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REPUBLIC OF SOUTH AFRICA



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

Case Number: 2026-053157

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO
DATE 30/03/2026
SIGNATURE

In the matter between:

M[...] M[...] M[...] OBO S[...] M[...]

Execution Creditor/
Applicant

And

FIRSTRAND BANK LTD

First Respondent

VILAKAZI MARY

Second Respondent

DAVIAS MARKOS GEORGE

Third Respondent

BURGER JOHAN PETRUS

Fourth Respondent

WINTERBOER THOMAS

Fifth Respondent

NAIDOO PREMILLA DEVI

Sixth Respondent

VON ZEUNER LOUIS LEON

Seventh Respondent

ROSCHERR ZELDA

Eight Respondent

SIBISI SIBUSISO PATRICK	Ninth Respondent
ISAACS TAMARA CAROL	Tenth Respondent
MAKOSHOLO PABALLO JOEL	Eleventh Respondent
ROAD ACCIDENT FUND	Twelfth Respondent
SHERIFF CENTURION EAST	Interested Party

JUDGMENT

STRYDOM, J

- [1] This is an application brought on an urgent basis for an order that the 1st respondent, First Rand Bank Ltd (FRB or FNB) and the 2nd to the 11th respondents (the directors of FRB, collectively referred to as the “directors”) and the Road Accident Fund (the RAF) be ordered/compelled to comply with the applicant's writs of execution obtained pursuant to a court order, dated 19 February 2026, obtained in the Polokwane High Court. Further, ancillary orders are sought, inter alia, to permit reliance on hearsay evidence and contempt of court applications.
- [2] This application was opposed by FRB, its directors, and the RAF.
- [3] The first issue to be adjudicated is the matter's urgency. To decide this, the court would have regard to the nature and merits of the application. In what follows is a chronology of events, with limited references to the merits of the application:
- a. On 19 February 2025, a court order was obtained by default against the RAF for the payment of R7 401 660.00 plus costs, constituting the payment for the future loss of earnings of a minor child who was injured in a motor vehicle collision. The child was a pedestrian when the collision took place.

- b. The court order stipulated that the RAF had to pay the applicant within fourteen days. The payment date was 9 February 2026. The RAF did not make the payment.
- c. On 11 February 2026, a writ of execution was obtained for the attachment of the immovable goods of the RAF and for the sheriff to search for attachable incorporeal goods at FRB. In the writ, it was stated “ *[p]lease sheriff demand and collect the money due and owed from the interested parties.....Please follow the peremptory executory processes set-out in Rule 45 of the Uniform Rules of Court.*” It was requested to pay the sums due into the account of the attorney of the applicant, Mr Malatji S Attorneys. Further, the sheriff should give notice to FRB to provide bank statements of the execution debtor, the RAF, in the case that it is stated that there are insufficient funds in the bank accounts.
- d. On 17 February 2026, the sheriff executed the writ at the offices of the RAF. Insufficient moveable goods were pointed to satisfy the writ. The notice of attachment of the Sheriff Centurion East, is also dated 17 February 2026 and purports to be a notice of attachment in terms of High Court Rule 45(8) and 12(a).
- e. On 19 February 2026, the writ of execution, obtained on 11 February 2026, was served on FRB attaching incorporeal goods in the form of the bank accounts which the RAF held with FRB. FRB indicated that there were insufficient funds available to satisfy the writ. The return of the sheriff indicating what was attached at First National Bank Ltd (FNB), stated that an attachment was made in terms of Rule 45(8)(c) of the High Court Act (sic) in respect of money kept on behalf of the debtor in various accounts. It should be mentioned that the return did not mention a garnishee order. It was disputed before this court whether a garnishee attachment occurred simultaneously.
- f. On the same day, 19 February 2026, FNB informed the deputy sheriff per email that there were no funds in the accounts to satisfy the judgment debt and that the accounts had a R0.00 balance.

- g. On 20 February 2026, the applicant's attorney addressed an email to FNB indicating it and its FRB directors failed to comply with the writ of execution and court order. These parties were threatened with an urgent court application "*to compel the release of RAF bank statements and release of the monies attached.*"
- h. On 2 March 2026, a further Notice of Attachment was issued by the sheriff. The reason for this was to correct the reference to the applicable High Court.
- i. On the same date, the RAF served an urgent application to stay the writ of execution on the applicant. The application is not opposed at this stage and is set down for hearing on 14 May 2026.
- j. On 4 March 2026, an email was sent by Mr. Malatji to FNB, where it was stated that "*First Rand Bank and its directors have failed to release the attached monies.*" Further, that the executor creditor would approach the court to enforce payment. The urgent application was attached to the email. It was stated that it would be served shortly.
- k. On 4 March 2026, Mr Malatji enquired from the sheriff if he had received payment. The sheriff confirmed on 6 March 2026 that no payment was received.
- l. On 6 March 2026, Mr. Malatji addressed an email to Ms. Waleca, a senior legal advisor of FNB, and recorded that FNB has failed to release the attached monies. In this regard, it should be noted at this stage already that an attachment in terms of Rule 45(8)(c) does not create an obligation for the release of attached monies. A judgment creditor enjoys no such competence under Rule 45(8) and is not entitled to call for any payment. Instead, the attached incorporeal right will have to be sold in execution.
- m. On 9 March 2026, this application was served on the respondents, without a founding affidavit. FRB and its directors replied in writing, denying that the email constituted proper service. The respondents were required to file their notice of intention to oppose on 10 March 2026 and file

answering affidavits on 12 March 2026. No provision was made in the notice of motion for the filing of a replying affidavit. The matter was set down for Tuesday, the 17th of March 2026.

- n. On 10 March 2026, FRB and its directors filed a notice of intention to defend and, at 20h50 on 12 March 2026, filed an answering affidavit.
- o. On the same date, the RAF issued and served an application for the rescission of the default judgment obtained by the applicant against the RAF. This matter is also set down for hearing on 14 May 2026.
- p. On 12 March 2026, a return of service of a writ served on the RAF was uploaded onto Caselines.
- q. On 13 March 2026, the RAF filed a notice to oppose the application.
- r. On 16 March 2026, a confirmatory affidavit deposed to by the applicant, the mother of the injured minor child, was uploaded onto Caselines. On the same date, a replying affidavit was filed in reply to the answering affidavit of FRB, and its directors. (the first replying affidavit)
- s. On 17 March 2026, when the matter was called, there was still no affidavit filed on behalf of the RAF. Attached to this affidavit is an application filed by the RAF on 5 March 2026 for rescission of the court order against the RAF. This application is set down for 14 May 2026. Further attached was an application filed by the RAF to stay execution pending the rescission application, which is also set down for hearing on 14 May 2026.
- t. On 19 March 2026, on Thursday during the week when urgent applications were heard, the RAF filed an answering affidavit. On the same date, the applicant filed a document referred to as “ MINOR S[...] M[...]’S EDUCATIONAL PSYCHOLOGIST EVIDENCE AND ITS AFFIDAVIT IN TERMS OF SECTION 16 AND 34 OF THE CIVIL PROCEEDINGS EVIDENCE ACT”. An affidavit from an Educational Psychologist, Ms. Orit Grossman, dated 18 January 2026, was filed.

- u. On 19 March 2026, at 17h53, which is after court hours, a second replying affidavit was uploaded onto Caselines, in reply to the RAF's answering affidavit.
 - v. The matter was heard by this court on Friday, 20 March 2026.
- [4] The applicant asserted that the urgency of the matter was founded on two grounds, in the first instance, the case relates to the best interest of a minor child. The child must be registered at a special private school, Nova Special School (Nova), before the end of March 2026, due to his traumatic brain and head injuries. Monies are urgently required to cover registration fees, study fees, and accommodation to secure admission at Nova. Nova was not prepared to accept an undertaking to make payment from the RAF, because these undertakings are not made good. The applicant, as the parent of the minor child, cannot pay the approximately R120,000 required for 2026. The applicant stated that if this application were filed in the ordinary course, the matter would likely have been heard only in September 2026. In such a case, the child would not receive substantial redress at the hearing in due course, as school time would have been lost.
- [5] Reference was made to the Children's Act and the Constitution, more specifically, because the child's best interest is categorized as being of paramount importance in every matter concerning a child in terms of Section 28 (2) of the Constitution.
- [6] The second consideration for establishing urgency was non-compliance with a court order. It was stated that the conduct of the FRB directors posed a serious threat to public trust in, and respect for, the authority of the courts, and that the rule of law requires this court to intervene and assert its authority without delay.
- [7] FRB and the directors opposed the urgency of the matter, pointing out that the application was not so urgent as to warrant ignoring the Thursday-for-Tuesday rule. They were only afforded 2 days to file an answering affidavit. Considering that the applicant could not have claimed for the payment of monies from FNB and the FRB directors, no urgency was established as far as these parties are concerned.

- [8] In defence of the relief sought against FRB and its directors, they pointed out that the writ of execution is in material respects fatally defective. It is stated that the applicant should not have joined FRB and its directors in the application, as no legal relation has been established between the applicant and them.
- [9] The RAF argued that the application was premature, as it had filed an application for a stay of the writ of execution in terms of Rule 45A of the Uniform Rules of the Court. It also filed a rescission application. For this reason, the current application is not urgent.
- [10] The RAF argued that the matter was not urgent. It pointed out that the applicant premised the urgency of the application on two grounds: (i) the non-compliance with court orders and judicial attachment deserves any court to hear the matter on an urgent basis to protect judicial decisions and (ii) the minor child need to attend a special school before the end of March 2026 and private schools do not accept RAF undertakings. It was averred in the answering affidavit that the applicant did not provide any proof of any attempts made to register the minor or of any alleged refusal by the special school to accept an RAF undertaking, as contended by the applicant.
- [11] It should be noted that on the same date the RAF filed its answering affidavit, the applicant caused further affidavits regarding the child's need to be placed at a special school referred to as Nova to be uploaded onto Caselines. This was on the Thursday of the urgent week. It is not clear when the applicant expected the court to read this affidavit, as the matter was to be heard at 10h00 on Friday, 20 March 2026. The affidavit was not filed through Court-on-Line, and no notification was sent to me.
- [12] When the urgency of this matter is considered, the court is well aware that it is dealing with the best interest of a child. Some urgency is established. The question, however, remains as to the degree of urgency of the matter. The mere fact that the court was dealing with an alleged contempt of court application does not create the high degree of urgency with which this application was launched. The allegation that it was of paramount importance that the minor child be placed at Nova special school is also unconvincing. A

wait of a further week or two before the placement could not have made a big difference.

- [13] In my view, the applicant, through her attorney, Mr. Malatji, overemphasized the degree of urgency. By 4 March 2026, the applicant had already decided to launch an urgent application. Yet this application (without a founding affidavit) was emailed to the respondents on 9 March 2026. The applicant took substantially more time to draft the application than the time allowed for the respondents to file answering affidavits. The 2-day timeframe afforded to the respondents was far too short, given the urgency of this matter. Moreover, the deadline provided by the applicant was noon on Thursday, 2026, before Tuesday, 17 February 2026, the date of the set down. As the applicant was going to reply to the two answering affidavits (as she subsequently did), the application was incomplete by Thursday noon. When the matter was called at the roll call on Tuesday, the matter was far from ready to be heard. It was only on Thursday that the RAF filed its answering affidavit. It applied for condonation in the affidavit. The applicant continued to upload additional documents throughout the week. Heads of argument were also filed on the date of the set down.
- [14] All of this could have been avoided if reasonable timelines had been afforded to the respondents. This could have been achieved in two ways. First, if the applicant filed its application one week earlier to be heard on 17 March 2026, or second, if the application was set down one week later. This would have afforded the parties, including the applicant, the opportunity to file all the affidavits, resulting in a complete application ready for hearing.
- [15] By stating this, the court does not find that the matter was of high urgency. Certainly not, as far as FRB and its directors are concerned. The entire application against them is premised on an incorrect assumption that, after the contested attachment, the judgment debt should have been paid directly to the judgment creditor. If this proposition is wrong in law, the urgency would fall away. Even if this were the position and the payment was wrongly refused, the contempt proceedings were not urgent.

[16] The Practice Directive 9.23 deals with urgent applications. It specifically provides that deviation from time periods prescribed in the rules of court must be strictly commensurate with the urgency of the matter as set out in the founding affidavit. The case of urgency cannot be made out in a replying affidavit or by filing further affidavits during an urgent week. This is what Mr. Malatji did.

[17] I find that the applicant, through her attorney, who was clearly the decision maker in this application, brought the application to the urgent court without establishing the high degree of urgency required to allow affidavits to be filed during the urgent week.

[18] For this reason, the matter stands to be struck from the roll for the lack of the required urgency.

[19] As far as costs are concerned, FRB and its directors requested this court to make a cost order *de bonis propriis* against Mr. Malatji. As I have not decided the merits of the application, I do not intend to make such an order. This can stand over for a later decision. I am only going to make a cost order relating to the wasted cost occasioned by the filing of the urgent application in this court.

[20] The order of this court is as follows:

- a. The application is struck off the roll for lack of urgency.
- b. The applicant to pay the wasted cost occasioned by the filing of this application on Scale C.

R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 17 & 20 March 2026

Delivered on: 30 March 2026

Appearances:

For the Applicant: Adv. T. Moloi

Instructed by: Malatji S Attorneys

For the 1st to 11th Respondents: Adv. N. Konstantinides SC

Instructed by: Van Hulsteyns Attorneys

For the 12th Respondent: Adv. M. Mogano

Instructed by: State Attorney – Johannesburg