

REPUBLIC OF SOUTH AFRICA



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

Case Number: 63050/2017

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
23 April 2025	
DATE	SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

MATSHELTO MARY JANE MABELA

First Respondent

THE SHERIFF PRETORIA EAST

Second Respondent

JUDGMENT

DOMINGO, AJ

Introduction

[1] This is an application brought by the applicant to suspend the operation and execution of two quantum court orders dated 09 April 2021 and 01 June 2023, and the warrant of execution dated 29 November 2023, pending the institution of

an application to rescind the said court orders within 20 days of the order and the respondents furnishing the applicant with proof of lodgement is sought in this application.

- [2] The application for stay of execution was initially brought on an urgent basis, however, the applicant never enrolled the matter on the urgent roll. This matter has been enrolled by the first respondent. To date, the applicant has not filed any replying affidavit and heads of argument. The applicant also failed to make an appearance in court on the day of the hearing of this matter.
- [3] The first respondent brought an application in terms of Uniform Court Rule 30, objecting to the applicant's failure to comply with Uniform Court Rules 6(5)(b)(iii) and 6(5)(d)(ii), requesting that the applicant remove the irregularity or that the applicant's non-compliance be set aside as an irregular step.

Background

- [4] The first respondent, Ms Matshelto Mary Jane Mabela was injured in a motor vehicle accident as far back as 16 April 2012. She lodged a direct claim with the Applicant under the Road Accident Fund Act, 56 of 1996, which became prescribed in the hands of the applicant. The first respondent, then proceeded to institute action under the common law and summons was served on the applicant as long ago as 15 September 2017. The applicant, however, did not file any notice of intention to defend and remained silent until the first respondent's writ of execution was served on the applicant by the second respondent on 28 November 2023. Only thereafter, did the applicant launch this application.
- [5] In the interim, by default, all the following five orders were granted against the Applicant:
 - a. 22 August 2018: 100% merits per van der Westhuizen J.
 - b. 9 April 2021: loss of income R350 000 per Neukircher J.
 - c. 12 August 2022: compel decision per Kooverjie J.
 - d. 1 June 2023: general damages R550 000 per Oosthuizen-Senekal AJ.

e. 20 October 2023: compel future medical per Mokoena J.

[6] Despite all the services and default judgments the applicant remained inactive and failed to engage up until the writ of execution was served on the applicant on the 28 November 2023.

Issues to be determined

[7] The issues to be determined in this matter are as follows:

- a. Whether the applicant's non-compliance with Uniform Court Rules 6(5)(b)(iii) and 6(5)(d)(ii) amounts to an irregular step;
- b. Whether the operation and execution of the court orders dated 09 April 2021 and 01 June 2023, and the warrant of execution dated 19 November 2023, pending the institution of an application by the applicant, to rescind the said orders within 20 days of this order and the respondents furnishing the applicant with proof of lodgement should be granted;
- c. Whether the second respondent should be interdicted from proceeding with the execution of the warrant of execution against the applicant's movable assets;
- d. Costs.

Relief

[8] I am in agreement with counsel for the first respondent that the relief sought by the applicant is difficult to discern. In this regard there is a difference between the relief set out in the notice of motion and the relief sought under oath in the founding affidavit.

[9] In the notice of motion, the following relief is set out:

- a. suspending the operation and execution of the court orders dated 09/04/2021 and 01/06/2023 and the warrant of execution dated 29/11/2023 pending the institution of an application by the applicant, to rescind the court

orders within 20 days of this order and the respondents furnishing the applicant with proof of lodgement.

- b. interdicting the second respondent from proceeding with the execution against the applicant's movable assets.

[10] By contrast, the founding affidavit declares that the following relief is sought:

- a. pending finalisation of the application for rescission of the default judgment or judgments obtained by the respondents against the applicant, the warrant of execution issued and authorised by the Court in favour of the respondent be and are hereby stayed and/or held in abeyance.
- b. in the alternative to the above, pending finalisation of the applicant's rescission of the default judgments or judgments obtained by the respondent, the execution of such judgements and/or Court orders be and is hereby stayed, held in abeyance and/or suspended.
- c. that leave be and is hereby granted to the applicant to issue the applications for rescission of the judgement and/or Court orders obtained by the Respondent.

Stay of execution

[11] The judgments underlying the writ of execution which the applicant is now desirous of having this court suspend or rescind, are in respect of quantum only and no attempt has been made by the applicant to lay any basis for impugning same. The applicant makes no case for why the quantum amounts are incorrect.

[12] Counsel for the first respondent stated that in effect this is an application under Rule 45A of the Uniform Court Rules, which states that a "court may, on application, suspend the operation and execution of any order for such period as it may deem fit."

[13] Execution is a means of enforcing a judgment or order of court and it is incidental to the judicial process.¹ It is true that the court has the inherent power to regulate its procedure in the interest of proper administration of justice and s173 of the Constitution reaffirms this power.² The court no doubt has the power to control its own processes which encompasses execution steps owing to its inherent jurisdiction or Rule 45A.³

[14] As stated in the Supreme Court of Appeal decision in *Van Rensburg No and Another v Naidoo NO and Others, Naidoo NO and Others v Van Rensburg NO and Others*⁴

“Apart from the provisions of Uniform Rule 45A, a court has inherent jurisdiction, in appropriate circumstances, to order a stay in 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.

A court will grant stay of execution in terms of Uniform Rule 45A where the underlying cause of a judgment debt is disputed, or no longer exist, or where an 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.”⁵

[15] I am in agreement with counsel for the first respondent’s submission that the inherent jurisdiction of the High Court does not include the right to tamper with the principle of finality of judgments and the power to suspend the execution will not be exercised as a matter of course and should be used sparingly to come to the assistance of an applicant outside the provisions of the Rules of Court, when

¹ *Chief Lesapo v The North West Agricultural Bank and Another* 2000 (1) SA 409 (CC) par 13; *Mjeni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (TKH) 453; *Road Accident Fund v Legal Practice Council and Others* 2021 (6) SA 230 GP para 28.

² *Universal City Studios Inc and Another v Network Video (Pty) Ltd.* [1986] 2 All SA 192 (A).

³ See *City of Cape Town v Rudolph and Others* 2004 (5) SA 39 (C) 72; *AJP Properties CC v Sello* 2018 (1) SA 535 (GJ) para 22.

⁴ 2011 (4) SA 149 (SCA) para 51 and 52.

⁵ See also *Gois t/a Shakespeare’s Pub v Van Zyl and Others* 2011 (1) SA 148 (LC) para 37.

the court is satisfied that the interest of justice require it to do so and that justice cannot properly be done unless the relief is granted to the applicant.⁶

[16] The general principles for the granting of a stay of execution summarised succinctly by counsel for the first respondent is as follows:

- (a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.
- (b) The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.
- (c) The court must be satisfied that:
 - (i) the applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and
 - (ii) irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right.
- (d) Irreparable harm will invariably result if there is a possibility that the underlying cause may ultimately be removed, that is, where the underlying cause is the subject-matter of an ongoing dispute between the parties.
- (e) The court is not concerned with the underlying merits of the dispute. The sole enquiry is simply whether the cause is in dispute.

[17] In this matter, none of the existing five underlying default judgments were questioned or legitimately argued against by the applicant. Under the present circumstances, it will not be in the interest of justice to suspend an execution order where on the facts of this case and the law no real and substantial justice requires a stay of execution. Furthermore, it will be an injustice to the first respondent to interdict the second respondent from proceeding with the

⁶ *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis and Another* 1979 (2) SA 457 (W) 462; *Whitefield v Van Aarde* 1993 (1) SA 332 (ECD) 337.

execution against the applicant's moveable assets. The enforcement of a judgment is tantamount to access to justice.⁷

- [18] The Constitutional Court, in *Chief Lesapo v North West Agricultural Bank and Another*⁸, held that “the entitlement of a litigant to enforce a judgment or order granted in his or her favour by a court of law is an incident of the judicial process, access to which is guaranteed by s34 of the Constitution...”

Merits revisited by the Road Accident Fund

- [19] The only court orders for which the Applicant attempts to make out a case for impugning is that in respect of merits, but its rescission is not included in the relief sought in the present matter.

- [20] The Supreme Court of Appeal in *Lodhi 2 Property Investments CC v Bondev Developments (Pty)*⁹ stated:

“A court which grants a judgment by default like the judgment we are presently concerned with, does not grant the judgment on the basis that the defendant does not have a defence; it grants the judgment on the basis that the defendant has been notified of the plaintiff's claim as required by the rules, that the defendant, not having given notice of intention to defend, is not defending the matter and that the plaintiff is in terms of the rules entitled to the order sought.”

- [21] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*¹⁰ the court poignantly stated:

“If our law, through the doctrine of preemption, expressly prohibits litigants from acquiescing in a court's decision and then later challenging that same decision, it would fly in the face of the interests of justice for a party to be allowed to wilfully refuse to participate in litigation and then expect the opportunity to re-open the case when it suits

⁷ *Mjeni v Minister of Health and Welfare* EC 2000 (4) SA (TK) 452, where the court held that the constitutional right of access to courts would remain an illusion unless court orders made by courts are capable of being enforced by those in whose favour such orders were made. The process of adjudication and resolution disputes in courts of law is not an end in itself but only a means thereto; the end being the enforcement of rights and obligations defined in the court order.

⁸ 2000 (1) SA 409 (CC) para 13.

⁹ 2007 (6) SA 87 (SCA) para 27.

¹⁰ 2021 (11) BCLR 1263 (CC) para 103.

them. It is simply not in the interest of justice to tolerate this manner of litigious vacillation. After all, that is why preemption has crystallised as a principle of our law...”

[22] The applicant contends that the first respondent failed to comply with section 24(1) of the Road Accident Act prior to issuing summons. However, the applicant loses sight of the fact that the cause of action embodied in such summons is not in terms of the Act at all, but for damages at common law based on the applicant’s negligence in allowing the first respondent’s claim under the Road Accident Act to become prescribed. Section 24(1) of the Act does not apply to such common law claims.

[23] Furthermore, the applicant proffers no explanation for its default and therefore the inference that can be drawn is that the applicant chose instead to rely on judicial oversight.

[24] In *Road Accident Fund v McDonnell In re: McDonnell v Road Accident Fund*¹¹ the court held:

“...the real purpose of this application was an attempt to revisit the merits...second and attempt to appeal the order granted, which was not only impermissible, but an abuse of the process.”

[25] In the present matter the court has handed down five default judgments against the applicant, this application rings similar to the *McDonnell* case above where the applicant is abusing the court’s processes, as a result thereof it would not be in the interest of justice for this court to revisit the merits.

[26] In the premises, the applicant, as in the case of *Road Accident Fund v Plaatjies and Another; In Re: Plaatjies v Road Accident Fund*¹² brings this application:

“[O]pportunistically with the sole purpose of preventing Ms Plaatjies having the warrant executed as she is entitled to do...”

“[P]repared from a template and had been brought as a matter of course for no purpose other than to delay the execution of the warrant.”

¹¹ (13183/2015) [2022] ZAWCHC 116 (9 June 2022) para 2.

¹² (72939/2017) [2022] ZAGPPHC 540 (25 July 2022) paras 24, 25 and 29.

“[F]or no purpose other than to lay a basis to attempt to avoid compliance with the very 180-day provision which the RAF had itself argued should be included in the order..”

[27] In *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another*; *BP Southern Africa (Pty) Ltd v ZA Petroleum and Another*¹³ the court stated:

“A litigant with an enforceable judgment is entitled to payment, and only in rare cases would be delayed in that process. In my view there may be exceptional cases where a court would still exercise a discretion to prevent an injustice in staying an execution.”

[28] The applicant in this matter has by no means made a case which qualifies as one of those rare and exceptional cases. The applicant also does not allege that it cannot pay the first respondent.

[29] It has been 13 years since the first respondent’s motor vehicle accident with five default judgements against the applicant and the first respondent is yet to receive her payment. The injustice in this matter rests solely on the shoulders of the first respondent who has had to bear the brunt of the applicant contemptuously ignoring all the court orders issued by this Honourable Court.

[30] The applicant has failed to make an appearance at all the court hearings, including this matter, I can therefore only conclude that the applicant is abusing the courts processes. In the premises and having read the papers filed of record and having heard the oral arguments made by Counsel on behalf of the first respondent. I make the following order.

Order:

1. The application is dismissed.
2. The Applicant is ordered to pay the High Court costs of this application and the Rule 30 application on an opposed scale between attorney and client, including the costs of two counsel.

¹³ 2022 (1) SA 162 (GJ) para 25.


W DOMINGO
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Delivered: The 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 email and by uploading it to the electronic file of this matter on CaseLines. This matter was heard in open court on the 13 February 2025. The date of hand-down is deemed to be 23 April 2025.

APPEARANCES

For the Applicant:

No appearance

For the First Respondent:

ADVOCATE BP GEACH (SC) with him
ADVOCATE FHH KEHRHAHN instructed by
ROETS & VAN RENSBURG INC

