REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no: 2025-105649

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

DATE: 6 March 2026

[redacted]

In the matter between:

IVY MOKGADI MONTSHA	**APPLICANT**
and	
THE ROAD ACCIDENT FUND	**FIRST RESPONDENT**
ACTING REGIONAL GENERAL MANAGER TSHEPO MOATSHE	**SECOND RESPONDENT**
ACTING SENIOR MANAGER SUPPORT SPHIWE MAMPA	**THIRD RESPONDENT**
ACTING SENIOR MANAGER CLAIMS 1 SIBONGILE MGWALI	**FOURTH RESPONDENT**
ACTING SENIOR MANAGER CLAIMS 2 TEBOGO TSHAKA	**FIFTH RESPONDENT**

JUDGMENT

K STRYDOM, AJ

Introduction

1) On the 14th of November 2023, under case number 24635 / 2021, the Road Accident Fund (First Respondent herein) was ordered to make an interim payment to Ms Montsha (the Applicant herein) in terms of Uniform Rule 34A (1) in the amount of R135 043-00, within 10 days from the date of service of that order. ("the 2023 order").

2) The First Respondent has to date failed to make the interim payment. As a result, the Applicant brought the present application seeking the following relief against the second to fifth Respondents (who are all employed by the First Respondent):

   "1. The Second to Fifth Respondents are found to be in contempt of Court by failing to comply with the Court Order granted by the above Honourable Court under the case number 24635 / 2021 on 14 November 2023 ("the Court Order")

   "2. The Second to Fifth Respondents be committed to imprisonment for contempt of Court for a period of 3 months, which committal is suspended for a period of one year, on condition that the Second- till Sixth Respondents complies with the order granted on 14 November 2023 within 7 days from date of service of this order;"

   3. Should the Second to Fifth Respondents fail to comply with this order it is declared that the Second- till Sixth Respondents does not oppose the Applicant's application and the Applicant may proceed with her application, solely, against the Respondents."

3) This contempt application was set down for hearing on 4 December 2025 on the unopposed motion roll. At the hearing, I indicated to counsel for the Applicant that, according to my reading of the common law, a money judgment (such as the 2023 order) is not enforceable by way contempt proceedings. I afforded counsel the opportunity to address this issue through the filing supplementary written submissions. Judgment was reserved pending receipt of said supplementary submissions.

Supplementary written submissions

4) In her supplementary written submissions the Applicant noted the Supreme Court of Appeal's dictum in *Jayiya v MEC*[1]*:*

   "*Contempt of court, even civil contempt of court, is a criminal offence. The way our common law has developed, it can be committed only by deliberately and mala fide ignoring orders of Court ad factum praestandum; it cannot by judicial extension be made to embrace orders ad pecuniam solvendam*."

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[1] *Jayiya v Member of the Executive Council for Welfare, Eastern Cape and Another* 2004 (2) SA 611 (SCA)

5) In view hereof, she now, correctly, conceded that the application in its current form is, on the face of it, probably fatally defective. As a result, she no longer sought the prayers as contained in the notice of motion. Instead, she applied for an order removing the matter from the roll, with the proviso that it may not be re-enrolled "*until such time that the applicant has amended the relief sought in accordance with Rule 28*"

6) She contends that the amended notice of motion will "...*frame the relief sought by the applicant to enforce a positive act by the first respondent to comply with its statutory duty and in those circumstances, the application is not fatally defective but can easily remedied".*

7) The Applicant submits that the facts set out in the founding affidavit, support the contention that the first respondent has failed to comply with its statutory duty of compensating the applicant for past medical- and hospital expenses in terms of section 17(5) of the Road Accident Fund Amendment Act ("*RAF Act*"), as well as with its statutory duty in terms of Section 3 of the RAF Act. As such, the argument goes, the 2023 order "...*is not merely an order for monetary judgement but includes an element of an order ad factum praestandum (to take positive action to satisfy its statutory duties) and in those circumstances, the applicant can pursue contempt of Court proceedings to enforce the first respondent's statutory duty to compensate her."*

8) Based on this reasoning, the proposition is that the notice of motion could be amended to, inter alia:

"*Delete the existing prayer 1 and replace it with:*

1. Declaring that the Second to Fifth Respondents are in contempt of this Court for failing to comply with their statutory duties under section 3(3) of the State Liability Act 20 of 1957, read with the order of this Court dated 21 February 2023, by failing and/or refusing to take the necessary steps to satisfy the said court order from funds appropriated to the Road Accident Fund.

Replace prayer 2 with:

2. Directing the Second to Fifth Respondents, in their capacities as accounting officers or officials responsible for the execution of court orders within the Road Accident Fund, to take all necessary statutory and administrative steps required under section 3 of the State Liability Act to give effect to the order of this Court dated 21 February 2024 within 15 (fifteen) days of service of this order.

Replace prayer 3 with:

3. In the event of non-compliance with paragraph 2 above, declaring such non-compliance to be wilful and mala fide, entitling the Applicant to enrol the matter for the imposition of an appropriate penalty for contempt of court."

Removal of matters from the roll: Relevant legal principles

9) Despite being *dominus litis*, an Applicant is not entitled to, in the absence of an agreement with the Respondent, remove an application after a matter has been enrolled for hearing, without leave of the Court.[2]

10) The removal of a matter from the roll being in all practical respects akin to a postponement of a matter *sine die,*[3] a Court confronted with an application for removal, will exercise its discretion on similar principles as those relating to postponements..

11) In *Psychological Society of South Africa*,[4] the Constitutional Court held that:

"[31] In exercising its discretion, a court will consider whether the application has been timeously made, whether the explanation for the postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed to determine whether it is in the interests of justice to grant the postponement. And, importantly, this [Constitutional] Court has added to the mix. <u>It has said that what is in the interests of justice is determined not only by what is in the interests of the immediate parties, but also by what is in the broader public interest</u>"[5]

12) As such, the fact that, in unopposed applications, the cited Respondents would suffer no perceivable prejudice should the matter simply be removed from the roll, does not *ipso facto* mean that the Court should exercise its discretion in favour of such a removal. The Court is now also required to also weigh the Applicant's interest against the broader public interest.

13) That the "broader public interest" also encompasses the "interests" of Courts/ the Judiciary, is well established in jurisprudence:

   a) For instance, in *Mnguni v Ngwenya and Another,* [6] it was held that:

   "[30] The removal of the matter from the roll has the 'potential to negatively affect the proper administration of justice and the operation of this court, particularly after the allocation of judges that have since been allocated and ready to disperse with the matter'

   b) The Constitutional Court in *National Police Service Union*[7] similarly held that:

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[2] *Dey Street Properties (Pty) Ltd v Salentias Travel and Hospitality CC* (25461/21) [2021] ZAGPPHC 462 (15 July 2021) at paras 3-5

[3] *Petse v Minister of Defence and Military Veterans and Others* (2016/01339) [2024] ZAGPJHC 358 (12 April 2024) at para 19

[4] *Psychological Society of South Africa v Qwelane and Others* [2016] ZACC 48

[6] *Mnguni v Ngwenya and Another* (A3065/2020) [2023] ZAGPJHC 117

[7] *National Police Service Union and Others v Minister of Safety and Security and Others* [2000] ZACC 15; 2000 (4) SA 1110 (CC)

"[5] ... The interests of justice may require that a litigant be granted more time, but account will also be taken of the need to have matters before this Court finalised without undue delay."

The purpose of the removal – prospects of success

14) To my mind, the following reasoning of Gilbert AJ in *PK v LSK*[8] logically flows from, and is ancillary to, the evaluation of the broader public interest:

"*[19] For it to be in the interests of justice to grant a postponement requires that there is a legitimate purpose to be gained by postponing the matter. That in turn entails an engagement with whether that which the applicant for postponement seeks to achieve by way of a postponement is bona fide and has at least <u>some prospects of success</u>. It is <u>pointless, and so would not be in the interests of justice, to postpone a matter if the purpose of the postponement cannot be achieved"</u>* [Underlining my own]

15) To appreciate the comparative degrees of interest of the Applicant as opposed to those the broader public (and to a certain extent, the absentee Respondents), an evaluation of the purpose (and possible success thereof) for which the removal is sought is necessary.

16) In essence the Applicant wants to transform the current contempt application based on non payment of a monetary award, to one based on non compliance with statutory duties to ensure that such a payment was made.

17) This proposed amendment, is, however, not the "easy" fix to the fatality of the application the Applicant makes it out to be.

18) In the first place, it has been decisively held that the State Liability Act does not apply to the Road Accident Fund:

   a) In *Mnyaka and Others v Road Accident Fund (Appeal)*[9] the full court held that: "*Whilst the RAF may be considered to be an organ of State, the State Liability Act applies only in proceedings instituted against a national or provincial department. The RAF is neither...."*

   b) In *Newnet Property (Pty) Ltd trading as Sunshine Hospital v Road Accident Fund and Another*,[10] the same conclusion was reached, albeit on a different basis: *"The RAF is not a state functionary. ...In terms of Schedule 3 of the Public Finance Management Act Schedule (PFMA) the first respondent is a public entity. Furthermore, in*

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[8] *P.K v L.S.K (Reasons)* (2022/21885) [2024] ZAGPJHC 1249 (18 November 2024)
[9] (CA46/2025) [2025] ZAECMHC 124 (25 November 2025) paras 13 and 14
[10] (053391/2024) [2024] ZAGPPHC 551 (13 June 2024) paras 24 and 25

terms of section 49 (2) of the PFMA if the public entity has a board or other controlling body, that Board or controlling body is the accounting authority."

19) Secondly, an amendment of only the notice of motion, would probably be excipiable. The relief claimed in the notice of motion as sought to be amended is dependent upon a different cause of action than that which is traversed in the founding affidavit. Given that affidavits cannot be amended as contemplated in Rule 28(1) the Applicant would, at the very least, have to file a supplementary affidavit setting out the statutory duties it says were implicit in the 2023 order and in what manner each of the second to fifth respondents have not complied with said duties.

20) Thirdly, even if the State Liability Act (or any other Act for that matter) imposed specific obligation regarding payment of court orders on defined functionaries, the Applicant would still not be able to rely on the 2023 order directly in contempt proceedings against the second to fifth Respondents.

a) As was stated by the Constitutional Court in *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another*:[11]

"[75].... The judgment creditor would have to obtain a mandamus order and if the state functionary does not comply with the mandamus then he or she would be held in contempt of court. "

b) More directly on point to the facts *in casu*, is the following succinct reasoning of the Labour Appeal Court in *Minister of Health and Another v Bruckner*:[12]

'In the present case, the Department of Health ....was ordered ...to reinstate Ms Brückner. No order was then made against the minister or the director-general, as being the persons capable of bringing about the reinstatement of Ms Brückner, to do whatever was necessary to achieve that purpose. In my view, what Ms Brückner ought to have done was to have applied for a mandamus compelling the minister and/or the director-general to take the steps necessary to effect her reinstatement as Deputy-Director: Medicines Registration. Without first obtaining such a mandamus it was not, in my view, competent for Ms Brückner to seek an order for the committal of the minister and the director-general to gaol for contempt of court.'

....

What Ms Brückner's counsel's submissions overlook is the fact that the citing of the appellants by name first took place in the contempt proceedings. Furthermore, whilst the admission by the appellants that they are the functionaries who are responsible to ensure compliance by the department with the court order, would obviously have been relevant in an

[11] (CCT 19/07) [2008] ZACC 8; 2008 (5) SA 94 (CC); 2008 (9) BCLR 865 (CC) (2 June 2008)
[12] (JA11/04) [2006] ZALAC 5; [2007] 5 BLLR 418 (LAC); (2007) 28 ILJ 612 (LAC) (6 December 2006)

application brought against those parties for a mandamus, the admission alone could not have rendered the appellants guilty of contempt of an order which was not made against them personally.'

21) It would be apposite to, at this juncture mention that the legal route that the Applicant intends to follow, as per her proposed amendment echoes the route followed by several applicants (and courts) following the finding in *Jayiya v Member of the Executive Council for Welfare, Eastern Cape and Another*. The Appellant was in possession of a court order ordering the Eastern Cape government to make a lumpsum payment of all outstanding social benefits to her. However, at the time, the State Liability Act in section 3 precluded execution against the property of a provincial administration (now government). Based on previous decisions in the Eastern Cape holding that a money judgment against the State or a provincial government can be enforced by proceedings for contempt of court, the Appellant's counsel argued that her only remedy was therefore the incarceration of the recalcitrant provincial official and that the Court should, for that reason, treat the failure by the Eastern Cape provincial government to satisfy the judgment *ad pecuniam solvendam*, in the same way as it would contempt of an order *ad factum praestandum*. The SCA refused to develop the common law and dismissed her appeal.

22) The legal quagmire caused by the provisions of Section 3 (as it then was) resulted in a variety of judgments where Courts attempted to come to the aid of creditors in possession of such impotent monetary court orders against organs of state. In, for instance, *Magidimisi v Premier of the Eastern Cape and Others* (2180/04 , ECJ031/06) [2006] ZAECHC 20 (25 April 2006) Froneman J granted a mandamus compelling the respondents to fulfil their constitutional and statutory obligations to comply with court orders against the province, by not only taking the steps necessary to ensure payment of the sums owing by the province to the applicant and others, but also by requiring the respondents to report to the court the manner and extent of their compliance.

23) The problematic nature of such a round about approach to obtaining satisfaction of a monetary award, culminated in Section 3 being declared invalid by the Constitutional Court in *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another* 2008 (5) SA 94 (CC), where, at paragraph 33 it was held that:

"...However, I share the applicant's view that the Magidimisi solution does make section 3 unconstitutional, as an invitation to a judgment creditor to seek a mandamus defies the harsh realities of litigation with its inherent concomitant risks and expenses.

and at paragraph 79 that:

> *"The practical effect of s 3 is that the State cannot be forced to honour court orders as there is no manner in which compliance can be enforced. In the result, the ordinary citizen has no effective remedy available in a situation where the State and its officials fail to comply with a court order. In terms of contempt of proceedings, the High Court found that s 3 of the Act does not mean that a Minister cannot be arrested for inherent power to protect and regulate their process, especially in light of s 173 of the Constitution. However, contempt of court proceedings do not put money in the pocket or food on the table."*

24) The invalidity was cured by amending section 3 in terms of the State Liability Amendment Act 14 of 2011, to now, subject to certain preliminary steps, permit the registrar or clerk of the court concerned to, on the request of the judgment creditor, issue a writ of execution in terms of the applicable rules of court against movable property owned by state and used by the department concerned (in terms of section 3(6))

25) *In casu* there is no statutory prohibition against execution against the property of the first Respondent. The Applicant herein does not disclose if she has attempted to issue and execute a writ of execution based on the non payment of the 2023 order. The fact that she would rather attempt to follow a route that was initially borne out of desperation for want of the ability to execute against property (eg *Magidimisi*) and later found to be a basis for declaring a statutory provision unconstitutional, is, to say the least, ironic.

26) Finally, even if all the aforementioned hurdles were assailed, a Court could still dismiss the application, as it did in *Plaintiffs Listed in Annexure "RAF 1" and Another v Road Accident Fund and Another* (20784/2022) [2022] ZAGPPHC 672 (13 September 2022), (an application for contempt on facts similar to those in casu), on the basis that:

> *" From the relief sought in the notice of motion, the <u>primary purpose</u> of the application is to obtain payment of all amounts granted in court orders and due to the applicants. The non-payment of the due amounts find the basis of the order for contempt. The order for contempt clearly was an attempt to enforce payment of the amounts due."*

Evaluation of the Applicant's interests

27) Should the removal be refused, the application stands to be dismissed as it clearly (and impermissibly) seeks to enforce a monetary judgment through contempt of Court proceedings. In view hereof, the Applicant's interest in the matter being removed from the roll may therefore, at first blush, seem to weigh heavily in favour of granting the

application. After all, it is trite that a”..*Court must be loath and very slow to close a litigant’s mouth by refusing a meritorious application for a postponement*.”[13]

28) However, the dismissal of the present contempt application would not be a bar to holding the same Respondents in contempt of court in future. The only difference would relate to the order upon which the application would be based. The Applicant is entitled to, based on the 2023 order, obtain a mandamus directing the Respondents to comply with any statutory duties to take the steps necessary to effect payment. Should they then not comply with the mandamus they could be held in contempt of court.

29) The practical effect hereof would be that the Applicant would start afresh and, foreseeably bring two applications: the mandamus application and, if necessary, the subsequent contempt application based on the mandamus order. This procedure has the advantage of being prescribed by our Courts and resultantly stands a greater chance of eventual success.

30) On the other, should the removal be granted, it would be necessary for, at least, three further applications to be brought before Court: an application for condonation for the filing of a supplementary affidavit, thereafter the application for amendment and, if granted, the amended contempt application based on the 2023 order.

31) The prospects of success at the stage of the amendment application or, if granted, at the contempt application stage, is dubious when one considers the legal precedents discussed *supra*.

Evaluation of the broader public interest

32) Every application brought has a marked impact on the already severely constrained capacity of the Court and, by implication, the access of other litigants to Court. On the numbers, it would therefore that the public interest favours refusing the removal (resulting in two additional applications) above granting it (resulting in three additional applications.)

33) The interest of justice however does not amount to a simple maths equation. Whilst factors such as litigation costs, excessive lead times for hearing dates and the increased workload on Judges are certainly important when considering what would be in the interest of justice, there is an even more crucial (and sometimes overlooked) principle: Certainty of law. The *stare decisis* principle is fundamental in establishing legal certainty. Given the binding nature of their pronouncements, Judges are called

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[13] *Seodin Primary School & Others v MEC of Education, Northern Cape & Others* 2006 (1) ALL SA 154 (NC) para [8]

upon to intensely scrutinise, consider, research and weigh every argument, before even putting pen to paper. Once such a judgment has been made, however, it is expected that (absent an appeal or other challenge) it would be unnecessary to repeatedly write judgments on the same point. Practitioners are expected to know and apply the law as pronounced. Whilst there are admittedly more often than not cases of uncertainty as to interpretation or specific application of such pronouncements, that is decidedly not the case *in casu*.

34) The principle that monetary judgments cannot be enforced by way of contempt orders[14] dates back to common law. Not only have South African courts, both pre and post constitutional dispensation, definitively confirmed this principle,[15] it was legislated as far back as 1977 in terms of the *Abolition of Civil Imprisonment Act 2 of 1977* that:

"1. No court shall have power to order the civil imprisonment of a debtor for his failure to pay a sum of money in terms of any judgment."

35) In this regard, the SCA in *Jayiya,* noted that:

"[16]..... it seems hard that the second respondent should have to go to prison for the non-payment of her employer's debt when the Abolition of Civil Imprisonment Act 2 of 1977 prevents her from suffering the same fate for nonpayment of a debt of her own."

36) In relation to enforcement of monetary judgments by way of contempt proceedings against the Road Accident Fund specifically, a brief cursory desktop search revealed various recent judgments dismissing such attempts. These include cases such as:

a) *Moyo v Road Accident Fund and Another* (3719/2021) [2024] ZAECQBHC 15 (5 March 2024), where the Court held that the application was "*contrived in an endeavour to set up an application for contempt of court against the second respondent, Mr Johnstone.."*

b) *Newnet Property (Pty) Ltd trading as Sunshine Hospital v Road Accident Fund and Another* (053391/2024) [2024] ZAGPPHC 551 (13 June 2024) where relief was sought on a similar basis as the Applicant herein proposes to in terms of her intended amended notice of motion. In *Newnet* the Court, in addition to finding that the State Liability Act does not apply to the RAF, also agreed that:

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[14] With the exception of maintenance orders

[15] *Matjhabeng Local Municipaity v Eskom Holdings Ltd & Others: Shadrack Shivumba Homo Mkhonto & Others v Compensation Solutions (Pyu) Ltd*[(2017) ZACC 35 at para 49: "*The common law drew a sharp distinction between orders ad solvendam pecuniam, which related to the payment of money, and orders ad factum praestandum, which called upon a person to perform a certain act or refrain from specific action. Indeed, failure to comply with the order to pay money was not regarded as contempt of court, where as disobedience of the latter order was*."

"The applicant's attempt to change the nature of their own orders from being ad pecuniam solvendam to ad factum praestandum is not competent. The applicant does this in circumstances where it has raised the very same issue against the same party, being the first respondent."

c) *Plaintiffs Listed in Annexure "RAF 1" and Another v Road Accident Fund and Another* (20784/2022) [2022] ZAGPPHC 672 (13 September 2022) (discussed *supra)*

Finding

37) Given the aforementioned considerations and conclusions, I am disinclined to exercise my discretion in favour of removing the matter from the roll.

38) As already indicated, the application in its current form impermissibly seeks to enforce a monetary judgment by way of contempt proceedings and stands to be dismissed.

ORDER

39) In view of the aforementioned, the following order is made:

1. The request for the removal of the application from the unopposed roll is refused;

2. The application is dismissed.

[redacted]

K STRYDOM
ACTING JUDGE OF THE HIGH COURT, GAUTENG DIVISION PRETORIA

Judgment reserved on: 9 December 2025
Judgment handed down: 6 March 2026

Appearances:
For the Applicant: Adv L Louw instructed by Kotze & Roux Attorneys Inc.