



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 932/2024

In the matter between:

**NEWNET PROPERTY (PTY) LTD t/a SUNSHINE
HOSPITAL**

APPELLANT

and

**THE ROAD ACCIDENT FUND
RADIKWENA PHORA**

**FIRST RESPONDENT
SECOND RESPONDENT**

Neutral citation: *Newnet Property v The Road Accident Fund & Another*
(932/2024) [2026] ZASCA 35 (24 March 2026)

Coram: MEYER, MOLEFE, and KATHREE-SETILOANE JJA

Heard: 12 November 2025

Delivered: 24 March 2026

Summary: Relief sought to enforce judgment debts and related relief for mandamus - non-compliance with court orders - directing the acting Chief Executive

Officer of the Road Accident Fund to ensure that the Road Accident Fund complies with orders of court – - the relief sought not *res judicata*.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Mali J sitting as court of first instance):

- 1 The appeal is upheld with costs.
- 2 The order of the full court is set aside and replaced with the following order:
 - ‘(i) The Road Accident Fund is hereby ordered to make payment of the judgments obtained in favour of Newnet Property (Pty) Ltd t/a Sunshine Hospital (Newnet) in the amount of R92 085 106.36 within 7 days from date of service of this order on it.
 - (ii) The Road Accident Fund is ordered to provide Newnet with an updated Requested Not Yet Paid (RNYP) list within 7 days from date of service of this order.
 - (iii) The Road Accident Fund is ordered to provide an updated RNYP list to Newnet every 14 days after compliance with prayer (ii) above.
 - (iv) The Road Accident Fund is ordered to adjudicate all accounts issued to it by Newnet within 120 days from receipt of such account from Newnet.
 - (v) The Road Accident Fund is directed to make payment to Newnet of all amounts due to it on the May 2023 RNYP list, being R158 890 967.70, within 30 days from date of service of this order on it, and thereafter to make payment to Newnet of all amounts due to it as per a current RNYP list within 30 days of such adjudicated account appearing on the RNYP list.
 - (vi) The Acting Chief Executive Officer, Mr Radikwena Phora, is directed and ordered to ensure that the Road Accident Fund complies with prayers (ii) to (vii) of the order.

- (vii) The Road Accident Fund is directed to pay the costs of the application including those of two counsel.’

JUDGMENT

Kathree-Setiloane JA (Meyer and Molefe JJ concurring):

[1] The primary question for determination in this appeal is whether the relief sought by the appellant, Newnet Property (Pty) Ltd t/a Sunshine Hospitals (Newnet) in an urgent application, in the Gauteng Division of the High Court, Pretoria to, inter alia, enforce the payment of a civil judgment granted against the first respondent, the Road Accident Fund (the Fund) is *res judicata*.¹ On 13 June 2024, the high court (Mali J) found it was and it made an order dismissing the application (the Mali J order). Newnet applied for leave to appeal against this order which was granted by the high court to this Court.

The Facts

[2] The facts in this appeal are essentially common cause. At the time of the institution of the June 2024 application in the high court, Newnet operated as a hospital. It treated patients who were injured in motor vehicle accidents. A large majority of these patients were referred or transferred to Newnet for treatment by either the Fund, a state entity established in terms of s 2(1) of the Road Accident Fund Act 56 of 1996 (the RAF Act), or state hospitals that were unable to provide them with the necessary medical care. In the former instance, the merits of a motor

¹ Due to the multiplicity of urgent applications that are referred to in the judgment, I will refer to this application as ‘the June 2024 application’.

vehicle accident claim against the Fund would have been determined, and it would have provided the patient with an undertaking to pay all future medical expenses. In the latter instance, the merits of the motor vehicle accident claim would have not been fully determined, and Newnet assumed the risk that it may not be compensated for treatment of the patient.

[3] With its agreement, Newnet invoiced the Fund for payment of services rendered by it, as well as those provided by its associate medical practitioners.² Although Newnet experienced payment challenges prior to 2020, by March of that year, the Fund stopped paying Newnet for services rendered to motor vehicle accident patients. This led to extensive legal proceedings against the Fund. Newnet launched its first application against the Fund for payment in the high court in 2020. The application was brought on an urgent basis for an order that the Fund be directed to make payment of the outstanding amount of R353 443 850.34 that was due, at that stage, in respect of ‘Requested Not Yet Paid’ (RNYP) claims (the 2020 urgent application). RNYP claims are for invoices that have already been audited and approved by the Fund. Once approved, they are loaded into its system, indicating that they are due for payment. I will deal with the significance of these claims later in the judgment.

[4] Due to the Fund’s inability to pay, Newnet sought an order that the outstanding indebtedness be paid by way of monthly instalments of R36 908 000.00. This was Newnet’s minimum monthly operational requirement to avoid closing down and relocating patients to other facilities. In December 2020, the high court

² The Fund sanctioned the practice of Newnet including doctors’ and service providers’ claims with its claims when lodging them with the Fund. The Fund permitted ‘combined or global claims’ as it avoided the duplication of documents lodged with the Fund. See in this regard *Road Accident Fund v Newnet Properties (Pty) Ltd t/a Sunshine Hospital and Another* (616/2024) [2026] ZASCA 15 (11 February 2026) paras 7-11, 22 and 25.

granted an order against the Fund for payment of the said monthly instalments (the December 2020 order). The order was granted by agreement between the Fund and Newnet.

[5] After 18 months, the Fund stopped paying in compliance with the December 2020 order. In response, Newnet sought to execute the judgment by issuing a writ for the attachment of certain moveable property of the Fund to sell at auction. The Fund launched an application to suspend the sale which Newnet opposed. Newnet counter-applied for an order that the Fund be directed to pay it the amount of R301 721 492.50 in monthly instalments of R45 581 098.50. On 25 July 2022, the high court (Van Nieuwenhuizen J) granted an order to this effect. Leave to appeal against this order was refused by the high court, as well as by this Court and the Constitutional Court.

[6] In the interim, Newnet obtained several further judgments against the Fund in respect of amounts owing to it. These judgments were granted either by default or with the Fund's consent. None of them have been appealed against or rescinded. Collectively, they compelled the Fund to pay Newnet a total amount of R403,812,884.05. The Fund has only paid Newnet the amount of R336,316,021.13. A balance of R92,085,106.36 remains unpaid and is owing to Newnet. As a result, on 5 June 2024, Newnet instituted the June 2024 application.

[7] In prayer 2 of the notice of motion of that application, Newnet sought payment of the amount of R92,085,106.36 by the Fund. In prayers 3 and 4, it sought orders directing the Fund to provide Newnet with an updated RNYP list within 7 days from date of service of the order, and every 14 days after compliance with prayer 2 thereof. In terms of prayers 5 and 6 of the notice of motion, Newnet sought orders directing

the Fund to, inter alia, adjudicate all accounts within 120 days of receipt, and to make payment to Newnet of all amounts due to it on the May 2023 RNYP list within 30 days of date of service of the order on the Fund. In prayer 7, Newnet sought an order that the second respondent, Mr Collins Phutjane Letsoalo, be directed to ensure that the Fund complies with prayers 2 to 6 of the notice of motion. At the time, Mr Letsoalo was the Chief Executive Officer of the Fund.

[8] In terms of the Fund's internal processes, it is required to make full payment of the RNYP amounts that are due within 30 days after listing them on the RNYP list. The Fund, however, obstructed payment of Newnet's long-overdue RNYP claims by delaying settlement. It also withheld the RNYP list from Newnet, and has not sent an updated RNYP list to it since May 2023. According to the last RNYP list furnished by the Fund to Newnet, the Fund was indebted to Newnet in an amount of approximately R380 000 000 of which R158 890 967.70 remains unpaid.

[9] The Fund paid its medical service providers regularly within 30-60 days after the evaluation, approval and placement of the account on the RNYP list for payment. This was necessary in order to keep the hospitals running and to ensure that patients receive the much needed medical care. The Fund has, however, become a recalcitrant payer. Since October 2023, it has stopped adjudicating and placing Newnet's claims on the RNYP list. This is directed at preventing Newnet from approaching a court for payment of amounts due on the RNYP list.

[10] Despite the non-payment of amounts due by the Fund, at the date of the 2024 urgent application (5 June 2024), Newnet continued to render services to patients injured in motor vehicle accidents at its own expense. This placed considerable financial strain on its shareholders, who made intermittent capital contributions to

enable Newnet to continue operating. That position was, however, unsustainable, and in April 2023 Newnet was compelled to close the hospital. The closure was due to the Fund's failure to make payment of arrears due to Newnet. Most patients who were in a critical condition had to be transferred to other hospitals, and staff had to be retrenched. Following the closure of the hospital, the Fund made limited payments, as a result of which Newnet was able to re-open the hospital in August 2023. On its reopening, the hospital had assisted more than 970 motor vehicle accident patients who had been injured.

[11] The Fund has, nevertheless, persisted in not honouring its obligation to make payment of judgment debts owing to Newnet. Newnet was accordingly forced to bring the June 2024 urgent application. As at the date of the application, Newnet had 28 motor vehicle accident patients in its wards at the hospital. These patients were extremely ill and in need of constant medical attention. Some of them were in need of ongoing critical care. It was clear that unless Newnet received payment of the judgment debts owing to it, Newnet would be unable to treat these patients, and their lives would be placed at severe risk. There were simply no funds to purchase medication, personal protective equipment for its frontline employees, and medical equipment and supplies to treat these patients. There were also no funds to pay Newnet's 150 staff members and its service providers. This meant that unless Newnet received payments from the Fund, it would have no option but to close down the hospital again, as it did in April 2023.

[12] In an attempt to exercise its available remedies, Newnet obtained a writ of execution for the attachment, removal and subsequent sale of moveable property of the Fund. The sale was scheduled for 26 March 2024. However, on attempting to remove the attached movables, the Sheriff of the high court (the Sheriff) was

restrained from doing so by members of the Fund and members of the South African Police Services (SAPS), whom the Fund enlisted to assist.

[13] In a further attempt to obstruct the execution process, the Fund launched an urgent application, on 26 March 2024, in the high court in which it sought an order staying the execution of the warrants of attachment and the return of the movable property that was removed from its offices (the March 2024 application). The high court dismissed this application with costs on the very same day. The sale of the movable property could, however, not proceed, as only the Fund arrived at the auction to purchase its own moveable assets. The following excerpt of a statement made, on 15 March 2024, by Mr Macintosh Palela, the spokesperson of the Fund on ‘eNCA’, is indicative of its policy of non-payment of judgment debts:

‘No, no, claimants are not affected by this, you must remember that they come and take our furniture and to day they opened a storage and took the kind of furniture that we don’t use, I mean sometimes they come and take the desks, I mean all the time that I go the offices in Centurion at head office, there is always a paper at the door with a list of assets that they want to take and fortunately what they do is they then auction the assets there and we just continue to buy them back. We’re going to do this until we resolve these issues.’

[14] Mr Palela furthermore stated, on eNCA, that Newnet was involved in a corrupt scheme involving the movement of patients from other hospitals across the county to itself; over servicing these patients; and over charging the Fund. These allegations were comprehensively investigated by various investigatory bodies of the Fund. The investigations yielded no irregular or unlawful conduct on Newnet’s part.

[15] Since the second quarter of 2024, Newnet has attempted to execute against fuel and road accident levy funds purportedly owing to the Fund by the relevant

entities. On 12 April 2024, the Sheriff served a warrant of execution on the South African Revenue Service (SARS) directing it to:

‘[A]ttach and, upon receipt of payment, to pay to the execution creditor [Newnet] a portion of the debt owed by the [SARS] to the defendant/ execution debtor (the Fund) (being the obligation to pay to the execution debtor its monthly allocation collected from Fuel and Road Accident levies in terms of Schedule 1, Part 5 of the Customs and Excise Act 1964 ...in the amount of R3 845 680. 92 ... in respect of the judgment granted by the [high court] on 24 July 2024 ...’. SARS responded in writing informing the Fund that it does not pay monthly fuel and road accident levies to the Fund.

[16] On 22 April 2024, Newnet then served a new warrant of execution on the South African Reserve Bank (the SARB) for payment of the same amount as in the warrant of execution served on SARS. A legal advisor at the SARB advised Newnet’s attorney of record, telephonically, that the National Treasury and not the SARB was responsible for payment of the monthly fuel and road accident levies to the Fund.

[17] On 26 April 2024, Newnet served a warrant of execution on the National Treasury. It responded in writing informing Newnet that no ‘debt’ was owing by National Treasury to the Fund. This was followed by a discussion between Newnet’s attorney and a legal advisor at the National Treasury, who confirmed that it was not responsible for making monthly fuel and road accident levy payments to the Fund.

[18] On establishing that the Fund received its allocated fuel and road accident levy income from the Department of Transport, Newnet sought to attach those funds. It was, however, informed that the Department of Transport did not ‘owe’ any monies to the Fund. The attachment of the monies in the Fund’s bank accounts had also

proven to be ineffective, as the bank account numbers were unknown. Where the bank accounts numbers were known to Newnet, only small amounts of monies had been found. Since the Department of Transport makes ad hoc, purpose-specific transfers, the Fund's accounts did not hold large balances. Thus, having exercised the alternative remedies at its disposal, Newnet was left with no alternative but to approach the high court for the orders as set out in its notice of motion.

[19] Instead of filing an answering affidavit in the June 2024 application, the Fund filed a notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules of Court (the rules) in which it raised the following points of law: urgency; non-joinder; no cause of action; and *res judicata*.

[20] The high court found that the application was urgent but dismissed it on the basis that the relief sought was *res judicata*. It held:

‘[Newnet] raised the very same issue against the same party, being the [Fund]. [Newnet] does not bring a different case against the [Fund], except that the court must order the second respondent [the CEO of the FUND] to make payment. There is no substantial case made out against the second respondent [the CEO of the Fund] bar that he is cited “herein in so far as it has an obligation to ensure that the Fund is delivering on its mandate.” There are no allegations made against the second respondent [the CEO of the FUND] proving that he precluded the [Fund] to deliver on its mandate. [Newnet's] argument assumes that were the orders in the first place issued against the second respondent [the CEO of the FUND], the current problem would be non-extant. I cannot agree with this contention, because the second respondent [the CEO of the FUND] acts on behalf of the [Fund]. In essence, the judgment is against the [Fund], there is no legal position changing same. The order sought mirrors the order that has already been granted. In my view the [Fund] remains the sole judgment debtor’.

[21] The high court concluded that its finding in respect of the *res judicata* point was dispositive of the application, hence it was unnecessary to deal with the other points of law. The appellant applied for leave to appeal against the dismissal of its urgent application. The Fund did not cross appeal the high court's omission to deal with the other law points raised in the rule 6(5)(d)(iii) notice.

Res Judicata

[22] The principle of *res judicata* is well-established in our law. Where a court has given a final judgment in a matter, any subsequent litigation between the same parties in respect of the same subject matter and based on the same cause of action is impermissible.³ The question for determination in this appeal is whether the Fund should be ordered to comply with the judgment, and if so whether the relief sought is barred by the principle of *res judicata*.

[23] The Fund argued, in the appeal, that the relief sought in the June 2024 application is barred by the principle of *res judicata* as it is based on the judgments that: (a) were obtained by Newnet against the Fund; (b) were obtained on the basis of claims submitted to the Fund for payments for services rendered by Newnet and its associated medical doctors; and (c) finally determined the issue of whether Newnet was entitled to payment by the Fund. Newnet countered this by arguing that its cause of action in the June 2024 urgent application is different as it is for the enforcement of the civil judgments against the Fund and, inter alia, the related mandamus against the Chief Executive Officer (CEO) of the Fund.

³ *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) 835F-G.

[24] The relief sought by Newnet is, inter alia, for the civil enforcement of the judgment debt against the Fund. Newnet does not seek to enforce a civil claim for payment of debt by asking for a new judgment or order for payment of the R92 million debt owing, but it rather seeks to enforce payment of judgment debts. In other words, it is seeking compliance with court orders. In addition, it seeks a *mandamus* directing the CEO of the Fund to ensure that the Fund complies with its payment obligations in terms of the judgments obtained in Newnet's favour in the amount of R92 million, as well as the relief sought in prayers 3 to 6 of the notice of motion.

[25] Our courts have recognised that a *mandamus* (often in the form of a mandatory interdict or an order for specific performance) is an extraordinary, but often necessary, remedy that may be used by a judgment creditor to compel a public body or state organ to perform a statutory duty, including the payment of a final judgment debt, where no other means can achieve the desired outcome. In *Nyathi v MEC for Department of Health, Gauteng and Another (Nyathi)*,⁴ the Constitutional Court observed as follows in the context of a challenge to s 3 of the State Liability Act No. 20 of 1957:

'No doubt, there may well be cases in which applying for a *mandamus* might be impractical and/or increase legal costs. However that, in my view, will not provide a justification for striking down section 3 [of the State Liability Act]. The possibility of a *mandamus* as a way to enforce the order is a consideration to be borne in mind in determining whether there was nothing lawful the applicant could do to obtain payment as was submitted on his behalf. Whether a *mandamus* could have coerced the MEC (or any other relevant state official such as the Head of Department) to pay is, for the purpose of this case, a matter I refrain from determining lest one speculates. Without saying anything about the wisdom, expediency or efficacy of the execution scheme, the fact

⁴ *Nyathi v MEC For Department Of Health, Gauteng and Another* 2008 (5) SA 94 (CC); ZACC 8; 2008 (5) SA 94 (CC); 2008 (9) BCLR 865 (CC) para 146 (*Nyathi*).

remains that a mandatory order is one of the remedies available to compel compliance with a court order.’

In addition, the Constitutional Court in *Nyathi* observed:

‘The Court had, with respect, seemingly lost sight of the fact that a common law remedy of a *mandamus* would have been a more plausible recourse because it forces a public authority to carry out a legal duty or obligation and responds to administrative inertia. In my view, a *mandamus* or a structural interdict, somewhat similar to the one granted by Froneman J in *Magidimisi*, would have been appropriate in the circumstances of this case.’⁵

[26] The primary relief sought by Newnet is the civil enforcement of judgment debts obtained against the Fund in the amount of R92 million to be paid within 7 days of date of service of the order. It is coupled with prayer 7 of the notice of motion in terms of which Newnet seeks a *mandamus* directing the first respondent, the CEO, to ensure that the Fund complies with prayers 2 to 6 of the order. Mr Collins Letsoalo was cited as the CEO of the Fund in the June 2024 application. However, on 6 August 2025, Mr Letsoalo’s contract had terminated. It is common cause that the Fund has to date not appointed a permanent CEO. The current acting CEO of the Fund is Mr Radikwena Phora. This was confirmed by the Fund in a letter to the Registrar of this Court, dated 3 February 2026. Mr Radikwena Phora (the acting CEO of the Fund) is substituted for Mr Letsoalo as the second respondent in the appeal.

[27] The Fund is listed as a national public entity in terms of Schedule 3A of the Public Finance Management Act 1 of 1999 (the PFMA). In terms of s 49 of the PFMA,⁶ the Board is the accounting authority of the Fund. The Fund, accordingly,

⁵ *Nyathi* at para 148.

⁶ Section 49 of the PFMA provides:

‘Accounting authorities. — (1) Every public entity must have an authority which must be accountable for the purposes of this Act.

contended that the mandamus in prayer 7 of the notice of motion should have been sought against the Board and not the CEO of the Fund. It argued that as the accounting authority of the Fund, the Board, and not its CEO, is responsible for its finances. Thus the relief sought against the CEO is not competent as the Board of the Fund, and not its CEO ought to have been cited as the second respondent in the application.

[28] The Fund also suggested, at the hearing, that a mandamus may not be sought against the CEO of the Fund as the Fund is not an organ of state. It is not necessary to dwell on this question as in *Mafisa v The Road Accident Fund*⁷ the Constitutional Court expressly stated that the Fund is an organ of state. It performs a public function as contemplated in terms of s 239(b)(ii) of the Constitution. The powers and functions of the Fund are provided for in s 4 of the Road Accident Fund Act, 56 of 1996 (the RAF Act). They include:⁸

(2) If the public entity—

(a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or
 (b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to the public entity designates another person as the accounting authority.

(3) The relevant treasury, in exceptional circumstances, may approve or instruct that another functionary of a public entity must be the accounting authority for that public entity.⁷

⁷ *Mafisa v Road Accident Fund* 2024 (4) SA 426 (CC); ZACC 4; 2024 (6) BCLR 805 (CC); 2024 (4) SA 426 (CC) para 1.

⁸ Section 4 of the Act provides:

(1) The powers and functions of the Fund shall include—

- (a) the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3, shall be administered;
- (b) the investigation and settling, subject to this Act, of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or the driver thereof, or the identity of both the owner and driver thereof, has been established;
- (c) the management and utilization of the money of the Fund for purposes connected with or resulting from the exercise of its power or the performance of his duties; and
- (d) procuring re-insurance for any risk undertaken by the Fund under this Act.

(2) In order to achieve its object, the Fund may—

- (a) purchase or otherwise acquire goods, equipment, land, buildings, shares, debentures, stock securities and all other kinds of movable and immovable property;
- (b) sell, lease, mortgage, encumber, dispose of, exchange, cultivate, develop, bid upon, improve or in any other way deal with its property;

- ‘(a) the stipulation of the terms and conditions upon which claims for the compensation contemplated in s 3, shall be administered;
- (b) the investigation and settling, subject to the Act, of claims arising from loss or damage caused by the driving of a motor vehicle whether or not the identity of the owner or the driver thereof, or the identity of both the owner and driver thereof, has been established;
- (c) the management and utilisation of the money of the Fund for purposes connected with or resulting from the exercise of its powers and the performance of its duties.’

[29] In terms of s 3 of the RAF Act, the object of the Fund is the payment of compensation in accordance with the Act for loss of damage wrongfully caused by the driving of motor vehicles. Section 5(1) of the Act provides that the Fund shall procure the funds it requires to perform its functions by way of a fuel levy in respect of all fuel sold within the Republic and by raising loans.⁹ In terms of s 7 ‘the resources and facilities of the Fund shall be used exclusively to achieve, exercise and perform the object, powers and functions of the Fund, respectively’.

-
- (c) invest any money not immediately required for the conduct of its business and realise, alter or re-invest such investments or otherwise deal with such money or investments;
- (d) borrow money and secure the payment thereof in such manner as it may deem fit;
- (e) make donations for research in connection with any matter relating to injuries sustained in motor vehicle accidents on such conditions as it may deem advisable;
- (f) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments, excluding share certificates;
- (g) take any other action or steps which are incidental or conducive to the exercise of its power or the performance of its functions;
- (h) make financial contributions to road safety projects and programmes approved by the Minister;
- (i) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services contemplated in this Act.
- (3) In the exercising of the powers conferred on it by this Act, the Fund may deal with any person, partnership, association, company, corporation or other juristic person wherever seated.
- (4)(a) The Fund may conclude an agreement with any other organ of State regarding any matter provided for in this Act in order to improve or ensure–
- (i) the effective management of the Fund;
 - (ii) the efficiency of the Fund;
 - (iii) co-ordination of functions;
 - (iv) co-operative governance contemplated in Chapter 3 of the Constitution.
- (b) The Minister shall, by notice in the Gazette, publish a summary of the terms of any agreement concluded under paragraph (a).

⁹ Section 5(1)(a) and (b) of the Act.

[30] The CEO of the Fund is appointed under s 12(1) of the RAF Act to, inter alia, manage the day to day operations of the Fund. The CEO is responsible for the executive or operational management of the Fund. The key functions of the CEO include implementing strategies and policy approved by the Board of the Fund, managing staff, preparing annual budgets for consideration by the Board and exercising delegated powers regarding claims.¹⁰ The operational management function of the CEO is to direct day-to-day operations of the Fund including claims processing, finance, and stakeholder relations. Section 12(2) of the RAF Act provides that subject to the directions of the Board, the CEO of the Fund shall conduct the current business of the Fund, and he or she may exercise the power and shall perform the functions of the Fund mentioned in s 4(1)(b); (c); (2) and 3 of the RAF Act. Section 12(2) of the RAF Act therefore confers on the CEO the power, subject to the directions of the Board, to manage and utilise the money of the Fund for purposes connected with or resulting from the exercise of its powers and the performance of its duties'. Thus as the operational manager of the Fund, the CEO (or acting-CEO as the case may be), has a statutory duty to ensure that the Fund makes payment of all judgment debts owing to judgment creditors.

¹⁰ Section 12 of the Act provides:

- (1)(a) The Minister shall upon the recommendation of the Board, appoint the Chief Executive Officer of the Fund on such terms and conditions of employment as the Board may determine.
- (b) The Chief Executive Officer shall be a person who is suitably qualified and experienced to manage the day to day affairs of the Fund.
- (2) Subject to the directions of the Board, the Chief Executive Officer shall conduct the current business of the Fund, and he or she may—
 - (a) exercise the power and shall perform the functions of the Fund mentioned in section (4)(1)(b), (c) and (d), (2) and (3);
 - (b) appoint, determine the conditions of employment of and dismiss the staff of the Fund, excluding members of staff on management level;
 - (c) draft internal rules and directions in respect of the management of the Fund and make recommendations in respect thereof to the Board;
 - (d) enter into an agreement with any person for the rendering of a particular service related to the management of the Fund or its functions;
 - (e) issue guidelines to agents regarding the manner in which claims should be administered by them on behalf of the Fund; and
 - (f) exercise such powers and shall perform such duties as may be delegated and assigned to him or her by the Board under section 11(1)(h).

[31] Section 165(3) of the Constitution Act 108 of 1996 (the Constitution) prohibits any person or organ of state from interfering with the functioning of courts. Section 165(4) of the Constitution obliges organs of state through legislative and other measures to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.¹¹ Integral to this is the duty to comply with court orders. As an organ of state, the Fund bears a constitutional obligation to comply with court orders, and to refrain from any conduct that interferes with the functioning, dignity or effectiveness of the courts. Yet, it has deliberately and publicly demonstrated its refusal to comply with the orders for payment to Newnet. What's more, is that it had enlisted the SAPS to obstruct the removal of assets pursuant to the lawful execution of the court orders.

[32] The high court's finding that there are no allegations made against the CEO of the Fund (at the time) proving that he precluded the Fund from delivering on its mandate, ignores the fact that the spokesperson of the RAF had, on 15 March 2024, publicly announced the Fund's policy not to pay all judgment debts in favour of Newnet. And to continually obstruct auctions by buying back its attached goods, instead of effecting payment of the judgments debts. The Fund's spokesperson made it clear that the Fund would continue not to pay the judgment debts until they resolve 'these issues'.

[33] The Fund's deliberate refusal through its officials not to comply with the court orders constituted a breach of its statutory obligations under the RAF Act, as well as its constitutional obligations under s 165 of the Constitution. Although Newnet does not, in its founding affidavit, attribute the Fund's failure and refusal not to comply

¹¹ *S v Jaipal* 2005 (4) SA 581 (CC) para 29.

with the court orders, directly to the CEO, at the time, it is inconceivable that the CEO, as the person in charge of the executive management of the Fund, would have been unaware of the Fund's purported policy in this regard, as made public by the spokesperson. Newnet was accordingly entitled to seek a mandamus compelling the CEO to ensure that the relief sought in prayers 2 to 6 of the notice of motion is complied with by the Fund.

[34] The high court found that Newnet was not entitled to the relief sought because it had not shown that it had executed the judgments. This conclusion ignores the fact that Newnet had shown that the Fund had not only frustrated the execution process, but that it had also obtained the assistance of the SAPS to interfere and obstruct execution of the orders. In addition, the Fund had publicly expressed its policy not to pay Newnet pursuant to the various court orders to do so, and to frustrate the execution of those court orders. This conduct undermines the rule of law and the dignity and authority of the courts. As observed by the Constitutional Court in *Pheko v Ekurhuleni Metropolitan Authority and Another*:¹²

‘The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it, as the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority merely a mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.’

¹² *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) at para 1.

[35] Where an organ of state defaults on its obligation to comply with a court order, a court is compelled to assume the invidious task of overseeing state action to secure compliance. Although the Board is the accounting authority of the Fund, nothing prevents this Court from making an order against the CEO (or acting CEO) of the Fund who is ultimately responsible for its executive management, to ensure that the court order is complied with.

[36] Newnet has also made out a case for the relief sought in prayers 3 to 6 of the notice of motion. After an invoice for payment is adjudicated it is placed on the RNYP list. Once this is done, it is effectively an admission by the Fund that that invoice has been checked, audited and is due for payment. The Fund is obliged to pay suppliers (in this case Newnet) within 30 days of the invoice being placed on the RNYP list. This is common cause as the Fund has failed to file an answering affidavit that may show otherwise. Newnet is also entitled to receive updated RNYP lists from the Fund. This will enable Newnet to keep track of what payments are due to it, and that the Fund is adjudicating its claims.

[37] As a final endeavour to overcome its persistent non-payment of the judgment debts to Newnet, the Fund submitted that it lacked the financial means to satisfy those debts. The facts in this matter are uncontested as the Fund chose not to file an answering affidavit but rather a rule 6(5)(d)(iii) notice. In the circumstances, it would be inappropriate for this Court to consider the new factual defence. To do so, will prejudice Newnet as it has not had an opportunity to respond to the new facts. The Fund also contended that the appeal is moot as Newnet has ceased to operate. I disagree. Pursuant to an inquiry from the Registrar of this Court concerning its status, Newnet informed this Court, in a letter dated 5 February 2026, that: (a) it suspended the operation of the hospital in May 2025; (b) it remains the owner of the

hospital; and (c) it has not been provisionally wound-up and no pending legal process or threat in this regard exists; (d) the shareholders and Board of Newnet will seriously consider reopening the hospital upon payment by the Fund of the outstanding indebtedness and agreement being reached with the Fund as to the way forward in respect of future business. Thus as things stand, the closure of the hospital is not an impediment to Newnet succeeding in the appeal.

[38] For all these reasons, Newnet is entitled to the relief sought in its notice of motion.

[39] In the result, the following order is made:

- 1 The appeal is upheld with costs.
- 2 The order of the full court is set aside and replaced with the following order:
 - ‘(i) The Road Accident Fund is hereby ordered to make payment of the judgments obtained in favour of Newnet Property (Pty) Ltd t/a Sunshine Hospital (Newnet) in the amount of R92 085 106.36 within 7 days from date of service of this order on it.
 - (ii) The Road Accident Fund is ordered to provide Newnet with an updated Requested Not Yet Paid (RNYP) list within 7 days from date of service of this order.
 - (iii) The Road Accident Fund is ordered to provide an updated RNYP list to Newnet every 14 days after compliance with prayer (ii) above.
 - (iv) The Road Accident Fund is ordered to adjudicate all accounts issued to it by Newnet within 120 days from receipt of such account from Newnet.
 - (v) The Road Accident Fund is directed to make payment to Newnet of all amounts due to it on the May 2023 RNYP list, being R158 890 967.70, within 30 days from date of service of this order on it, and thereafter to make payment

to Newnet of all amounts due to it as per a current RNYP list within 30 days of such adjudicated account appearing on the RNYP list.

- (vi) The Acting Chief Executive Officer, Mr Radikwena Phora, is directed and ordered to ensure that the Road Accident Fund complies with prayers (ii) to (vii) above.
- (vii) The Road Accident Fund is ordered to pay the costs of the application including those of two counsel.’

F KATHREE-SETILOANE
JUDGE OF APPEAL

Appearances

For the appellant:

F Arnoldi SC with B Stevens and ZT
Motha

Instructed by

Podbielski Mhlambi Carletonville Inc,
Pretoria
Claude Reid Attorneys, Bloemfontein

For the first and second respondents:

G Naude SC with A Ngidi

Instructed by:

Malatji & Co Attorneys, Sandton
Honey Attorneys, Bloemfontein.