of existing court orders for the payment of capital which

³ The order issued by Lamont J on 9 December 2020.

⁴ In terms of the order issued by Janse van Nieuwenhuizen J.

⁵ It reads:

“That the RAF is ordered to pay all personal capital compensation claims based on court orders already granted in terms of the RAF Act, 1996, which are older than 180 days from the date that the RAF was informed thereof by email to 45A-order@raf.co.za within 30 days from the date set out in paragraph 6, provided that the RAF has been properly notified by an attorney who represents the claimant that such claims that are older than 180 days of the

were older than 180 days, the Fund undertook to pay the capital within a fixed period subject to conditions concerning notice of the claims by a claimant's attorney.

Interest claims

[21] The lapse of time reckoned from the date of the payment of the capital claim would determine the duration of the suspension on the execution of interest claims.

Legal costs

[22] In the case of legal costs, the date of the costs order (or settlement of the dispute as to the Fund's liability for legal costs) and whether the bill of costs was settled with the Fund internally and when, or had to be taxed, would determine the duration of the suspension on the execution of legal costs claims, and its commencement (prayer 4).

The interim relief pending finalisation of this application

[23] On 15 February 2024, Bam J extended the operation of the order issued by Janse van Nieuwenhuizen J pending the finalisation of this application. On 23 May 2024, I extended the operation of the order issued by Bam J until the finalisation of this application.

The unfolding of the presentation, and hearing, of this application

[24] The application which was enrolled before me for three days was not argued. Nor were the counter applications.

existence of such claims within 30 days from the date of this order by email to [sic] as set out in paragraph 5 6..."

Prayer 5 reads:

"That all attorneys who represent a claimant and whose matters have not been placed on the RNYP list, are to provide the RAF with a list of matters which do not appear on the RNYP list by email to 45A-order@raf.co.za within 30 Court days from the date of this order."

Prayer 6 reads:

"That the RAF is ordered to place all matters referred to in paragraph 5 above on the RNYP list within 30 court days from the date mentioned in paragraph 5 and should the RAF failed to load such matters on the RNYP list, then the matter may be executed, notwithstanding the age of the judgment...."

[25] The parties informed me on the first day of the sitting that they wished to explore the possibility of resolving or limiting the disputes. I acceded to the request to stand the application down to later in the week. On the third day, I was informed that the bulk of the disputes were resolved, however, there remained issues which the parties could not agree on. The application was called at 14h00. Some respondents raised points *in limine* and thus resisted the application. By the end of their arguments, there appears to have been a change of heart. Nevertheless, the Minister of Transport is not a necessary party and the authority to institute the application has been established on the papers. The non-joinder point, and the charge that the proceedings are not authorised, in my view are without merit. I am not satisfied that a dispute of fact arises on the papers. I was presented with five (5) separate proposals styled “Draft Order” by the following parties-

- (a) The Fund (“**the RAF’s draft order**”).
- (b) Mafori Lesufi Incorporated, the fourteenth (14th) respondent (“**the Mafori Lesufi draft order**”).
- (c) Professionals Unity of South Africa, the two hundred and eleventh (211th) respondent (“**the PROFSA draft order**”).
- (d) The Black Lawyers’ Association, the two hundred and fifteenth (215th) respondent (“**the BLA draft order**”).
- (e) The tenth (10th) to the two hundred and tenth (210th) respondent and the two hundred and twelfth (212th) to two hundred and fourteenth (214th) respondent (“**the Geach draft order**”).

[26] The Fund moved for an order in terms of the draft order prepared by it. The terms of the draft order did not align with the terms of the notice of motion. The devil was in the detail added to the relief claimed in the notice of motion. The resulting differences between the relief claimed in the notice of motion and the order moved for, were not insignificant.

[27] While there were differences in the content of the five proposals, there were also commonalties. At the end of the day what each of the five proposers effectively desired was for the court to pick one of the proposed draft orders to convert into a court order or pick provisions from the proposals presented which should make their

way into a court order. There were no meaningful submissions whether an order proposed was competent or why a particular provision in a proposal should be included in the order made in this application or not.

[28] I have reservations whether the application which on the face of it is brought under rule 45A of the Uniform Rules of Court, the common law or section 172 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), is in effect not an application deferring or postponing the Fund's liability to claimants for reasons which follow. However, because the parties are agreed that writs and warrants in respect of capital claims and interest claims should be suspended, this is not an issue before me.

[29] Apart, from the issue whether execution in respect of legal costs should also be suspended, the differences in the provisions in the five draft orders are administrative or regulatory. Courts are adjudicators of disputes of fact and law. They are not administrators. What the RAF seeks goes beyond the regulation of the court process. The holders of the remedy to permanently heal or temporarily soothe or alleviate the Fund's malady is the Legislature and the Minister in charge of the portfolio for Transport.

[30] The legislature has dictated the Fund's rights and obligations, and the conditions under which they arise. At the same time, it has dictated the rights and obligations of the beneficiaries of the compensation payable by the Fund, and the conditions under which they arise.

[31] Regrettably, over at least the last 3-4 years, the Fund has not respected the rights and needs of claimants injured in motor vehicle accidents due to the negligent driving of another. Lamentably, the Fund has breached its statutory obligation to compensate injured claimants.

[32] The Fund disregards the rules of court aimed at an orderly and speedy resolution of disputes. It also ignores court orders. Consequently, whether intentionally or not, the Fund has obstructed the efficient operation of the courts, thus failing to discharge its positive constitutional obligation under section 165(4) of the

Constitution “to assist ...courts to ensure the dignity, accessibility and effectiveness of the courts”.

[33] Undesirably, countless hours of judicial time, and resources are wasted because the Fund does not properly defend actions. In most cases, the Fund does not produce expert reports and is not represented at the trial. The adjudicative task is however not made lighter when the Fund is in default, it is heavier. The court must still ensure that a plaintiff is neither over-compensated nor under-compensated. But, without the benefit of submissions from the defendant why the compensation sought is not fair and reasonable, invariably the court must critically, and more closely, scrutinise the opinion evidence than would otherwise be necessary. At the same time, the court must remain mindful that it is an adjudicator, not an adversary. This unwittingly leads to the inefficient use of already strained judicial resources. Unfortunately, even in those isolated cases where the Fund is represented at the trial, the Fund cannot challenge the correctness of the facts informing the opinion of an expert consulted by the plaintiff, let alone the opinion. Often, through no fault of the legal practitioner, the legal practitioner is hamstrung making meaningful submissions. Not only participation, but meaningful participation, by the Fund will contribute and alleviate the burden which the courts bear.

[34] The Fund’s attitude to actions has clogged court rolls to the prejudice of other litigants. Albeit perhaps unconsciously, the Fund’s conduct is inconsistent with section 162(4) and section 164(3) of the Constitution.

[35] Through appealing to the court’s discretion under rule 45A to suspend the execution of any order, or its inherent power to regulate its procedures conferred by the common law and section 173 of the Constitution, the Fund has achieved a postponement or deferment of its statutory obligation to compensate the beneficiaries of the social security scheme created by the RAF Act. The reprieve which the Full Court granted to the Fund was intended to be a temporary suspension of execution.⁶ However, what the Fund has achieved, and wants to perpetuate, is a postponement or deferral of its liability to compensate a claimant. In my view, that

⁶ Para 35 of the Full Court’s judgment.

must be sanctioned by the legislature because the obligation to pay compensation and the conditions under which this must happen have been proclaimed by the legislature. If the Fund wants a deferral or the postponement of its obligation to pay compensation to claimants who meet the conditions for compensation, it must obtain the legislature's sanction.

[36] While the court has the inherent common law power and the constitutional authority to regulate its process, it does not have the power to regulate how an entity such as the Fund must administer its affairs and what it should do to discharge its statutory mandate, and obligations. It does not lie in the purview of the courts to administer the Fund and manage its operations or direct the minutiae of how it should carry out its functions. The Fund has invoked the court process as an instrument to regulate, administer and manage its operations. In this way the Fund seeks to impose rules that suit it, when it suits it. The rules are fluid and for its benefit alone.

[37] If it is necessary or expedient for the achievement or promotion of the object of the RAF Act to impose conditions such as notification of court orders, the manner thereof, and the provision of documents to facilitate efficient and prompt payment of claims, as the Fund seeks to do in this application, in my view the remedy lies in section 26 of the RAF Act. The Minister is empowered thereby to make regulations regarding any matter which it is expedient or necessary to prescribe to achieve or promote the object of the RAF Act.

The issues

[38] By the time that the application was recalled before me on the third day, the parties were agreed that writs and warrants in respect of capital claims ⁷ as well as awards for interest on the capital claims should be suspended for 180 days. The parties differ on when the period of suspension should commence.

⁷ Payable by the Fund under a court order or a settlement agreement between the claimant/plaintiff and the Fund.

[39] They are not in agreement that writs and warrants for legal costs payable by the Fund should be suspended. Nor, that this order should operate for more than 6 months.

[40] The 15th to 201st, and 208th and 209th, respondents had conditionally counter applied for a structural interdict. They did not persist with this at the hearing and aligned themselves with the Geach order.

[41] The 14th respondent, Mafori Lesufi Incorporated, counter-applied for an order compelling the Fund (i) to pay to it in respect of matters which were settled with the Fund or finalised, all amounts due and owing for more than 180 days of which the Fund had been duly informed; and (ii) to load all settled and/or finalised matters submitted by it within 5 calendar days. It did not persist with this relief.

[42] However, and even though the 14th respondent, as well as the 211th respondent, PROFSA, and the 215th Respondent, the BLA, did not counter apply for a structural interdict, their draft orders contain a structural interdict. Not only is there no counter application for a structural interdict before me by these respondents. I was also not addressed on the merits of a structural interdict. Accordingly, I am not prepared to grant the orders proposed by the 14th respondent in paragraph 15 and 16.1 and 16.3 of its draft order, nor for payment in terms of paragraph 16.2, which is linked to sub-paragraph 16.1 and 16.3. For the same reason, I am not inclined to grant the structural interdict contained in paragraph 4 and 11 of the draft order proposed by the 211th respondent and the 215th respondent respectively in their separate draft orders (which are identical in all respects).

[43] In view of the agreement on the suspension of writs and warrants to satisfy capital claims as well as interest claims, I do not have to decide whether a case has been made out for the suspension of such writs and warrants. The issues which the parties are not able to agree on and which I must therefore decide are:

- (a) When the 180-day suspension in respect of writs and warrants in respect of capital claims should commence.

- (b) From what date should execution be suspended for interest claims which are not older than 90 days reckoned from the date the capital claim was paid.
- (c) Whether writs and warrants for legal costs should be suspended, and if so, from what date and for how long.
- (d) Whether the commencement of the suspension should be postponed in certain circumstances.
- (e) Whether the order I make should operate for 6 months or 12 months.

The commencement date of the 180-day suspension in respect of writs of execution and warrants of attachment in respect of orders for capital which have not aged 180 days

[44] In its notice of motion, the Fund sought in respect of writs of execution and warrants of attachment based on capital claims a reprieve of 180 (one hundred and eighty) calendar days (6 months) from the date of the court order or the date of the settlement of the capital claim.⁸

[45] However, in its draft order it, moves for the following —

“All writs of execution and warrants of attachment against the Road Accident Fund (“the RAF”) in respect of capital based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 1996 (“the RAF Act”), as amended, which are not older than 180 calendar days as from the date when the RAF is alerted to the court order or settlement in question by the sending of an e-mail including a stamped court order to 4[...], are hereby suspended for a period of 180 calendar days from the date that the RAF is alerted to the order or settlement as set out above.”

[I have underlined the text to highlight the differences]

⁸ Paragraph 2 of the notice of motion reads:

“That all writs of execution and warrants of attachment against the Road Accident Fund (“the RAF”) based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 1996 (“the RAF Act”), as amended, which are not older than 180 calendar days as from the date of the court order or settlement question, are hereby suspended for a period of 180 days [sic] calendar days from the date of the order or settlement in question.”

[46] The differences are not insignificant; the judgment creditor's right to execute its judgment is not only suspended it is postponed. Firstly, the date on which the suspension commences is determined by the date on which the Fund is "alerted to the court order or settlement" in the manner and form required by the Fund. Secondly, flowing from the first, alerting the Fund to the court order or settlement agreement in the manner and in the form required by the Fund is a pre-requisite to execution. Execution will thus be postponed until the Fund is alerted as required by it, and execution will be suspended from that date for a period of 180 days.

[47] I infer from the Fund's shift from what was claimed in the notice of motion to what is claimed in the draft order, namely imposing an obligation on the claimants' attorneys to "alert" the Fund to the court order, was deliberate. But the Fund does not explain why it has shifted the commencement date of the suspension from the date of the court order to when the Fund is "alerted" to the court order or settlement. It also does not explain why claimants must be ordered to provide to it a stamped court order as a condition to execution of the order.

[48] The consequence of the obligation which the Fund seeks to impose on claimants is that unless the Fund is alerted as required by the Fund the commencement of the aging of the court order and the commencement of the period for which writs and warrants are to be suspended will be postponed until the Fund is so alerted.

[49] Save for the 211th and the 215th respondent, the other respondents oppose the imposition of an obligation (i) to "alert" the Fund to the court order, or settlement; and (ii) to send a stamped copy of the court order to the Fund. These respondents propose in their draft order —

"All writs of execution and warrants of attachment against the [Fund] in respect of capital based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act..., which are not older than 180 calendar days as from the date when the RAF is informed thereof by the sending of an e-mail to [4\[...\]](#), are hereby suspended for a period of 180 calendar days from the date that the e-mail is sent to the RAF."

[50] The Fund is not content with being “informed” of the existence of a court order, it wants to be warned (in its words, “alerted to”) something perilous to it.⁹ The aim of a warning is to enable the person warned to avert danger. As I see it, unless the warning comes to the attention of that person it cannot act to avert the danger. Hidden between the lines, the Fund seeks to impose upon the claimant an obligation to ensure that the court order comes to someone’s attention. The obligation to “alert” the Fund to a court order or a settlement imposes a duty on the claimant’s attorney to ensure that the Fund is aware of the court order, or that the order is brought to its attention.

[51] I am not inclined to oblige claimants to “alert” the Fund to the existence of a court order. In my view, this carries more than the obligation to inform or notify the Fund of the existence of the court order. The obligation to “alert” the Fund to the court order or settlement, is unduly onerous. Instead of accomplishing a moratorium, the Fund would achieve a restraint on execution unless the claimant can prove that the court order came to the attention of the Fund. It is inimical to the interests of justice for the beneficiaries of social security to be restrained in this way.

[52] None of the respondents, object to informing the Fund of the court order, or settlement agreement, by sending it by e-mail to the Fund’s dedicated e-mail address. The claimants’ attorneys are prepared to assume the obligation to inform the Fund by e-mail of court orders granted or settlements reached. Therefore, I can find no reason, and none was advanced, why the claimants’ attorneys should not simultaneously with the e-mail send a copy of the stamped court order, and a copy of the settlement agreement, if applicable.

[53] I am not inclined to impose upon a claimant anything more than the obligation to (i) inform the Fund of the court order; (ii) send a copy of the stamped court order, and a copy of the settlement agreement if applicable, to it. I find no compelling reason, and none was advanced, to postpone the commencement of the aging of a court order or the suspension period for writs of execution and warrants of attachment for capital claims beyond the date on which the Fund is informed of the

⁹ Cf meaning of “alert” as a verb in the Oxford Essential Dictionary, Oxford University Press (2011).

court order by the sending of an e-mail accompanied by a copy of a stamped court order to the Fund's dedicated e-mail address.

[54] I therefore intend making an order that all writs and warrants against the Fund in respect of capital based on orders already granted or settlements already reached, which are not older than 180 calendar days as from the date when the Fund is informed thereof by the sending of an e-mail to [4\[...\]](#) together with a copy of the stamped court order, and a copy of the settlement agreement where applicable, are suspended for a period of 180 calendar days from the date when the court order is sent to the Fund's dedicated e-mail address, together with where applicable, a copy of the settlement agreement. An e-mail delivery report shall constitute rebuttable proof of delivery and hence rebuttable proof that the obligation to inform the Fund has been discharged. In the event of the dedicated e-mail address not accepting e-mails on three consecutive calendar days, delivery by hand to the RAF's head office will discharge the claimant's attorney's obligation to inform the Fund.

The suspension of writs and warrants in respect of interest claims

[55] Janse van Nieuwenhuizen J suspended for 14 calendar days all writs and warrants based on claims for interest on amounts already paid to claimants which were not older than 180 days from the date of the payment of the capital amount. The order sought in the notice of motion mirrors this order. However, this is not what the Fund moves for in its proposed order. It seeks the postponement of the commencement of the suspension period unless, and until, the claimant's attorney has notified the Fund of the interest claim and has additionally shown to the Fund the number of days for which interest has been applied, and the gazetted interest rate applied. I do not know the legal basis for imposing these conditions. It seems, the Fund wants to achieve relief from clerical and mundane administrative burdens. I know of no law which allows it to divest itself of such burdens and transfer and impose them on others.

[56] I find no compelling reason, and none was advanced, to postpone the commencement of the suspension period for writs and warrants for interest claims on the conditions which the Fund seeks to impose. Once the period for the payment of the capital claim has passed, interest accrues, unless the law or a court order

provides otherwise. The Fund can determine with reference to the court order whether the capital was paid timeously, and if not, when it was paid and the permissible rate of interest leviable at the relevant time or times under the Prescribed Rate of Interest Act, Act No 55 of 1975. Imposing additional burdens on the claimants' attorneys would escalate legal costs and deplete the compensation awarded to claimants. Postponing the commencement of the suspension period is not in the best interest of claimants for whose benefit the Fund exists. I cannot find any basis to alter the order by Janse van Nieuwenhuizen J for the suspension of writs and warrants in respect of interest claims.

The suspension of writs and warrants in respect of legal costs

[57] The Fund applied before Janse van Nieuwenhuizen J for a suspension on the execution of legal costs for 6 months after a bill of costs was taxed by the Taxing Master. The order was refused because it was found unreasonable for parties to wait a further 6 months for the payment of legal costs when they had already waited 18 months for the bill to be taxed before the Taxing Master. In the present application, in respect of legal costs, the Fund seeks a suspension of writs and warrants for a period ranging between 45 to 180 days.

[58] The respondents oppose the suspension of such writs and warrants outright. The Fund contends that the opposition is unreasonable. I do not agree. To the contrary, I agree with Janse van Nieuwenhuizen J that it is unreasonable that in addition to a plaintiff having to wait for a date for the bill of costs to be taxed before the Taxing Master, it must wait a further six months before it can enforce a costs order granted months, and more likely years, ago. However, the reality is that the survival of the Fund is dependent on a moratorium on execution. Inherent in the respondents' agreement to a further suspension of writs and warrants in respect of capital and interest, is the acknowledgement that a suspension of execution while unpalatable, is necessary to avert a collapse of the Fund.

[59] If the Fund is forced to pay legal costs under the compulsion of the attachment of assets and execution to satisfy these claims, or if it incurs legal costs to obtain an order to suspend attachments and execution, the positive effects of the suspension on execution of writs and warrants in respect of capital claims and

interest, will be diluted, if not undone albeit partially. As I see it, the very object of the moratorium which has been in place since November 2020 will be defeated. It is in the interests of justice, that writs and warrants in respect of legal costs should be suspended. However, the length of the suspension which the Fund seeks is not reasonable. The Fund must be incentivised to settle bills of costs, and pay the legal costs, with expedition. For this reason, I intend ordering a suspension of writs and warrants in respect of legal costs as follows:

- (a) Writs of execution and warrants of attachment in respect of bills of costs settled with the RAF's internal costs department —
 - (i) within 30 calendar days from the service of the bill of costs by e-mail to an address dedicated for this purpose ("the dedicated legal costs e-mail") or
 - (ii) within 30 calendar days from the re-service, by e-mail to the dedicated legal costs e-mail, of bills of costs previously served on the Fund, but not taxed or settled at the date of this ordershall be suspended for 6 weeks from the date of the settlement of the bill of costs.
- (b) Writs of execution and warrants of attachment in respect of bills of costs which have been taxed at the date of this order shall be suspended for 6 weeks from the date of this order.

Length of operation of the order

[60] The notice of motion is silent on the length of time for which the order will be effective. In terms of the Fund's draft order, the order should endure for 12 months from the date of this order. There are no facts to motivate why this is necessary. Mr Geach SC and other respondents submitted that 12 months was arbitrary. It was submitted that the life of the order should be limited to 6 months.¹⁰ In the absence of a motivated case why the Fund requires breathing space for 12 months, and how that will stabilise the Fund to pay judgment debts when they fall due, I am not prepared to allow the Fund a further 12 months. The majority of the respondents are agreed that the order in this application may endure for 6 months. I have considered making an order with a shorter life considering the benefit of the length of the

¹⁰ The 14th and 215th respondent are in agreement. The 211th respondent proposed 3 months

moratorium since this application was heard. I have however decided against it. In my view, the Fund should reflect on and explore whether a legislative path is open to address its challenges, or whether its challenges can be managed through Regulations under section 26 of the RAF Act. I intend allowing them six months from the date of this order to do so.

Costs

[61] The Fund cited the Legal Practice Council, the Board of Sheriffs, Sheriffs in various areas, the Pretoria Association of Attorneys and the Johannesburg Attorneys' Association. Of these, the Pretoria Association of Attorneys ("PAA") and the Johannesburg Attorneys' Association ("JAA") opposed the application. The Fund seeks an indulgence and brings these parties to court. They were entitled to oppose the application, and their contribution has benefited claimants and their attorneys. The Fund should pay the costs of these two respondents. In view of the nature, and implications of the relief which the Fund seeks, the employment of a senior counsel and one junior counsel was warranted. In the circumstances, it is just and equitable, that the Fund pays the costs of the application together with the costs of two counsel, where so employed. Hence the Fund must pay the costs of senior counsel and one junior counsel, the latter's costs taxable on scale C. In the case of the lead counsel not being a senior counsel, the Fund must pay the costs of two junior counsel on scale C.

[62] Concerning the costs of the remaining respondents, their contributions were not essential for the adjudication of the application. At best, they supported the JAA and PAA's opposition. In view of the Fund's parlous financial circumstances, I do not consider it to be in the interests of justice nor in the interest of present and future beneficiaries of the social security scheme established under the RAF Act to burden the Fund with further costs. In the circumstances the remaining respondents shall pay their own costs.

The remaining orders sought

[63] Other orders which the parties request, are not contentious. They are included in the order.

The order

[64] The parties may approach the court by 26 February 2025, for any agreed amendments or the correction of omissions or patent errors, if any, in the order below.

In the result I make the following order:

[65] All writs of execution and warrants of attachment against the Road Accident Fund ("the RAF") in respect of capital, based on court orders already granted, or settlements already reached, in terms of the Road Accident Fund Act, 1996 ("the RAF Act"), as amended, which are not older than 180 calendar days as from the date when the RAF is informed thereof by sending an email to 4[...], accompanied by a copy of the stamped court order, together with where applicable, a copy of the settlement agreement, are hereby suspended for a period of 180 calendar days from the date when the email is sent to the RAF.

[66] All writs of execution and warrants of attachment against the RAF based on claims for interest on capital amounts already paid to claimants, which are not older than 180 calendar days from the date of the payment of the capital amount, are suspended for a period of 14 calendar days.

[67] Writs of execution and warrants of attachment against the RAF based on orders already granted, or settlements already reached, in respect of legal costs for a plaintiff in third-party compensation claims against the RAF, are suspended only in the following instances -

- (a) Writs of execution and warrants of attachment for legal costs in the case of bills of costs settled with the RAF's internal costs department-
 - (i) within 30 calendar days from the date when the bill of costs is sent by e-mail to an address identified by the RAF and dedicated for this purpose ("the dedicated legal costs e-mail"); or
 - (ii) within 30 calendar days from re-sending to the dedicated legal costs e-mail address, bills of costs previously sent to the Fund which have not been taxed or settled at the date of this order

are hereby suspended for 6 weeks from the date of the settlement of the bill of costs.

(b) Writs of execution and warrants of attachment in respect of bills of costs which have been taxed at the date of this order shall be suspended for 6 weeks from the date of this order in the case where the Fund was represented at the taxation and in cases where the Fund was not represented at the taxation, the suspension shall operate for 6 weeks from the date when the claimant's attorney sends the bill of costs embodying the allocatur signed by the Taxing Master to the dedicated legal costs e-mail address.

[68] All attorneys who represent a claimant and whose matters (inclusive of capital, cost and interest) have not been placed on the RNYP list at the date of this order, are to provide to the RAF by sending an e-mail to [4\[...\]](#) within 10 calendar days from the date of this order a list of those matters which do not appear on the RNYP list.

[69] The RAF must place on the RNYP list all matters which a claimant's attorney has identified on its list to the RAF referred to in paragraph 68 above as not appearing on the RNYP list, and it must do so within 30 calendar days of the date on which the e-mail listing such matters is sent by the claimant's attorney to [4\[...\]](#).

[70] If the RAF fails to place such matters on the RNYP list, such settlement or orders may be executed upon on the 180th calendar day following the date of the order or settlement. This paragraph of the order shall not deprive the RAF of the right to contest the order in terms of any law.¹¹

[71] The RAF must pay by 30 April 2025 all personal claims (inclusive of capital, costs and interest) based on court orders already granted in terms of the RAF Act or settlements reached, which are at the date of this order older than 180

¹¹ The RAF reserves this right with the respondents' blessing.

calendar days from the date that the RAF was informed thereof by email to [4\[...\]](#) provided:

- (a) they appear, and are marked “older than 180 calendar days on 21 February 2025”, on the list contemplated in paragraph 68 above of matters which do not appear on the RNYP list which the claimant’s attorney must in terms thereof provide to the RAF by e-mail to [4\[...\]](#) within 10 calendar days from the date of this order; and
- (b) the claimant’s attorney has provided to the RAF the documentation in annexure “X”, referred to in paragraph 73 below, to process payment.

[72] Paragraph 71 above shall not deprive the RAF of the right in terms of any law to contest the order referred to therein. ¹²

[73] The RAF must by 26 February 2025 provide to the court a document listing the documentation necessary for it to process payment, which list shall form annexure “X” to this judgment and form part of this court’s order.

[74] An e-mail delivery report shall constitute rebuttable proof of delivery to the dedicated e-mail addresses referred to in this order, and the claimants’ attorneys’ obligations under this order to send e-mails to the dedicated e-mail addresses shall be deemed to have been discharged. In the event of the dedicated e-mail addresses referred to in this order not accepting e-mails on three consecutive calendar days, delivery by hand to the RAF’s head office will discharge the claimant’s attorney’s obligation under this order to inform or notify the RAF.

[75] The RAF must continue distributing the RNYP list bi- monthly to the attorneys on its database. Any attorney who does not receive its RNYP list must immediately contact the branch where its claims are administered to confirm the correctness of the email address registered on the RAF’s system.

¹² The RAF reserves this right with the respondents’ blessing.

- [76] The RAF must continue its process of paying the oldest claims (capital, costs and interest) first by date of court order or date of the written settlement agreement or date of taxation or date on which interest was claimed for the first time *a priori tempore*.
- [77] This order does not constitute a compromise on any claim which may be in dispute between the RAF and any of the respondents and/or claimants. ¹³
- [78] The parties' rights in respect of ongoing disputes and/or litigation not concerning a writ of execution or warrant of attachment are reserved and this order does not dispose of, nor suspend, such disputes or litigation. ¹⁴
- [79] Supplier claims, as defined in the RAF Act, are excluded from the moratorium in this order on payments.
- [80] This order takes effect immediately and, will be effective for 6 months from the date of this order.
- [81] This order shall be published by the RAF as follows:
- (a) Through the Legal Practice Council to all practising attorneys.
 - (b) Service by the Sheriff on the Minister of Transport, at the official address of the Ministry of Transport and at the office of the State Attorney, Pretoria.
 - (c) Circulating it by e-mail to all attorneys listed on its database.
 - (d) Publication in two major national newspapers.
- [82] The RAF shall pay the Pretoria Association of Attorneys' taxed costs as well as the taxed costs of the Johannesburg Attorneys' Association, including the costs of a senior counsel and one junior counsel where so employed with the junior counsel's costs taxable on scale C. In the case of the lead counsel not

¹³ This is proposed in the Geach order but not the RAF order. This order is made out of an abundance of caution to avert disputes as to the ambit of the orders issued.

¹⁴ This is also proposed in the Geach order but not the RAF order. Again, this order is made out of an abundance of caution to avert disputes as to the ambit of the orders issued.

being a senior counsel, the Fund shall pay the costs of two junior counsel on scale C.

- (c) The remaining respondents shall pay their own costs.

S K HASSIM J

Judge of the High Court
Gauteng Division, Pretoria

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file on CaseLines. 21 February 2025 is deemed to be date on which the judgment is handed down.

Date of Hearing:	23 May 2024
Date of Judgment:	21 February 2025
For the Applicant:	Adv CE Puckrin SC Adv R Schoeman Adv P Nyapholi-Motsie
For the 10 th Respondent:	Adv BP Geach SC Adv JC van Eeden
For the 11 th Respondent:	Adv Salim Ebrahim
For the 12 th Respondent:	Adv G J Strydom SC
For the 13 th Respondent:	Adv E Ferreira SC Adv JRF Ernst
For the 14 th Respondent:	Adv SG van der Walt
For the 15 th to 201 st Respondents:	Adv BP Geach SC Adv G Jansen

For the 202nd to 207th Respondents: Adv M Snyman SC

For the 208th to 209th Respondent: Adv FHH Kehrhahn
Adv R Hawman

For the 210th Respondent: Adv DeWet Keet
Adv L Van Dyk

For the 211th Respondent: Adv K Maponya
Adv JMT Tlokana

For the 212th Respondent: Adv A van der Westhuizen
Mr JJ Bouwer

For the 213th Respondent: Adv Pieter van der Schyff
Adv D Hinrichsen

For the 214th Respondent: Mr. J. Lazarus.

For the 215th Respondent: Adv MR Maphutha
Adv DM Mphahlele