



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 6101/2019

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

JUAN PIETER NEETHLING

First Respondent

**THE SHERIFF OF THE HIGH COURT FOR
THE DISTRICT OF CAPE TOWN WEST**

Second Respondent

Court: Justice J Cloete

Heard: 5 June 2025

Delivered: 5 June 2025

EX TEMPORE JUDGMENT

CLOETE J:

- [1] This is an opposed urgent application brought by the Road Accident Fund ("RAF") to stay a writ of execution lawfully issued and served on 14 February 2025, and a lawful attachment made by the sheriff of the RAF's movable property, in respect of a judgment and/or order granted by Adams AJ in this Division on 28 November 2024 for payment by the RAF of R190 928.20 in

respect of past medical expenses. Given that the application came before me in the “Fast Lane” of motion court this judgment is, of necessity, brief.

- [2] The RAF failed to file the requisite Practice Note as required by WCHC Practice Directive 20. This, on its own, is sufficient for me to strike the matter from the roll. However, I have decided, in the interest of justice, to determine the matter on its merits.
- [3] The ground advanced by the RAF for a stay of the writ of execution is that there are pending appeals in both the Supreme Court of Appeal [from a split decision in the Gauteng High Court, namely, Discovery Health (Pty) Ltd v Road Accident Fund & Another [2024] ZAGPHC 1303 (17 December 2024) (“Discovery Health”)] and in this Division (which I understand to be the Van Wyk matter, although no particulars were furnished by the RAF) ie, in respect of different individuals litigating against the RAF, but also in relation to past medical expenses and the RAF’s liability therefor due to certain of its own internal directives.
- [4] The RAF contends that if either or both of those appeals succeed “the result thereof will result in the [RAF] losing property of substantial value [being the amount of the judgment in the matter before me]. The deponent to the RAF’s founding affidavit also contends that “if execution proceeds, the Fund will be forced to direct scarce resources away from settling other judgments and processing current claims in order to restore basic office functionality”. However in the very next paragraph, the RAF alleges that the first respondent’s claim “is fully secured” should the appeals in the other matters fail, and that – without providing an iota of supporting evidence - “the Fund remains solvent and is able to satisfy the judgment”. Self-evidently, these are two materially contradictory allegations.
- [5] The RAF did not apply for leave to appeal the order of Adams AJ. It fundamentally misunderstands the legal position, namely that irrespective of the outcome of any appeal in different litigation (even though it might involve the same legal issues) that outcome will have no effect whatsoever on other

orders made. The Constitutional Court has made this clear in **Merafong City v Anglogold Ashanti** 2017 (2) SA 211 (CC) at paragraphs [41] to [43]. Put differently, the order of Adams AJ will remain of full force and effect until set aside by a court, and not by the RAF deciding that it does not have to comply therewith.

[6] There is an additional relevant factor. In **Esack N.O. v RAF** [2023] ZAWCHC 27, a judgment in this Division, Nuku J held inter alia that the majority decision in Discovery Health fell foul of the doctrine of *stare decisis*, a fundamental principle that requires High Courts to follow decisions of the Supreme Court of Appeal and the Constitutional Court (at paragraphs [15] to [17] of the judgment). In making such finding he referred to binding Supreme Court of Appeal authority which is contrary to the approach adopted by the majority in Discovery Health. Why this is also relevant is that the RAF itself was the losing party before Nuku J and was therefore fully aware of the Nuku J judgment, but elected not to draw this court's attention to it, despite bringing this application on two court days' notice to the respondents; having a duty of the utmost good faith to disclose all relevant factors; and being aware that its own application for leave to appeal the Nuku J order was refused. I was only informed by the RAF's legal representative, in reply, that it now intends lodging a petition against the Nuku J order in the Supreme Court of Appeal.

[7] Having regard to all of the aforementioned, I am compelled to the conclusion that this application is an abuse of the court process.

[8] **The following order is made:**

The application is dismissed with costs on the scale as between attorney and client, including the costs of senior junior counsel.

J I CLOETE
Judge of the High Court

For Applicant: Mr C Hindley
Office of the State Attorney

For First Respondent: Adv P Eia

Instructed by: Batchelor & Associates (Mr A Batchelor)