



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 3036/2022

In the matter between:

ROAD ACCIDENT FUND

APPLICANT

and

ABIGAIL RUNKEL

FIRST RESPONDENT

SHERIFF OF THE HIGH COURT

FOR THE DISTRICT OF PRETORIA EAST

SECOND RESPONDENT

Neutral citation: *Road Accident Fund v Runkel and Another* (3036/2022) [2026] ZAFSHC 79 (2 March 2026)

Coram: CHESIWE J

Heard: 28 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 2 March 2026.

Summary: Stay of execution – rule 45A of the Uniform Rules of Court – s 173 of the Constitution of the Republic of South Africa, 1996 – appeal pending before a superior court – irreparable harm – public interest.

ORDER

1 The second respondent's intended removal, and sale in execution with regards to the first respondent's writ of execution issued on 6 of February 2025, is stayed in terms of the provisions of rule 45A of the Uniform Rules of Court as well as the provisions of the s 173 of the Constitution of the Republic of South Africa, 1996, pending the outcome of the matter which currently serves before the Supreme Court of Appeal, following the judgement handed down on 17 December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.

2 The first and second respondents are interdicted and restrained from proceeding with any further steps with regards to the first respondent's writ of execution issued on 6 February 2025, pending the outcome of the matter which currently serves before the Supreme Court of Appeal, following the judgement handed down on 17 December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.

3 Each party to pay their own costs.

JUDGMENT

Chesiwe J

Introduction

[1] This is an opposed application in terms of rule 45A of the Uniform Rules of Court, as well as the provisions of s 173 of the Constitution of the Republic of South Africa, 1996 (the Constitution). The applicant seeks a stay of the writ of execution issued on 6 February 2025 (the writ of execution) in favour of the first respondent, pending the outcome of a matter which is currently before the Supreme Court of Appeal (the SCA), following the judgment handed down by the Full Bench of the Gauteng Division of the High Court.

[2] The relief sought in the notice of motion by the applicant is as follows:

- '1. That the second respondent's intended removal, and sale execution with regards to the first respondent's Writ of Execution issued on those 6 of February 25 be stayed in terms of the provisions of Rule 45A of the Uniform Rules of Court as well as the provisions of the section 173 of the Constitution of the Republic of South Africa pending the outcome of the matter which currently serves before the SCA, following the judgement handed down on the 17th December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.
2. That, the second respondent be interdicted and restrained from proceeding with any further steps with regards to the first respondent's Writ of Execution issued on 6 February 2025 pending the outcome of the matter which currently serves before the SCA, following the judgement handed down on the 17th December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.
3. That, the first respondent's Writ of Execution be interdicted and restrained from proceeding with any further steps with regards to the first respondent's Writ of Execution issued on 6 February 2025 pending the outcome of the matter which currently serves before the SCA, following the judgement handed down on the 17th December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.
4. That, the Respondents to pay the costs of this application only in the event of opposition.
5. Such further and/or alternative relief as the above Honourable Court may deem appropriate.'

Background

[3] The first respondent instituted a claim against the applicant for a motor collision that occurred on 14 September 2019. The first respondent sustained several injuries due to the collision. The merits were settled with the quantum having been set down for trial on 27 February 2024, 28 February 2024 and 1 March 2024. However, the matter was settled between the parties before the trial could commence. The issue of past medical expenses could not be settled and proceeded before Reinders J. The first respondent proceeded with an application in terms of rule 35(9). A court order was issued with the date of 28 February 2024, awarding the past hospital and medical expenses amounting to R45 474,87 (forty-five thousand, four hundred and seventy-four rand and eighty-seven cents).

[4] The applicant did not pay for the past hospital and medical expenses. The first respondent then proceeded to issue a writ of execution against the applicant in relation to the unpaid hospital and medical expenses, and court order was issued on

6 February 2025. The second respondent was thereafter instructed to execute the writ of execution. The second respondent proceeded to attached certain movable property of the applicant and the auction for the attached movable property was scheduled for 8 April 2025.

[5] *The application to stay the writ of execution is based on the matter, Discovery Health (Pty) Ltd v Road Accident Fund and Another (Discovery),*¹ which is pending before the SCA. This Court therefore has to determine whether the writ of execution should be stayed pending the outcome of the above stated matter before the SCA, and whether the applicant has made out a case in terms of rule 45A and if s 173 of the Constitution is applicable.

Submissions

[6] Counsel on behalf of the applicant submitted that the pending matter before the SCA has to be decided first before any payment for past medical hospital expenses can be made. Further submissions were that there is uncertainty in respect of payment for past hospital expenses, since the Gauteng Full Bench had decided in favour of the applicant. Counsel further submitted that the applicant had relied on two directives to pay past medical expenses and that section 18(1) of the Superior Courts Act 10 of 2013 suspended these directives.

[7] Counsel on behalf of the first respondent submitted in oral argument that the applicant has not shown that the claim for past medical expenses that was before court on 28 February 2024, concern the same issues as the *Discovery* matter before the SCA. That the said order was not on appeal, neither was a special plea raised by the applicant. Counsel submitted that *Discovery* relied on the directives that were issued by the applicant, and there was no link between the matter before the SCA and the current court order dated 28 February 2024. That the application ought to be dismissed with costs on scale C.

Applicable legal principles

¹ *Discovery Health (Pty) Ltd v Road Accident Fund and Another* [2024] ZAGPPHC 1303; [2025] 2 All SA 113 (GP); 2025 (3) SA 225 (GP).

[8] Rule 45A of the Uniform Rules of Court Provides as follows:

'The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of [an] appeal, such suspension is in compliance with section 18 of the Act.'

[9] The suspension of a court order and the principles for granting a stay of execution were dealt with in *Gois t/a Shakespear's Pub v Van Zyl and Others (Gois)*,² 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 *causa* may ultimately be removed, ie where the underlying *causa* is the subject-matter of an ongoing dispute between the parties.

(e) The court is not concerned with the merits of the underlying dispute - the sole enquiry is simply whether the *causa* is in dispute.'

[10] The applicant in the founding affidavit relied on the *Discovery* judgment, which is quoted as follows:

'5.3.1 The RAF issued directives in lawful discharge of its statutory function of evaluating and settling claims.

5.3.2 The second (footnote 5, the second directive (13 April 2023) deals with the provisions of the MSA and its regulations, that medical schemes have a statutory obligation to pay PMB's and EMC's and have no reimbursement right after honouring statutory obligations) and third (footnote 6 the third directive (2 November 2023) which is based on Section 19 (d)(i) of the RAF Act) issued by the RAF, remains operative until its set aside by a court.'

[11] At paragraph 5.4.2 the applicant states further that:

² *Gois t/a Shakespear's Pub v Van Zyl and Others* 2011 (1) SA 148 (LC) para 37.

'Irreparable harm will result if the Writ of Execution is not stayed and the Applicant, thereafter, ultimately succeeds in establishing that the Plaintiff, alternatively the medical aid by means of subrogation, is not entitled to be reimbursed for past hospital and medical expenses paid by virtue of its statutory obligation to settle claims arising out of prescribed minimum benefits and emergency medical care, as prescribed by the Medical Schemes Act.'

[12] The applicant submitted that the quantum for general damages has been paid including loss of income. It appears that the applicant does not have a problem to pay the past medical expenses. It only wants certainty in respect of past hospital expenses. Neither will the first respondent be prejudiced to wait for a certain period as a large sum has already been paid to the first respondent. Thus, the first respondent will not suffer any irreparable harm in waiting. If the SCA judgment is indeed in favour of *Discovery* then the applicant will have to pay the past hospital expenses.

[13] On the other hand, the applicant as a juristic person established in terms s 2(1) of the Road Accident Fund Act 56 of 1996, will suffer irreparable harm if the execution is not stayed. This is noted in the items attached by the Sheriff. Some items listed are tables, 28 office chairs, overheard projector, and many other items. The applicant serves the public at large and in order to continue to render these services, these items are needed. The applicant is not disputing that the first respondent ought to be paid however, the issue is that the past hospital expenses be settled once and for all, including the certainty thereof. I see no reason that the claim may remain pending till the SCA outcome.

[14] In *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another BP Southern Africa (Pty) Ltd v ZA Petroleum (Pty) Ltd and Another*,³ the court held that the principles laid down in the *Gois* matter are guidelines and that the court seized with such an application, could, in its discretion consider the merits of the dispute to determine whether and injustice will be done. This is a considered view by this Court, especially in the circumstances due to the uncertainty of the directives of the RAF as well as the matter before the SCA.

³ *BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another BP Southern Africa (Pty) Ltd v ZA Petroleum (Pty) Ltd and Another* [2020] ZAGPJHC 56; 2022 (1) SA 162 (GJ) para 18.

[15] In terms of rule 45A, there ought to be an appeal to suspend the order. This issue was dealt with thoroughly in the *Gois* guiding principles, one being the irreparable harm that will invariably result if there is a possibility that the underlying cause may ultimately be removed, i.e. where the underlying causa is the subject-matter of an ongoing dispute between the parties. Indeed, the ongoing dispute between RAF and *Discovery* is before the SCA.

[16] The first respondent's contention that the matter before the SCA is irrelevant to the current matter as it will not alter the judgment already granted in her favour, is in my view, incorrect. It may not be relevant, but the matter will be able to give certainty on the way forward particularly for the applicant. This ought to allow the applicant an opportunity to deal with the writ of execution as well as the judgment/order itself.

[17] In the matter of *Stoffberg N O and Another v Capital Harvest (Pty) Ltd*,⁴ the court stated the following:

'[26] The broad and unrestricting wording of rule 45A suggests that it was intended to be a restatement of the courts' common law discretionary power. The particular power is an instance of the courts' authority to regulate its own process. Being a judicial power, it falls to be exercised judicially. Its exercise will therefore be fact specific and the guiding principle will be that execution will be suspended where real and substantial justice requires that. 'Real and substantial justice' is a concept that defies precise definition, rather like 'good cause' or 'substantial reason'. It is for the court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment; and, if they are, on what terms any suspension it might be persuaded to allow should be granted.'

[18] The court in *Knoop and Another NNO v Gupta (Tayob Intervening)*,⁵ held that execution may only be granted if there are exceptional circumstances and if the applicant will suffer irreparable harm if the application is not granted. I am of the considered view that, the applicant in this matter will suffer harm if the attached items are auctioned. Then applicant will then have to buy the items again in order to service the public. The circumstances to my mind, are exceptional. The applicant is a juristic

⁴ *Stoffberg N O and Another v Capital Harvest (Pty) Ltd* [2021] ZAWCHC 37.

⁵ *Knoop and Another NNO v Gupta (Tayob Intervening)* [2020] ZASCA 149; [2021] 1 All SA 17 (SCA); 2021 (3) SA 135 (SCA) para 2.

person who deals with several members of the public, including the several accident victims that must be assisted.

[19] Moreover, apart from the provisions of rule 45A, the court indeed has the inherent jurisdiction, in appropriate circumstances to order stay of execution or suspend such an order. For obvious reasons such discretion must be exercised judicially. And as a general rule the court will do so in the interests of justice or if there is any injustice that will occur.⁶ As stated above that the first respondent will not suffer any prejudice as the main claim has been settled and there is no reason to litigate vigorously over the outstanding claim of past hospital expenses. The applicant indeed faces a risk of losing the items attached by the Sheriff. Therefore, there is a real risk of loss of the said items and this constitutes irreparable harm as they would have to be bought back using public funds. The applicant ought to therefore, be granted the relief sought.

[20] The first respondent was entitled to oppose the application, albeit prematurely. The applicant's explanation is clear, it was awaiting the outcome of the SCA matter. Further, this Court doubts that the applicant will refuse to settle the claim for past hospital expenses if the matter before the SCA is not in favour of it.

Costs

[21] The general rule is that the costs follow the successful party. As the applicant seeks indulgence, the first respondent should not be out of pocket. However, in this regard it will be appropriate that each party pays their own costs.

Order

[22] Accordingly, the following order is made:

1 The second respondent's intended removal, and sale in execution with regards to the first respondent's writ of execution issued on 6 of February 2025, is stayed in terms of the provisions of rule 45A of the Uniform Rules of Court as well as the provisions of the s 173 of the Constitution of the Republic of South Africa, 1996, pending the outcome of the matter which currently serves before the Supreme Court

⁶ *Van Rensburg N O and Another v Naidoo N O and Others, Naidoo N O and Others v Van Rensburg N O and Others* [2010] ZASCA 68; [2010] 4 All SA 398 (SCA); 2011 (4) SA 149 (SCA) paras 51-52.

of Appeal, following the judgement handed down on 17 December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.

2 The first and second respondents are interdicted and restrained from proceeding with any further steps with regards to the first respondent's writ of execution issued on 6 February 2025, pending the outcome of the matter which currently serves before the Supreme Court of Appeal, following the judgement handed down on 17 December 2024 by the majority of the Full Bench of the Gauteng Division of the High Court.

3 Each party to pay their own costs.

A handwritten signature in dark ink, appearing to be 'S CHESIWE', is written over a large black rectangular redaction box.

S CHESIWE
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

Instructed by:

Ms C Bornman

State Attorney,

Bloemfontein

For the respondent:

Instructed by:

P J J Zietsman SC

Honey Attorneys,

Bloemfontein.