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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

REPORTABLE

Case no: 20944/2022

In the matter between:

ADVOCATE ROXANNE VAN WYK N.O.

CATHERINE YIANNAKIS

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Neutral citation: *Advocate Roxanne Van Wyk N.O. Catherine Yiannakis v Road Accident Fund* (Case no 20944/2022) [2026] ZAWCHC (7 May 2026)

Coram: LOUW AJ

Heard: 28 April 2026

Delivered: Electronically on 7 May 2026

Summary: The RAF refused to compensate the victim of a motor vehicle accident for past hospital and medical expenses on the basis that these had been covered by medical aid, despite binding full court authority in this Division and SCA confirmation of its liability –The RAF relied on internal directives already declared unlawful and inapplicable retrospectively, as well as the speculative prospect of a future appeal against the full court judgment, which had not been instituted and would in any event require condonation – The court rejected this stance, held the RAF liable, and awarded punitive costs.

ORDER

1. The defendant shall pay to plaintiff's attorneys of record the sum of R 2 231 081.34 (two million two hundred and thirty-one thousand and eighty-one rand and thirty-four cents) which is in respect of the patient's past hospital and medical expenses.
2. The capital amount referred to in paragraph 1 above shall be paid to plaintiff's attorneys of record by means of an electronic transfer of funds, which amount is to be paid within 180 (one hundred and eighty) calendar days from date of this order.
3. The defendant shall pay plaintiff's taxed or agreed costs in respect of the plaintiff's claim for past hospital and medical expenses on the High Court Scale, which costs shall be on an attorney and client scale.

4. The costs shall include the taxed or agreed fees of plaintiff's counsel, including but not limited to his consultations, preparation of written submissions and trial preparation, as well as his day fee in respect of the trial on 28 April 2026.
5. The plaintiff shall, in the event that the costs are not agreed, serve the notice of taxation on the defendant.
6. The payment of the legal costs shall be payable 180 (one hundred and eighty) calendar days following settlement or the taxing master's allocatur, in the event of taxing the bill of costs, whichever is applicable.
7. Payment of the capital and costs shall be effected directly to plaintiff's attorneys of record by means of an electronic transfer into the trust account mentioned below.
8. The defendant shall be liable for interest on the capital amount at the prescribed rate of interest from 14 (fourteen) days from date of this order to date of final payment.
9. The defendant shall be liable for interest on the legal costs at the prescribed rate of interest from 14 (fourteen) days following settlement of the costs or the taxing master's allocatur, in the event of taxing the bill of costs, whichever is applicable.
10. Plaintiff shall not proceed with a warrant of execution in respect of the capital and costs prior to the expiry of the said 180 calendar days.

11. Plaintiff's attorneys' trust banking account details are as follows:

NAME OF BANK:	NEDBANK LIMITED
BRANCH:	CPT CENTRAL SUBURBS NCB
NAME OF ACCOUNT:	SOHN AND WOOD TRUST
ACCOUNT ACCOUNT NO:	1[...]
BRANCH CODE NO:	198765

JUDGMENT

Louw AJ:

Introduction

[1] The plaintiff is Advocate Roxanne Van Wyk N.O., acting in her representative capacity as *curatrix ad litem* to Catherine Yiannakis ('the patient'). The defendant is the Road Accident Fund ('RAF'), a juristic person established under the Road Accident Fund Act¹ ('RAF Act'), as amended. In terms of that Act, the RAF serves as the statutory insurer tasked with compensating persons injured in motor vehicle collisions arising from negligent driving.

¹ 56 of 1996.

- [2] The matter is a delictual action in which the plaintiff is suing RAF for damages arising from bodily injuries which the patient sustained in a motor vehicle collision on 12 February 2018 as a pedestrian.
- [3] The merits were conceded and all heads of damages were settled between the parties as per a court order dated 5 August 2024. However, what remained in dispute was the quantum for the past hospital, medical and related expenses. Plaintiff asserted the costs amounted to a sum of R2 231 081.34, which the plaintiff claimed is made up of an amount of R1 678 832.58 that is due to the plaintiff and an amount of R 552 248.76 that is due to the medical aid scheme of the patient, in this matter, Discovery Medical Scheme (‘Discovery Health’). RAF disputes its liability to pay for the plaintiff’s past hospital and medical expenses already paid by Discovery Health in the amount of R 552 248.76.
- [4] The matter was initially enrolled for trial on 19 August 2025. In light of a pending appeal before a full court of this Division at the time, concerning, inter alia, the RAF’s liability to pay past hospital and medical expenses covered by a patient’s medical fund, the parties agreed to postpone the trial to 28 April 2026. The full court in this Division delivered its judgment on 9 February 2026 in *Road Accident Fund v Van Wyk* (‘*Van Wyk*’).²
- [5] In *Van Wyk*, the RAF appealed against an order requiring it to pay the claimant’s past medical expenses. The RAF argued that because the

² (1169/2020; A186/2025) [2026] ZAWCHC 39 (9 February 2026).

claimant's medical insurance had already covered those costs, its liability should be reduced. The full court disagreed. In short, applying the doctrine of *res inter alios acta*, the court held that the insurance contract was a private arrangement between the claimant and their insurer and had no bearing on the RAF's obligations. The RAF therefore, remained liable for the full amount of past medical expenses, regardless of who had paid them.

- [6] Despite the ruling by the full court on this issue, the trial proceeded before this court on 28 April 2026. The counsel for the plaintiff, Mr Coughlan, called two witnesses, namely the daughter of the patient, Ms Olga Eudoxia Yiannakis, and Ms Thanusha Tia Hoosen, a Team Leader of Discovery Medical Scheme ('employee of Discovery Health'). Counsel, Mr Hindley, for RAF called no witnesses.

Factual background

- [7] It is not necessary for the court to elaborate on the factual background of the matter. For brevity, the background facts are merely that the patient was seriously injured in a motor vehicle collision on 12 February 2018 as a pedestrian. It is common cause that the injuries have severely impacted her mental and physical capacity to the point where she is no longer able to act for herself, look after herself or live on her own. Accordingly, a *curator bonis* was appointed to assist the patient to manage her finances.

- [8] Since the accident, the patient has been unable to live independently and has resided at St Anthony's Home, a care facility dedicated to the specialised long-term care and nursing of persons with chronic psychiatric and mental disorders, since around July 2018.
- [9] It is common cause that the patient is a member of Discovery Health, which covered her past medical expenses incurred as a result of the injuries sustained in the accident.
- [10] The settlement order, which addressed damages other than those relating to past hospital, medical and related expenses, is not material to the present matter and has no bearing on the issues before the court.
- [11] The matter was first set down for trial on 19 August 2025. However, because the full court of appeal in this Division in *Van Wyk* was pending on RAF's liability for past hospital and medical expenses where same were paid by a victim's (claimant's) medical fund, the trial was postponed by agreement to 28 April 2026. That appeal was decided on 9 February 2026 in *Van Wyk* and its outcome now forms part of the background to the current proceedings. Given this, it is thus important, for the sake of conciseness, to provide a short background of what transpired prior to the *Van Wyk* judgment, particularly in relation to the conduct of the RAF and its directives that it issued.
- [12] The RAF had adopted the position that it was not liable where medical aid schemes had settled past medical expenses. This led to the first directive of 12 August 2022, which was reviewed and set aside in

*Discovery Health (Pty) Ltd v Road Accident Fund and Another*³ (‘Discovery Health 1’) by Mbongwe J in October 2022. The judge held that the RAF Act did not exclude benefits received from private medical aid schemes, and interdicted the implementation of this directive. The RAF’s applications for leave to appeal were refused by both the Supreme Court of Appeal (‘SCA’) and the Constitutional Court. Despite this, the RAF issued two further directives: the second (13 April 2023) required exclusion of expenses categorised as Prescribed Minimum Benefits (‘PMB’) or Emergency Medical Conditions (‘EMC’), and the third (2 November 2023) excluded claims where claimants (plaintiffs) had agreed to reimburse their medical aid schemes.

- [13] These directives gave rise to *Discovery Health (Pty) Ltd v Road Accident Fund and Another*⁴ (‘Discovery Health 2’), decided by a full court of the Gauteng High Court. The majority held that the later directives were different and did not breach the order by Mbongwe J, while the minority considered them squarely contrary, reiterating that it was unlawful to reject claims merely because medical aid scheme had paid.

Issues for determination

- [14] The first issue concerns the patient’s claim for reimbursement of the patient’s own past hospital, medical and related expenses. These costs

³ 2023 (2) SA 212 (GP).

⁴ 2025 (3) SA 225 (GP).

represent the direct financial burden the patient personally incurred as a result of the accident and form a central component of her damages claim. The court must determine whether the RAF is liable to compensate the patient for these expenses, which were asserted to have been reasonably incurred and directly attributable to the injuries sustained.

- [15] The second issue, and the crux of this case, is whether the RAF is liable for the past medical expenses already paid by the patient's medical aid scheme, Discovery Health, a liability which the RAF disputes.

Arguments and testimony before court

- [16] Counsel for the plaintiff, Mr Coughlan, handed in Exhibit 1 which constitutes a bundle setting out schedules of all past hospital and medical expenses with relevant invoices and expenses from St Anthony's home from the period August 2018 to July 2024; the medical expenses paid by Discovery Health related to the injury caused by the motor vehicle accident; and related expenses in this regard that the patient had to pay herself. Counsel for RAF, Mr Hindley, did not object to Exhibit 1 being accepted as evidence.

- [17] Counsel for the plaintiff called two witnesses. The first was the patient's daughter, Ms Olga Eudoxia Yiannakis, who testified regarding the payments her mother had made to St Anthony's Home from her (the patient's) own funds. She explained that, due to the

mental and physical incapacity caused by the accident, the patient (her mother) could no longer live independently and had therefore required full-time institutional care from mid-July 2018, where she continues to reside. Ms Yiannakis confirmed that all costs for the patient's accommodation at the nursing home were detailed in the payment schedule to St Anthony's, supported by invoices and proof of payments contained in Exhibit 1, covering the period from mid-July 2018 to July 2024 and amounting to R1 554 503.88.⁵ She further testified that, from August 2024 onwards, these costs have been borne by the RAF pursuant to the settlement agreement reached in respect of other damages.

[18] Ms Yiannakis also testified regarding the past medical expenses the patient had to pay from her own funds, amounting to R 114 742.12, as detailed in the schedule of expenses and supported by invoices and proof of payment contained in Exhibit 1.⁶

[19] Ms Yiannakis further testified that the patient had to pay the shortfall for the medical expenses that Discovery Health did not pay and which amounted to R 9 586.58.

[20] She further stated that, prior to the accident, the patient had lived a full and independent life and was able to drive herself. Finally, she confirmed that a *curator bonis* had been appointed to manage the

⁵ Exhibit 1 at pages 1-77.

⁶ Exhibit 1 at pages 78-129.

patient's financial affairs. Mr Hindly, appearing for RAF, elected not to cross-examine this witness.

[21] The second witness was Ms Thanusha Tia Hoosen, a Team Leader at Discovery Health. She testified regarding the process Discovery Health followed when injuries sustained in a motor vehicle accident are reported. In summary, she explained how attorneys are engaged immediately, how the injuries are coded for expenses, and how claims related to the accident are kept separate from unrelated medical claims. She confirmed that all accident-related expenses were vetted and that Discovery Health recovers costs where third parties reimburse patients. Ms Hoosen deposed to an affidavit confirming that all payments made by Discovery Health to the patient in this case, as reflected in Discovery's schedule, had been assessed and personally verified by her as correct.⁷ She testified that the total amount paid was R 552 248.76. She further confirmed that although R 561 835.34 was claimed, only R 552 248.76 was paid, with the patient covering the shortfall of R 9 586.58. Finally, she verified that all expenses incurred by Discovery Health were accurately reflected in their schedule of payments and supported by vouchers and invoices contained in Exhibit 1.⁸ RAF's counsel also elected not to cross-examine this witness.

⁷ See the affidavit deposed by Ms Hoosen plus the attached Discovery Health schedule of payment attached thereto in Exhibit 1.

⁸ Exhibit 1, third part after Ms Hoosen's affidavit at pages 1-103.

[22] Counsel for the plaintiff argued that the RAF's defence to the claim for past hospital and medical expenses was not only fatally defective, but also very vague. The RAF seemingly sought to rely on the three internal directives referenced above and the *Discovery Health 2* case, but none of these were pleaded or produced in evidence. As mentioned, the first directive, issued on 12 August 2022, stated that where medical expenses had been paid by a medical aid scheme, the plaintiff had suffered no loss and the RAF was not liable. The second directive, issued on 13 April 2023, asserted that expenses relating to PMB or EMC were statutorily payable by medical aid schemes under the Medical Schemes Act,⁹ thereby relieving the RAF of liability. However, to sustain this defence, the RAF would have needed to lead medical evidence to prove that the expenses fell within PMB or EMC, which it did not intend to do. The third directive, issued on 2 November 2023, claimed that where plaintiffs had agreed to reimburse their medical aid schemes, such agreement fell within the exclusionary provision of section 19(d)(i) of the RAF Act.

[23] Counsel emphasised that none of these directives had been pleaded or placed before the court to substantiate them. Accordingly, there was no factual or legal basis for the court to apply or rely on the RAF's directives, and the plaintiff's claim for past medical expenses remained valid.

[24] Counsel further argued that neither *Discovery Health 2* nor the directives could assist the RAF in these circumstances, given the

⁹ 131 of 1998.

cause of action in the present claim, which arose on 12 February 2018, predates the issuance of the RAF directives. On that basis, the principle against retrospectivity precludes reliance upon them. This position is reinforced by *Van Wyk*, which held that the RAF's directives do not operate retrospectively.¹⁰ Ultimately, it was argued that this court is thus bound by the full court decision in *Van Wyk*, which affirmed the RAF's obligation to pay past medical expenses.

[25] In a very detailed written submission, counsel for the plaintiff took the court through the history and case law concerning RAF's liability for past medical expenses, even where such expenses had already been paid by medical aid schemes. Reference was made to a number of cases in which the RAF sought to evade its liability. This court will not rehash the full submission, as the full court in *Van Wyk* has already addressed and settled the matter in this Division.

[26] Counsel referred to later authority including cases delivered by judges in this Division, such as *Esack v Road Accident Fund*,¹¹ and *Jaffer v Road Accident Fund*,¹² that criticised the majority in *Discovery Health 2* for failing to follow binding precedent. Reference was also made to *Bane v D'Ambrosi*,¹³ where the SCA confirmed that the Medical Schemes Act does not extinguish a plaintiff's delictual claim. Accordingly, even where a medical aid scheme has paid medical expenses on a plaintiff's behalf, the claimant may still recover those expenses in a delictual action.

¹⁰ *Van Wyk* above note 2 at paras 103-105.

¹¹ 2025 (4) SA 201 (WCC).

¹² 2025 JDR 1436 (WCC).

¹³ 2010 (2) SA 539 (SCA).

[27] It is common cause that the full court in *Discovery Health 2* granted Discovery Health leave to appeal against the majority judgment. That appeal remains pending. Plaintiff's counsel submitted that, as the full court in *Discovery Health 2* neither considered nor decided the deductibility of medical aid payments from compensation due to road accident victims, the outcome of the appeal to the SCA may bear on this matter. However, even if the RAF's defences are upheld in that appeal, the outcome will not affect the present case, given the principle of retrospectivity. So, even if the SCA in *Discovery Health 2* were to uphold the RAF's reliance on its internal directives, such directives cannot operate retrospectively.

[28] No written submissions were filed on behalf of the RAF. RAF's counsel nevertheless argued that, in accordance with his instructions, the RAF denies liability for the medical expenses paid by Discovery Health. The precise basis of the RAF's defence is unclear; it appears to rest not on any identifiable directive, but rather on the speculative prospect of a future successful appeal against the *Van Wyk* judgment.

Applicable legal principles and discussion

[29] It is clear that RAF in this case is not disputing that the expenses for past hospital, medical and related expenses are related to the accident referred to. If they did, these would have been disputed during the testimony of the two witnesses. RAF does, however, deny liability for

having to pay the amount payable for the medical expenses already paid by Discovery Health.

[30] No written submission was filed on behalf of the RAF. Counsel argued in court that liability for the medical expenses paid by Discovery Health should be denied.

[31] I agree with the plaintiff in this case that it remains unclear whether RAF's denial is based on the RAF directives or on the prospect of a possible successful future appeal against the *Van Wyk* judgment. The defence upon which the RAF seemingly relies is the speculative prospect of such an appeal. Such reliance is misplaced and does not constitute a valid ground to resist liability in the present matter and accordingly must fail.

[32] I am bound by the decision in *Van Wyk*. The suggestion that liability may be avoided through a prospective appeal in that matter, which has not been instituted and would in any event require condonation, does not constitute a defence. Courts decide cases on the law as it stands when the matter is heard, not on speculative hopes of success in hypothetical future proceedings.

[33] As in *Van Wyk*, the directives are irrelevant here. Whether or not the RAF relies on them, they have no consequence in this case. My brother, Lekhuleni J, in *Van Wyk*, put it aptly when he said:¹⁴

¹⁴ *Van Wyk* above note 2 at para 89.

‘The parties have litigated to finality the issue of whether it is lawful for the RAF to refuse claims for past medical expenses on the ground that the victim’s medical scheme paid those expenses. The RAF’s attempt to relitigate the same issues by issuing new directives is unlawful. It violates the interdict granted by Mbongwe J. This is incompatible with the doctrine of *res judicata*. That matter had become *res judicata* insofar as the SCA and the Constitutional Court refused the RAF leave to appeal.’

[34] Even if I were not bound by the *Van Wyk* precedent, which I am, I would nonetheless be in full agreement with that judgment. In addition, I, together with other judges in this Division,¹⁵ am a proponent of the minority judgment in the *Discovery Health 2* case. In *Van Wyk* it was noted that the disagreement between the two approaches in *Discovery Health 2* is pending before the SCA. On 9 April 2025, the full court in *Discovery Health 2* granted leave to appeal against the majority judgment delivered on 17 December 2024.¹⁶ Counsel for the RAF informed this court that the appeal was apparently heard in February 2026.

[35] In this Division, it is settled law that the RAF cannot refuse claims for past medical expenses on the basis that they were paid by a road accident victim’s medical scheme. That issue has been litigated to finality. The RAF has failed to establish any proper ground to deny or evade liability once the matter has been finally decided.

¹⁵ See, eg, *Basson v Road Accident Fund* (5213/2021) [2025] ZAWCHC 229 (30 May 2025); *Jaffer v Road Accident Fund* 2025 JDR 1436 (WCC); and *Esack Road Accident Fund* 2025 (4) SA 201 (WCC).

¹⁶ *Van Wyk* above note 2 at para 56.

[36] I agree that the principle against retrospectivity finds application in the present matter. The RAF directives cannot be invoked to regulate a cause of action that arose prior to their issuance. This position accords with the full court decision in *Van Wyk*, which confirmed that such directives do not operate retrospectively. It is further supported by the SCA in *The Road Accident Fund v Mudawo and Others and The Road Accident Fund v Lyton and Others*,¹⁷ (*'Mudawo'*) where the court emphasised the limits of the RAF's powers and underscored that measures of this nature cannot be applied in a manner that undermines established legal principles, including the prohibition against retrospectivity.¹⁸

[37] It appears to have become a recurring practice for the RAF to attempt to circumvent court orders and even statutory provisions in order to avoid or diminish its liability through the issuing of directives. The *Van Wyk* judgment provides a clear illustration of this approach and Lekhuleni J goes as far as stating '[i]n the present matter, the RAF has sought to make a mockery of the courts by issuing directives in conflict with a court interdict to evade what its statute obliges it to do.'¹⁹

[38] The present matter before me is no exception. A more recent example is found in *Mudawo*. In *Mudawo* the RAF sought, by way of a directive, to circumvent section 17(1) of the RAF Act by excluding foreign nationals who were unlawfully in South Africa from claiming

¹⁷ [2026] ZASCA 54 (16 April 2026).

¹⁸ *Mudawo* above note 17 at paras 54-56.

¹⁹ *Van Wyk* above note 2 at para 107.

against the RAF. The RAF also purported to amend the prescribed claim form (RAF 1 form) through a series of directives.²⁰ The respondents (claimants) contended that the RAF's internal management directives do not have the force of law and are therefore not binding on members of the public or claimants.²¹

- [39] Although the SCA in *Mudawo* did not definitively pronounce on the legal force of such directives, it made several significant observations that cast serious doubt on their status. The court emphasised that the founding affidavit alleged that the RAF and the Minister (of Transport) had effectively bypassed the parliamentary law-making process, thereby offending the principle of legality and the rule of law. It held that there was no rational basis for excluding unlawful foreign nationals from submitting claims under the Act.²²

²⁰ This attempt has since failed and been decisively put to rest in *Road Accident Fund and Others v Legal Practitioners' Indemnity Insurance Fund, NPC and Others* (1106/2024 and 1479/2024) [2026] ZASCA 63 (30 April 2026). The SCA examined the lawfulness of changes to the RAF 1 claim form introduced by RAF and later endorsed by the Minister. The process began in 2021 with internal RAF directives and external communications requiring claimants to submit additional documents. These requirements were then formalised through a series of board notices published in the Government Gazette, including Board Notice 58 of 2021 and a substituted RAF 1 form under Board Notice 66 of 2021. After these measures were challenged and withdrawn following litigation, the RAF again attempted to introduce stricter requirements through Board Notice 271 of 2022. Recognising that it lacked the authority to amend the form itself, the RAF sought to have the revised RAF 1 form approved by the Minister. This led to the publication of Board Notice 302 of 2022 in the Government Gazette, through which the Minister formally incorporated the revised form into the regulations. The SCA held that both the RAF's and the Minister's actions constituted administrative action under the Promotion of Administrative Justice Act ('PAJA'). The Minister's decision was unlawful because he failed to follow mandatory procedural requirements, including public participation, and did not establish that the changes were necessary, expedient, or rational. Thus, Board Notice 271 had no independent legal force and fell away with it. The revised RAF 1 form was therefore set aside, and the position reverted to the 2008 regulations. Of particular interest, showing the behaviour of the RAF, is that the SCA held that the Minister's decision adversely affected claimants by imposing additional documentation requirements for a valid RAF 1 form, thereby limiting access to compensation under the Act, and that the RAF in practice rejected claims without providing reasons (para 31).

²¹ *Mudawo* above note 17 at para 28.

²² *Mudawo* above note 17 at para 44.

[40] The RAF's contention in *Mudawo* that the impugned decisions constituted an executive policy choice immune from judicial interference was found to lack any evidential foundation.²³ There was nothing in the answering affidavit to indicate that the Minister had taken a policy decision either to issue the directive or to amend the claim form.²⁴ The court accordingly held that the Minister's powers are confined to making regulations in terms of section 26 of the RAF Act on the matters specified therein, and do not extend to excluding any category of claimant from the statutory compensation scheme.²⁵ The SCA concluded that the impugned decisions were not rationally connected to the RAF's powers under sections 4(1) and 17(1) of the Act and were therefore arbitrary.²⁶ It also rejected the RAF's interpretation that section 17(1) excludes such claimants, finding it to be incorrect.²⁷

[41] Even if the RAF's contention in *Mudawo* were to be accepted, that the impugned decisions constituted an executive policy choice immune from judicial interference, it would remain untenable. As Opperman J, in the minority judgment of *Discovery Health 2*, correctly held '[a] public body cannot insulate itself from the law by adopting a policy not to comply with a court order'.²⁸

[42] In *Van Wyk*, counsel for the claimant also submitted that the RAF's directives cannot acquire the force of law or conflict with the RAF

²³ *Mudawo* above note 17 at para 45.

²⁴ *Ibid.*

²⁵ *Mudawo* above note 17 at para 48.

²⁶ *Ibid.*

²⁷ *Mudawo* above note 17 at para 53.

²⁸ 2025 (3) SA 225 (GP) para 137.

Act. Mr Coughlan contended that the Fund is not entitled to alter the prevailing legal position to evade its statutory duty under section 17 of the RAF Act to provide full compensation to road accident victims.²⁹

[43] Although the force of the RAF's directives was not directly at issue in this matter, I nevertheless find that their legal status and effect remain debatable and constitute an important consideration. In any event, and as noted, the relevant directives issued relating specifically to the payment of past medical expenses do not arise for determination in this case for reasons already mentioned.

[44] In my view, the RAF's reliance on the prospect of a future successful appeal to avoid liability for past hospital, medical and related expenses is untenable. A court is required to interpret and apply the law as it stands at the time the matter is heard, not as it might be determined in future. A similar approach was adopted in *Van Wyk*, relying on *Franko Maphosa v RAF*,³⁰ where it was confirmed that the core function of the judiciary is to apply the law impartially, irrespective of the possibility of appellate review. While appellate review is a vital safeguard in our legal system, it does not relieve a court of its duty to deliver a timely, reasoned judgment on the law as it presently stands. Justice is not served by deferring a decision in anticipation of a possible future ruling.³¹

²⁹ *Van Wyk* above note 2 at para 107.

³⁰ (1093/2022) [2024] ZAGPJHC 263 (7 March 2024) para 55.

³¹ *Van Wyk* above note 2 at para 56.

[45] I find that the plaintiff has discharged the onus of proving that the RAF is liable to pay the full amount of R2 231 081.34 in respect of past hospital, medical and related expenses. This liability is established notwithstanding the RAF's dispute regarding the portion already paid by Discovery Health. The total sum is comprised of R1 678 832.58 due directly to the plaintiff and R 552 248.76 due to the medical aid scheme provider, Discovery Health. Accordingly, the RAF is held liable for payment of the entire amount.

Costs

[46] Counsel for the plaintiff submitted that, should judgment be granted in the plaintiff's favour, costs ought to follow the result and be awarded on a punitive basis against the RAF, specifically as party and client costs. His argument rested largely on the fact that the RAF's liability for past medical expenses paid by a patient's medical aid scheme had already been substantially settled by the full court decision in *Van Wyk*.

[47] Counsel further contended that the RAF, being funded from public resources and ultimately taxpayers' money, bears a duty to litigate only where matters have merit. He argued that the RAF should refrain from advancing frivolous claims or defences.

[48] As an alternative to a punitive costs order, counsel for the plaintiff requested that the court award party and party costs on scale C, relying on Rule 67A, particularly subrule (3)(a), of the Uniform

Rules. In support of this request, he pointed to the fact that counsel qualifies as a senior/junior advocate falling within scale C, the complexity of the matter involved, and the substantial quantum involved, exceeding R2.5 million.

[49] In contrast, counsel for the RAF submitted that a punitive costs order would be inappropriate and denied that the RAF's defence was frivolous. He argued that, should the court find in favour of the plaintiff, the proper order would be party and party costs on scale B rather than scale C. His justification was that the matter was not particularly complex, and that plaintiff's counsel, being an experienced RAF litigator, would not have encountered undue difficulty in conducting the case. Counsel nevertheless conceded that the claim involved a substantial amount exceeding R2.5 million.

[50] Costs lie within the discretion of the court,³² and punitive awards are rarely made, being reserved for conduct that is dishonest, fraudulent, vexatious, or malicious.³³ In *In re Alluvial Creek Ltd*, Gardiner J explained that such orders may also be justified where proceedings, even if pursued with upright intent, nonetheless impose unnecessary trouble and expense on the other party 'and expense which the other side ought not to bear'.³⁴

³² *Ferreira v Levin NO and Others; Vreyenhoek and Others v Powell NO and Others* 1996 (2) SA 621 (CC).

³³ Punitive costs are an exceptional measure to mark a court's displeasure, reserved for clearly vexatious, reprehensible or scandalous conduct. As confirmed in *Plastic Converters Association of South Africa (PCASA) v National Union of Mineworkers Union of South Africa and Others* (2016) 37 ILJ 2815 (LAC) para 46, such orders are extraordinary and reflect strong judicial disapproval, a position reinforced in *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) paras 9 and 97.

³⁴ 1929 CPD 532 at 535.

[51] My sister Cloete J in *Van Tonder v Road Accident Fund*³⁵ correctly held that, despite the Constitutional Court's dismissal of RAF's leave to appeal on 18 October 2023 in that case, the RAF persisted in refusing to pay claimants' past medical expenses. This conduct, driven by instructions from the RAF itself rather than its legal representatives, was found to be unjustifiable, wasteful of public funds, and prejudicial to deserving claimants. On that basis, a punitive costs order was warranted.³⁶

[52] In my view, the RAF could not in good faith have opposed this matter before me. Its conduct, reflected in a flimsy defence, refusal to accept the binding full court decision in *Van Wyk*, and total disregard for established obligations, warrants a punitive costs order. The issue of liability for past medical expenses paid by a road accident victim's medical aid scheme had already been settled by the full court in this Division, leaving no reasonable basis for the RAF to believe its defence had merit. I agree with counsel for the plaintiff that opposition on this ground was frivolous.

[53] Moreover, counsel for the RAF conceded during his opening address that this court, sitting as a single judge, is bound by the full court ruling in *Van Wyk*. He nevertheless indicated that his instructions from the RAF were to oppose the matter on the basis that the RAF intends to appeal the full court decision in *Van Wyk*, despite acknowledging that no such appeal has yet been instituted and that

³⁵ 1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023).

³⁶ 1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023) para 15.

condonation for its late filing would likely be required. Proceeding in these circumstances not only squanders public funds through unnecessary legal costs in defending a case already settled by a binding authority, but also represents a futile attempt to sidestep that authority.

[54] Even where a punitive costs order is granted against the RAF, the road accident victim (claimant) of an accident does not recover all legal expenses,³⁷ thereby diminishing the compensation ultimately available to defray such costs.

[55] I am presently seized with a similar matter in this Division, where the RAF has once again adopted the same untenable stance. It is wholly unacceptable that the RAF persists in defending these hopeless matters, thereby wasting public resources, driving up legal costs for both the RAF and claimants, and compelling claimants to incur unnecessary expenses to enforce rights already established. This approach not only exposes the RAF to further adverse costs orders when claimants succeed, but also contributes significantly to delays and backlogs in the finalisation of claims.

Order

[56] The following order is made:

³⁷ See, eg, *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597 at 607; *Eskom Limpopo Legal Solutions v Eskom Holdings (Soc) Limited* 2017 (12) BCLR 1497 (CC) para 35; and *Mkhatshwa and Others v Mkhatshwa and Others* 2021 (5) SA 447 (CC) para 20.

- 1 The defendant shall pay to plaintiff's attorneys of record the sum of R 2 231 081.34 (two million two hundred and thirty-one thousand and eighty-one rand and thirty-four cents) which is in respect of the patient's past hospital and medical expenses.
- 2 The capital amount referred to in paragraph 1 above shall be paid to plaintiff's attorneys of record by means of an electronic transfer of funds, which amount is to be paid within 180 (one hundred and eighty) calendar days from date of this order.
- 3 The defendant shall pay plaintiff's taxed or agreed costs in respect of the plaintiff's claim for past hospital and medical expenses on the High Court Scale, which costs shall be on an attorney and client scale.
- 4 The costs shall include the taxed or agreed fees of plaintiff's counsel, including but not limited to his consultations, preparation of written submissions and trial preparation, as well as his day fee in respect of the trial on 28 April 2026.
- 5 The plaintiff shall, in the event that the costs are not agreed, serve the notice of taxation on the defendant.
- 6 The payment of the legal costs shall be payable 180 (one hundred and eighty) calendar days following settlement or the taxing master's allocatur, in the event of taxing the bill of costs, whichever is applicable.
- 7 Payment of the capital and costs shall be effected directly to plaintiff's attorneys of record by means of an electronic transfer into the trust account mentioned below.

- 8 The defendant shall be liable for interest on the capital amount at the prescribed rate of interest from 14 (fourteen) days from date of this order to date of final payment.
- 9 The defendant shall be liable for interest on the legal costs at the prescribed rate of interest from 14 (fourteen) days following settlement of the costs or the taxing master's allocator, in the event of taxing the bill of costs, whichever is applicable.
- 10 Plaintiff shall not proceed with a warrant of execution in respect of the capital and costs prior to the expiry of the said 180 calendar days.
- 11 Plaintiff's attorneys' trust banking account details are as follows:

NAME OF BANK: NEDBANK LIMITED
BRANCH: CPT CENTRAL SUBURBS NCB
NAME OF ACCOUNT: SOHN AND WOOD TRUST
ACCOUNT ACCOUNT NO: 1[...]
BRANCH CODE NO: 198765

M LOUW
ACTING JUDGE OF THE HIGH COURT

Appearances

For plaintiff: Adv W Coughlan

Instructed by: Sohn and Woods Attorneys Inc, Cape Town

For defendant: C Hindley

Instructed by: State Attorney, Cape Town.