

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 45484 / 2021

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

DATE: 4 September 2025

SIGNATURE OF JUDGE:

[REDACTED]

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

**ADV M MPHAHLELE OBO
MAGADLA OYENA ZELDA**

First Respondent

SHERIFF PRETORIA EAST

Second Respondent

JUDGMENT

Woodrow, AJ:

Introduction

[1] The Road Accident Fund (“**RAF**”) initially brought this application urgently seeking (a) to set aside a warrant of execution dated 3 September 2024, (b) to interdict the second respondent, the sheriff, from proceeding with execution of the warrant, and (c) to rescind a judgment of this court granted on 21 February 2024.

[2] The matter was initially enrolled in the urgent court in December 2024. Neukircher, J struck the matter from the urgent roll for lack of urgency. Neukircher, J further ordered that the RAF “... *may not re-enrol the matter in the urgent court and may enrol it in the ordinary opposed motion court.*” and that the RAF’s “... *legal representative is barred from charging fees for today.*”¹

¹ Order of Her Ladyship Justice Neukircher, CL000-1

[3] The notice of motion reads as follows in relation to the substantive relief sought (excluding the prayer for urgency and costs):²

...

2. Setting aside the operation and execution of the warrant of execution dated **03rd September 2024**;
3. Interdicting the Second Respondent from proceeding with execution of the warrant of execution against the Applicant's movable assets;
4. Rescission of the judgment granted by Justice **Joyini, J** on the **21st February 2024**;

...

[4] Since the launch of the application, the record reveals that the RAF has done nothing. The RAF has filed no replying affidavit, has filed no heads of argument, and has failed to appear at the present hearing. The facts of this matter demonstrate that the application is a vexatious stratagem aimed at delaying payment and frustrating compliance with a court order. It constitutes a furtherance of the RAF's "*chaotic approach to litigation*".³

[5] Counsel for the first respondent appeared in court together with the court appointed curator *ad litem*.

Background facts and litigation history

² Notice of motion, CL055-1

³ **Road Accident Fund v Harmse** (23540/2017) [2025] ZAGPPHC 545 (20 May 2025) par [10]

- [6] The relevant accident that caused Ms Magadla injury and damage occurred in January 2020. Summons was issued and served in September 2021. The background and history are accordingly extensive, and it is not possible or necessary to set out a comprehensive recordal of the background or the litigation history. I merely set out certain of the more relevant dates.
- [7] The version advanced by the RAF in the founding papers is shown to be misleading when one has regard to the answering affidavit filed in this matter. The RAF has elected not to file a replying affidavit. The facts set out below are extracted from the answering affidavit read together with the record in this matter.
- [8] Ms Magadla was a passenger in a vehicle that was involved in an accident near the N1 Road, Allandale, in January 2020. She sustained various serious injuries, including a moderate traumatic brain injury.
- [9] A claim was lodged with the RAF on 23 September 2020, and summons was issued and served on 9 and 13 September 2021 respectively.
- [10] On 24 January 2022, the RAF conceded merits - 100% in favour of Ms Magadla, offered general damages of R500,000.00, and offered an undertaking in terms of section 17(4) of the Act. The offer was accepted. Accordingly, the only outstanding issue was loss of income.

- [11] The attorneys on behalf of Ms Magadla appointed a number of experts in order to quantify loss of income, the majority of which reports were served on the RAF in September 2022 already. The RAF did not appoint any experts.
- [12] Due *inter alia* to the head injuries sustained by Ms Magadla, a curator *ad litem* was appointed for her by order of this court on 14 September 2022 (pursuant to an application for such appointment).
- [13] In October 2022, amended particulars of claim were filed on behalf of Ms Magadla (pursuant to an unanswered notice of intention to amend), in essence substantially increasing the *quantum* claimed, such *quantum* being in line with the expert reports filed on behalf of Ms Magadla.
- [14] The RAF filed notice to defend the action in January 2023. In the notice of intention to defend the RAF stated that “... *it has appointed the **STATE ATTORNEY, PRETORIA** at the address set out below and at which it will accept service of all process in this action.*” The RAF has been represented by the State Attorney ever since then.
- [15] Pursuant to a notice of bar, the RAF finally filed its plea (including also special pleas) dated 16 May 2023.
- [16] A pre-trial was held on 27 June 2023, and the minute on behalf of the parties signed on the same date. The pre-trial minute was served by hand on the State attorney on 29 June 2023.

- [17] The notice of set-down of the trial reflecting the trial date of 21 February 2024 in this matter was served by hand on the State attorney on 3 October 2023.
- [18] The RAF's attorney of record from the State Attorney, Ms Nompumelo Kunene, was at roll call court on 21 February 2024 and elected to not to participate at the hearing. The matter was enrolled as matter 30 on the trial roll. The trial matter was allocated to Joyini, AJ in court 2D. Evidence was led to prove the case of loss of income. Joyini, AJ granted judgment in favour of the plaintiff in the precise sum arrived at in the expert report of Tsebo Actuaries dated 22 July 2022 (and which had been served on the RAF in September 2022) in respect of loss of income.
- [19] The order was served on the RAF on 21 February 2024 and uploaded on Caselines on the same day.
- [20] The RAF failed to comply with the order of this court and failed to make payment. A warrant of execution was issued on 3 September 2024, and an attachment of movable goods of the RAF was made on 26 September 2024.
- [21] The RAF, still represented by the State Attorney, brought the present application in November 2024, approximately nine months after the order had been granted by Joyini, AJ.

The merits

[22] The RAF states *inter alia* that: “*This application is brought in terms of Section 173 of the Constitution of the Republic of South Africa ..., the provisions of Uniform Rule 45A and 31(2)(b) read with Rule 42(1)(a);*”⁴

[23] The RAF makes out no case for the relief that it seeks.

[24] The reliance of the RAF on rule 31(2)(b) of the uniform rules of court is entirely misplaced. Rule 31(2) of the uniform rules of court provides as follows:

- (a) Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.
- (b) A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.

[25] The first fundamental obstacle for the RAF in this regard is the fact that the order that the RAF seeks to rescind is not a default judgment as contemplated

⁴ Founding affidavit, par 8, CL056-4

in rule 31(2) of the uniform rules of court for the following reasons: **(a)** the RAF had filed a notice of intention to defend and a plea and was accordingly not “*in default of delivery*” of either of such documents (as envisaged in rule 31(2)(a) of the uniform rules of court); **(b)** the plaintiff had not set the action down as provided for in subrule (4) for default judgment – *in casu*, the action had been set down on the trial roll, the notice of set down having been served on the RAF, the attorney of the RAF was present in court, and the matter was allocated for hearing by a trial judge. The order granted *in casu* does not constitute a default judgment as contemplated in rule 31(2). The order is accordingly not susceptible to rescission in terms of Rule 31(2)(b) of the uniform rules of court.

[26] Even if such order were to have been susceptible to rescission in terms of Rule 31(2)(b) of the uniform rules of court, the RAF would still not be entitled to an order in terms thereof as **(a)** the application was launched months late, and no condonation has been sought, **(b)** the RAF has failed to show “*good cause*”.

[27] The explanation proffered by the RAF for being ‘in default’ is false. The State attorney has at all times since the filing of the notice of intention to defend been the attorney of record of the RAF. The RAF further fails to disclose a *bona fide* defence. The highwater mark of the case of the RAF regarding its so-called *bona fide* defence is the allegation that: “*I therefore submit that the accident in question had no impact or, at best, it only had minor impact towards the Claimants’ future work ability and thus the applicant is herein is of the view*

that the amount as per the actuarial calculation is excessive and /or the Respondent's claim for Loss of earnings is inflated." The RAF however fails to furnish a shred of evidence in support of its contention and fails to provide any expert reports of its own. The unsupported submission is destroyed by the expert reports filed on behalf of the plaintiff. The RAF raises no *bona fide* defence which carries any prospect of success.

[28] The reliance of the RAF on rule 42(1)(a) is similarly misplaced and without merit.

[29] Rule 42(1) of the uniform rules of court provides:

The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary—

- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
- (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) an order or judgment granted as the result of a mistake common to the parties.

[30] The order *in casu* was not "*granted in the absence of*" the RAF. Further, such order was not "*erroneously sought or erroneously granted*" as contemplated in rule 42(1)(a) of the uniform rules of court. The order is accordingly not susceptible to rescission in terms of Rule 42(1)(a) of the uniform rules of court.

- [31] The RAF is not entitled to a rescission in terms of Rule 42(1)(a) of the uniform rules of court, for further reasons: (a) the attorney of record of the RAF was present in court when the order was granted; (b) the RAF was “*afforded procedurally regular judicial process*”, and even if it could be construed that the RAF was not present in court (which the facts do not bear out), rule 42(1)(a) does not assist the RAF;⁵ (c) the RAF has failed to show an ‘error’ as is contemplated in rule 42(1)(a).
- [32] Whilst the RAF does not explicitly refer to a common law rescission, for the reasons addressed already, read together with the submissions in paragraph 4 of the respondent’s heads of argument,⁶ the RAF has made out no case in this regard.
- [33] The rescission application is accordingly to be dismissed.
- [34] The RAF makes out no case in terms of Rule 45A nor for an interdict. Justice does not require a stay. In fact, on the facts of this matter, justice requires the enforcement of orders of this court. The rescission claimed by the RAF must clearly be dismissed for the reasons stated already. For such further reason there is no case made out for any of the further relief sought by the RAF.
- [35] The application ought to be dismissed.

⁵ **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** [2021] ZACC 28 par [56]

⁶ Caselines, 061-10 to 061-13

Costs

[36] The court agrees with the first respondent that a punitive cost order is warranted for the following reasons *inter alia*: (a) the rescission application has no prospect of success and is brought extremely late; (b) the application is an abuse of court process, and the first respondent has been seriously prejudiced thereby; (c) the application is a deliberate attempt to frustrate the litigation process and the first respondent whose rights are at stake; (d) the RAF has sought to mislead in its application in order to obtain an order that it is not entitled to; and (e) the application is vexatious.

[37] Costs on an attorney and client scale are warranted.

[38] The curator *ad litem* in complying with his duties attended at the hearing of the matter. The costs order ought to include his costs.

ORDER

[39] Accordingly, I make the following order:

1. The application is dismissed.
2. The applicant is directed to pay the costs of the first respondent and the costs of the curator *ad litem* on an attorney and client scale.



WOODROW AJ
ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by e-mail and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on the 4TH September 2025.

Appearances

Counsel for the Applicant: No appearance

Attorney for the Applicant: State Attorney

Counsel for the First Respondent: F Matika

Attorney for the First Respondent: Mathekga Attorneys

Curator *ad litem*: M Mphahlele

Date of Hearing: 12 June 2025

Date of Judgment: 4 September 2025