

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 37048 / 2020

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

DATE: 11 September 2025

SIGNATURE OF JUDGE:

A black rectangular box redacting the signature of the judge.

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

GLADMAN JAMBAYA

First Respondent

**THE SHERIFF OR HIS DEPUTY
CENTURION EAST**

Second Respondent

JUDGMENT

Woodrow, AJ:

Introduction

[1] The applicant, (the “**RAF**”), seeks orders in the following terms:¹

1. That pending finalization of the Application for Rescission of the court order obtained by the 1st Respondent against the Applicant, the Warrant of Execution issued and/or authorised by the court in favour of the 1st Respondent be and are hereby stayed and/or held in abeyance;
2. In the alternative to the above that pending finalization of the Applicant's Application for Rescission of the court order obtained by the 1st Respondent, the execution of such judgment and/or Court Order be and is hereby stayed, held in abeyance and/or or suspended;
3. That leave be and is hereby granted to the Applicant to issue the Application for Rescission of the court Order obtained by the 1st Respondent.
4. That any of the Respondents be and is hereby order to pay the costs of this application on an attorney and client scale only in the event of opposition to the application;
5. That the Applicant be and is hereby granted any further and/or alternative relief that the Honourable Court deems meet.

¹ Quoted directly from the notice of motion. The notice of motion is dated 24 June 2024.

- [2] The RAF requires no 'leave' of the court to bring a rescission application. The RAF is at liberty to bring a rescission application. The relief sought in prayer 3 of the notice of motion has no basis or merit. No such order shall be granted.
- [3] Apparent from prayer 1 and 2 of the notice of motion is that the RAF purports to seek a stay or suspension of the warrant of execution issued by the court, alternatively of the execution of a court order, pending the finalisation of a rescission application. To date, the RAF has brought no rescission application against any of the orders granted in this matter.
- [4] The first respondent ("**Mr Jambaya**") has opposed the application and filed an answering affidavit. Mr Jambaya was represented by counsel who filed heads of argument and appeared at the hearing of this matter. The RAF has not filed a replying affidavit or heads of argument, and there was no appearance for the RAF at the hearing of the matter.
- [5] Before addressing the merits of the application any further, I address the litigation history of the present matter briefly.

Litigation history

- [6] This brief exposition is derived from what appears from the CaseLines record in this matter.

[7] The accident relevant to this matter occurred on 27 April 2019. Mr Jambaya instituted action against the RAF for damages suffered as a result of injuries sustained in the accident.

[8] On 14 August 2020, summons and particulars of claim were served on the RAF. (Summons and particulars of claim, **CaseLines 00-6**; Return of service, **CaseLines 00-4**) In terms of the action, Mr Jambaya claimed R3,700,000 comprised of:

- a. *“PAST HOSPITAL, MEDICAL AND TRAVELLING COSTS: R 200 000.00”;*
- b. *“FUTURE HOSPITAL, MEDICAL AND TRAVELLING COSTS: R 500 000.00”;*
- c. *“PAST LOSS OF EARNINGS & FUTURE LOSS OF EARNINGS OR EARNING CAPACITY R 2 000 000.00”;* and
- d. *“GENERAL DAMAGES: R 1 000 000.00”.*

[9] The RAF failed to enter an appearance to defend.

[10] In September 2020, Mr Jambaya brought an application in terms of rule 31(2) (for default judgment) and rule 33(4) (for separation of issues – separating merits and quantum). Mr Jambaya was granted an order (as set out below)

for the relief that he claimed. (Application in terms of rules 31(2) and 33(4), **CaseLines 001-18**)

[11] On 13 October 2020, Fourie, J granted an order in terms of the aforesaid application in the following terms: (Order of 13 October 2020, **CaseLines 074**)

1. Merits and quantum be separated;
2. Merits be granted 100% in favour of the Applicant/Plaintiff;
3. Quantum be postponed sine die;
4. Costs for this application be costs in the cause.

[12] On 15 January 2021, the RAF served notice of intention to defend and appointed the State attorney as attorney of record. (Notice of intention to defend, **CaseLines 00-19**)

[13] On 23 February 2021, the RAF filed its plea, including also two special pleas. (Plea, **CaseLines 00-22**)

[14] On 5 September 2022, the parties held a further pre-trial meeting and signed a pre-trial minute dealing with the issue of quantum. (Pre-trial minute, **CaseLines 0001-17**) The parties minute records that the issue of merits had been finalised on 13 October 2020. The attorney of the RAF recorded in the minute that the merits of the matter had been “... *finalised by way of default judgement on the 13th of October 2020.*”

[15] On 6 September 2022, Mr Jambaya’s attorney of record uploaded two ‘quantum bundles’ which contained *inter alia* the order of Fourie, J dated 13 October 2020, Mr Jambaya’s driving certificate, and various expert reports

relevant to the quantum of the claim. (Quantum bundle one, **CaseLines 005** and Quantum bundle two, **CaseLines 006**) The bundles had been prepared and served via email in April 2022 already. (Service e-mail, **CaseLines 007**)

[16] On 3 March 2023, the attorney for Mr Jambaya served notice of set down for trial regarding the issue of the quantum of the claim of Mr Jambaya. The notice titled "*Notice of Set Down: Quantum*" stated that the "... *matter has been placed on the roll for trial on the 31st May 2023 at 09h30 ...*". (Set down dated 3 March 2023, **CaseLines 000-1**) Together with the notice of set down, a practice note was served dealing with quantum and indicating *inter alia* that the "... *issue in dispute between the parties is Quantum.*". (Practice note dealing with quantum, **CaseLines 000-4**)

[17] It is unclear precisely what occurred at the 31 May 2023 quantum trial date. The record reflects that the plaintiff uploaded a 'written settlement proposal' on that date (Settlement proposal, **CaseLines 010**) and a so-called 'mortality affidavit'. (Mortality affidavit, **CaseLines 011**)

[18] The RAF made a written, without prejudice offer of settlement which is dated 13 June 2023 (and received by the attorneys of record of Mr Jambaya on the 14 June 2023). (Settlement offer, **CaseLines M001-53**) The settlement offer is titled "*OFFER & ACCEPTANCE OF SETTLEMENT*" with the words "*Without Prejudice*" below the title. The following *inter alia* is stated in the settlement offer: "*The RAF hereby offers, without prejudice or admission of liability, in full and final settlement of your claim, the amount as set out hereunder: ...*" The settlement offer was for a total payment of R927,288.35, comprising

R577,288.35 in respect of 'loss of earnings' and R350,000.00 in respect of 'general damages'. The offer further included an undertaking in terms of section 17(4)(a) of the Act. The offer further provided under 'Section B: Capital' that: *"Payment for the capital sum of R 927 288.35 will take place 180 days from the receipt of this form signed by the Claimant/Representative. RAF captures all settled claims in 30 days and payment thereof is effected in 180 days from date of settlement or court order."*

[19] The attorneys of Mr Jambaya formally and in writing accepted the settlement offer, (**CaseLines M001-50**) and signed and accepted the settlement offer on 3 July 2023. (at **CaseLines M001-55**) The acceptance was e-mailed on 20 July 2023. (E-mail enclosing acceptance, **CaseLines M001-56**)

[20] The claim of Mr Jambaya was formally compromised and settled.

[21] Thereafter, the parties agreed to make the settlement agreement an order of court. The agreement of the RAF is recorded in a letter from the RAF dated 7 September 2023 that reads as follows: (at **CaseLines M001-61**)

...

I refer to the above matter and confirm that the matter has become fully settled as below:

Road Accident Fund (RAF) has tendered the following "Without Prejudice"

- General damages : R 350 000.00
- Future medical expenses : Undertaking
- Loss of earnings : R 577 288.35
- Total : R 927 288.35

(ALL COSTS SUBJECT TO THE DISCRETION OF THE TAXING MASTER)

I have perused the proposed Court order and confirm that same may be made an Order of Court, subject to the pursuant condition(s) that:

1. The RAF will effect payment of the capital amount within 180 days of this court order to the trust account of the Plaintiff's Attorneys.
2. The RAF will effect payment of the Plaintiff's taxed or agreed party-and-party costs on the scale of the respective or applicable court's jurisdiction ... within 180 days of the service of the taxed bill on the RAF or date of the agreed bill.

I confirm that the Plaintiff may proceed to have the Court order made an Order of Court in absence of the RAF and wish to place on record that payment will only be requested upon receipt of signed and duly stamped Court Order or Notice of Acceptance.

...

[22] The matter was duly set down on the 'settlement roll' for hearing on 9 October 2023. (Set down, at **CaseLines 0000-28**) A notice of set down, a draft order, and practice notes were duly delivered. (Plaintiff's settlement bundle, at **CaseLines 0000**)

[23] As is apparent from the detailed memorandum of settlement prepared by counsel for Mr Jambaya, the settlement figure accepted on behalf of Mr Jambaya is considerably less than the amount that he claimed in his summons. (Plaintiff's memorandum of settlement, at **CaseLines 0000-8**)

[24] On 9 October 2023, Le Grange AJ, granted an order in terms of the draft order and settlement between the parties by agreement between the parties. (Order

of court dated 9 October 2023, at **CaseLines M001-57**) In terms of the order, the amounts were payable within 180 days of date of the order.

[25] The RAF failed to make payment in terms of the court order.

[26] On 6 May 2024, the attorneys for Mr Jambaya issued out a warrant of execution against the RAF. The warrant purports to have been received by the RAF on 9 May 2024 and 21 June 2024. (Warrant dated 6 May 2024, at **CaseLines M001-26**)

[27] The RAF brought the present application in terms of its notice of motion dated 24 June 2024.

The law applied to the facts

[28] The RAF failed to file a replying affidavit in these proceedings. There was no appearance for the RAF at the hearing, and the legal representatives of the RAF failed to file heads of argument.

[29] The founding affidavit of the RAF contains averments that are plainly incorrect. For example, the deponent states the following: "*The First Respondent failed to provide proof of entry and exit stamps for the minor child who was involved in the accident, and as a result, the Applicant cannot effect payment on this matter.*" (Founding affidavit, par 5.5, at **CaseLines M001-9**) There was no minor child involved in the accident or in the matter.

- [30] Furthermore, many of the further allegations in the founding affidavit constitute generalised statements that do not apply to the present matter. (For example, founding affidavit, par 7.5, at **CaseLines M001-13**)
- [31] The case of the RAF rests not just on a precarious factual basis but on practically no factual basis at all.
- [32] No rescission application has been launched in respect of any of the orders granted in this matter.² Nor has the RAF brought any proceedings to set aside the settlement concluded with Mr Jambaya. Prayers 1 and 2 of the notice of motion seek a stay of execution pending the “... *finalization of the Application for Rescission...*” (prayer 1) and pending the “... *finalization of the Applicant’s Application for Rescission...*” (prayer 2).
- [33] The founding papers make out no case for the relief sought in the notice of motion. For this reason alone, the present application stands to be dismissed.
- [34] However, there are further reasons why the application cannot succeed.
- [35] The case of the RAF is that on 21 June 2022 it issued a management directive with requirements to be complied with for the processing of payment of claims

² The notice of motion refers to a stay of execution pending the rescission of “... *the court order obtained by [Mr Jambaya] ...*”. However, as is apparent from the section of this judgment dealing with the litigation history of the matter, there are two orders / judgments that were obtained by Mr Jambaya, the order of Fourie, J dated 13 October 2020 (merits), and the order of Le Grange AJ dated 9 October 2023 (quantum). The notice of motion does not specify which order / judgment the RAF will seek to rescind.

of foreign nationals. The RAF refers to the material part of the directive which reads as follows: (at **CaseLines M001-24**)

Foreign Claimants

The following applies to all lodgements received or pre-assessed from the date of this directive: In instances where the claimant or injured is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident. A copy of the foreign claimant's passport showing the entry stamp and/or exit stamp must be submitted. Where the passport does not have any stamp, the RAF will not be lodging such a claim. Where the passport document does not have an exit stamp, proof that the claimant is still in the country must be produced. In this instance the passport copy indicating approved Visa must be submitted. Copies of the passport must be certified by SAPS.

- [36] The RAF refers to the “*main application under case number 11795/2022*”, (a reference to the case of **Mudawo and Others v Minister of Transport and Another** (011795/2022) [2024] ZAGPPHC 258 (26 March 2024), a full court decision of this division (the “**Mudawo case**”)) and states that the “... *position of the RAF and the management directive issued by the RAF in this regard, is the subject of litigation in the Appeal application of the main action.*” (At the time of deposing to the founding affidavit in the present matter, the RAF had brought an application for leave to appeal the decision in the Mudawo case. (Application for leave to appeal, “**FA3**”, at **CaseLines M001-33**) Whilst not dealt with on the papers, it appears that leave to appeal was refused by the full court (**Road Accident Fund v Mudawo and Others** (011795/2022) [2024] ZAGPPHC 655 (9 July 2024)), but that leave to appeal was subsequently

granted by the Supreme Court of Appeal (“**SCA**”), and that the appeal in this regard is currently pending in the SCA.)

[37] The order granted in the Mudawo case (excluding the cost order) is as follows:

1. The provisions of the substituted RAF1 claim form prescribed by Government Notice R2235 published in Government Gazette 46661 dated 4 July 2022 issued by the Minister of Transport (first respondent) in terms of section 26 of the Road Accident Fund Act, 56 of 1996, is reviewed and set aside to the extent that both part 6.1 (substantial compliance injury claims) and part 12.1 (substantial compliance death claims) thereof require that, if a claimant is a foreigner, proof of identity must be accompanied by documentary proof that the claimant was legally in South Africa at the time of the accident.
2. The provisions of the RAF Management Directive dated 21 June 2022 titled Critical Validations to Confirm the Identity of South African Citizens and Claims Lodged by Foreigners, is reviewed and set aside to the extent that:
 - 2.1 In respect of foreign claimants, it requires that proof of identity must be accompanied by documentary proof that the claimant was legally in South African at the time of the accident;
 - 2.2 In respect of foreign claimants, they are required to provide copies of their passports with an entry stamp and where they have left South Africa, the passport must have an exit stamp and should the foreign claimant still be in the country, that proof of an approved visa must be submitted before the RAF is prepared to register such claimants’ claims;
 - 2.3 It is required that copies of the passports of foreign claimants may only be certified by the South African Police Service.

[38] The RAF proceeds to state as follows dealing with its alleged *prima facie* right:
(Founding affidavit, par 7.31 – 7.32, at **CaseLines M001-20**)

7.31 If the Fund's stance is upheld in the main application, and the First Respondent is ultimately shown to have been illegally in the country, then the Fund will have grounds to apply for the rescission of the judgment granted upon the previous settlement.

7.32 Such grounds will be that the order was made with an error in law as the as the order was legally objectionable, that is, it terms were an illegality alternatively contrary to public policy alternatively inconsistent with the Constitution.

[39] In my view, the RAF is incorrect for various reasons. Without being exhaustive, these include the following:

a. The “*judgment granted upon the previous settlement*” is the order of Le Grange AJ dealing with quantum which had been settled between the parties. The RAF makes out no case for the rescission of that order. But even if the RAF had made out a case for rescission of that order, the order granted by Fourie J (on merits) would be unaffected and would stand. Further, the settlement itself (which was subsequently made an order of court) has not been attacked and would stand.

b. The RAF appears to assert that if its appeal is upheld by the SCA in the Mudawo case, and the provisions of the management directive remain unaffected by the review application (and subsequent order of the full court) in the Mudawo case, that the management directive may provide the RAF with some or other defence to the claim of Mr Jambaya and “...

then the Fund will have grounds to apply for the rescission of the judgment granted upon the previous settlement.” However, this assertion is incorrect and loses sight of *inter alia*:

- i. The manner in which the quantum was settled by the RAF in this matter, “*without prejudice or admission of liability*”. (Settlement offer, **CaseLines M001-53**) In other words, it was settled without admitting any liability, and whether the RAF had a defence or not. Accordingly, assuming that the management directive did create some defence for the RAF in this matter, this is irrelevant to the settlement that was concluded which the RAF concluded “*without prejudice or admission of liability*” – a classic example of a compromise.
- ii. The setting aside of the settlement on quantum will have no bearing on the court order granted in respect of merits.
- iii. The matter of **Maphosa v Road Accident Fund** (2022-1093) [2024] ZAGPJHC 263 (7 March 2024) at par [61] – [102] is authority for the fact that even if the RAF is able to prove that Mr Jambaya was an ‘illegal foreigner’ this would not constitute a defence to the claim of Mr Jambaya under the RAF Act. (see also: **Gomo v Road Accident Fund** (2022/20083) [2025] ZAGPJHC 539 (3 June 2025))
- iv. The requirements for the setting aside of a consent order have not been met.

v. Rescission of an order of court is not there simply for the asking. The RAF has provided no explanation for its delay, has failed to set out facts in support of a rescission, and has failed to bring a rescission application at all.

c. The RAF makes out no case for the assertion that the order in respect of quantum in this matter (or in respect of merits for that matter) was granted based on an error in law, or that the order granted was legally objectionable, an illegality, contrary to public policy, or inconsistent with the Constitution.

[40] The RAF makes out no case for the setting aside of the consent order granted in this matter. On the RAF's own version in its founding affidavit: "*On 31 May 2023 the matter was enrolled for trial and subsequently settled by way of an offer received and accepted.*" (Founding affidavit, par 5.2, at **CaseLines M001-9**) In the answering affidavit filed on behalf of Mr Jambaya, it is pointed out that the settlement in this matter was concluded post the so-called "*management directive*" being in place in 2022, and the RAF placed no conditions on the settlement which was subsequently made an order of court. (Answering affidavit, par 5.3 – 5.4, at **CaseLines M001-47**) The claim against the RAF had been made and summons instituted years prior to the directive coming into being.

[41] In **Mafisa v Road Accident Fund and Another** [2024] ZACC 4, the Constitutional Court said the following in respect of the principles relating to compromise: (footnotes omitted)

[32] Before dealing with the issues in this matter, it is necessary to consider the legal principles relating to a compromise and set out the nature and extent of a compromise.

[33] A compromise is an agreement between the parties to prevent or terminate a dispute by adjusting their differences by mutual consent. It is trite that a compromise gives rise to new contractual rights and obligations which exist independently of the original cause of action. Once a compromise is reached, the parties are precluded from proceeding on the original cause of action (unless, of course, the compromise provides otherwise).

[34] Inherent in the concept of a compromise is the risk, which is voluntarily assumed by both parties, that their bargain may be more or less advantageous than litigating the original cause of action. Lawfully struck compromises find support in our law as they not only serve the interests of the litigants but may also serve the interests of the administration of justice.

[42] The quantum of the matter was settled by means of a compromise. The merits of the matter had been resolved and an order granted by this court almost five years ago. The RAF had quite clearly accepted the order in respect of the merits of the matter and proceeded to deal with and ultimately settle the quantum of the matter. Apart from the fact that the RAF has brought no rescission application at all, the RAF has failed to address any facts in its founding affidavit and has failed to make out a case for the rescission of a consent order. (**MEC for Economic Affairs, Environment & Tourism v Kruisenga** 2008 (6) SA 264 (Ck) par [29], [38] – [49].)

[43] In **Newnet Properties (Pty) Ltd t/a Sunshine Hospital v Road Accident Fund** (1150/2023) [2025] ZASCA 19 (14 March 2025), (the “**Sunshine**

Hospital case”) the SCA after dealing with the importance of the principle of the finality of judgments, an incident of the rule of law, (at paragraphs [17] – [24]), thereafter considered the Rule 45A relief relevant to that matter (at paragraphs [25] – [32]), and held as follows *inter alia*:

[28] The high court found that the RAF succeeded in establishing a *prima facie* right as custodian of public funds which has the statutory obligation to manage and avoid fruitless, irregular and wasteful expenditure. This finding is, however, not borne out by the established facts. In my view, the RAF has failed to show that the appellants irregularly obtained the orders. The fact that the RAF has no proof that it was furnished with identity numbers for the implicated claims does not mean that the court orders sought to be executed are susceptible to rescission. They were granted properly and are valid until set aside. Since s 24 is no longer available to the RAF to contest a claim after judgment, to establish a *prima facie* case, the RAF ought to demonstrate that it has prospects of success when impugning the orders in a rescission application.

[29] In seeking the interim relief pending the institution of rescission proceedings, the RAF has not put up any facts to show that the underlying causa of the judgments is being disputed or that real and substantial injustice would follow the refusal of such relief. It instead relied on anecdotal averments based on unsubstantiated and generalised examples. The high-water mark of those averments is that the required information will assist the RAF in establishing whether its internal processes have been complied with. According to the RAF, it will then be able to decide whether to pay the supplier claims. While the RAF is to be commended for re-visiting its internal processes, it cannot be at the expense of litigants against whom there is no evidence of fraud.

...

[32] Furthermore, the interim relief sought by the RAF was based on vague references to contemplated applications for rescission or declaratory relief without committing to any timeframes. The appellants point to the fact that

almost 17 months after the granting of the high court order, the RAF has still not applied for rescission, and neither is there any indication as to when it intends to file those applications. I am accordingly of the view that the RAF failed to establish a prima facie right.

[44] *In casu*, the RAF has failed to establish a *prima facie* right. The underlying *causa* of the orders in this matter continue to exist, and no rescission application has been brought by the RAF. Further, no facts are set out by the RAF to impugn either the settlement reached between the parties or the consent order granted pursuant thereto. The RAF makes out no case for the relief that it seeks. Real and substantial justice does not support the suspension of the court orders (**Van Rensburg NO and Another v Naidoo NO, Naidoo NO v Van Rensburg NO** 2011 (4) SA 149 (SCA) par [52]) but rather the enforcement thereof.

[45] The pending appeal in the SCA in the Mudawo case does not afford the RAF a right to stay or interdict the enforcement of a valid court order. (*cf.* **Road Accident Fund v Sheriff, Cape Town West and Others** (1065/2023) [2024] ZAWCHC 429 (18 December 2024) par [33] – [36]) The RAF may not simply ignore valid orders of court that have not been impugned in a court of law. The order granted by Le Grange AJ (and by Fourie J) in this matter will remain of full force and effect unless set aside by a court. (*cf.* **Road Accident Fund v Neethling and Another** (6101/2019) [2025] ZAWCHC 242 (5 June 2025) par [5]) The RAF makes out no case for a stay of execution of such court orders.

[46] The RAF is not entitled to a stay of execution as of right. It is seeking a discretionary indulgence. In **BP Southern Africa (Pty) Ltd v Mega Burst Oils**

and Fuels (Pty) Ltd and Another and a Similar Matter 2022 (1) SA 162 (GJ)

at par [21], the court held as follows:

[21] In *Road Accident Fund v Strydom* [2001 \(1\) SA 292](#) (C) Immerman AJ at 304E questioned if the analogy of interim interdict in considering Rule 45A is entirely appropriate in the circumstances of that matter: “*For one thing the applicant is not asserting a right in the strict sense but a discretionary indulgence based on the apprehension of injustice.*” I agree.

[47] The RAF has made out no case for the exercise of such discretion.

[48] For the further reasons, as held in the matter of **Road Accident Fund v Mahmoud and Another** (2018-28163) [2024] ZAGPJHC 243 (3 March 2024) (read together with **Road Accident Fund v Sheriff Of The High Court, Pretoria and Another** (0114226/2023) [2023] ZAGPJHC 1336 (20 November 2023 – the *Macamo* decision), the present application must fail: (footnotes omitted)

25. The directive in its terms applies to ‘*all lodgements received or pre-assessed from the date of the directive*’. Twala J accordingly found in paragraph 20 of *Macamo* that the directive is directed at dealing with new claims that were lodged with the Fund and which were still to be processed from the date of the management directive. The directive was no assistance in relation to an action that had already been instituted in 2019.

26. The same situation arises in the present instance. The action in the present instance was instituted in 2018 and so, as found in *Macamo*, the directive cannot apply. Unless I find that *Macamo* is clearly wrong, I am bound to follow

the judgment. I am not persuaded that *Macamo* is wrong; to the contrary, the judgment is persuasive. On this basis, the present application cannot succeed.

and

30. The Fund was clearly aware of its own directive, which had existed since June 2022, when it agreed to the settlement in April 2023. The Fund cannot now seek to raise an issue that it should have been raised before it settled, and the subsequent consent order.

31. There is no disclosure by the Fund in the present matter when it first became alive to potentially relying upon the directive as a basis to resist the first respondent's claim. ...

32. Should this awareness have arisen before the settlement was reached in April 2023 and subsequently resulted in the consent order in October 2023, the Fund cannot now rely upon the directive as a basis to avoid the judgment debt. And in any event the Fund must be assumed to have been alive at that time to its own management directive of June 2022.

33. On the other hand, should the Fund's realisation that the directive may come into play only have arisen after the order was granted, it would still not avail the Fund. A judgment to which a plaintiff is procedurally entitled taken in the absence of a defendant cannot be erroneously granted in light of a subsequently disclosed defence: 'The existence or non-existence of a defence on the merits is an irrelevant consideration and, if subsequently disclosed, cannot transform a validly obtained judgment into an erroneous judgment.' More so where the order was consented to pursuant to a settlement.

[49] It is a trite but important principle that a court order is valid until set aside and must be complied with. **(Municipal Manager OR Tambo District**

Municipality and Another v Ndabeni 2023 (4) SA 421 (CC) par [23] – [26])

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. (**Road Accident Fund v Mabela and Another** (63050/2017) [2025] ZAGPPHC 383 (23 April 2025) par [18] citing the Constitutional Court judgment in **Chief Lesapo v North West Agricultural Bank and Another** [1999] ZACC 16; 2000 (1) SA 409 (CC) par [13]) The RAF has delayed and frustrated the enforcement of their own agreement and the orders of this court. Mr Jambaya has been seriously prejudiced by the conduct of the RAF.

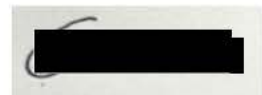
[50] No case for the relief sought in the notice of motion has been made out. The application stands to be dismissed.

[51] A consideration of the totality of the facts in this matter warrant a punitive cost order against the RAF. Such facts include the RAF's conduct in failing to adhere to its own agreement, its clear attempts at delaying justice – serving the present hopeless application but thereafter taking no steps at all, and in effect abusing the process of this court. The conduct of the RAF is vexatious. The RAF has put Mr Jambaya to unnecessary trouble and expense which the he ought not to bear. A cost order on an attorney and client scale is warranted. (**In re: Alluvial Creek Ltd** 1929 CPD 532 at 535)

ORDER

[52] Accordingly, I make the following order:

1. The application is dismissed.
2. The applicant is directed to pay the costs of the first respondent 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 11TH of September 2025.

Appearances

Counsel for the Applicant: No appearance

Attorney for the Applicant: State Attorney

Counsel for the First Respondent: T Malange

Attorney for the First Respondent: Marlin Marimuthu Attorneys Inc

Date of Hearing: 12 June 2025

Date of Judgment: 11 September 2025