

REPUBLIC OF SOUTH AFRICA



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

Case Number: **34467/2016**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
 SIGNATURE 16 April 2026 DATE	

In the appeal between:

ROAD ACCIDENT FUND

Applicant

and

KATERINA PATTICHIDES

First Respondent

PIETER JACOBUS SMIT

Second Respondent

MUNNI K

Third Respondent

PIETER JOHANNES OOSTHUIZEN

Fourth Respondent

MAGEZA M	Fifth Respondent
MABEKO T	Sixth Respondent
MTHEMBU SMT	Seventh Respondent
FERREIRA MC	Eighth Respondent
MATJILA MJ	Nineth Respondent
KADERLI BM	Tenth Respondent
THE SHERIFF OR HIS DEPUTY	
PRETORIA EAST	Eleventh Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

Introduction

[1] On or about 1 December 2023, the applicant, the Road Accident Fund (“the Fund”), brought an application for an order staying warrants of execution issued at the behest of the first to tenth respondents against the applicant in respect of judgments obtained against the Fund, pending the finalisation of an application for rescission of the judgments.

[2] Only the first respondent opposes the relief claimed by the applicant.

Applicant’s case

[3] In order to obtain the relief sought, the Fund must establish that it has a *prima facie* case for the rescission of the orders.

[4] In support of the claim for the rescission of the orders, the Fund avers that the first to tenth respondents (“the respondents”) issued summonses against it claiming *inter alia* payment of past medical expenses, which expenses “were

awarded by the court at its own instance or by agreement with the legal representatives of the Applicant in other instances.”

- [5] Notwithstanding the allegation that the award of past medical expenses was, in some instances, by agreement between the legal representatives of the parties, the Fund stated that the orders were erroneously granted in its absence. In terms of rule 42(1)(a), orders that were erroneously sought or erroneously granted in the absence of a party affected by it may, on application, be rescinded or varied by the court.
- [6] Upon perusal of the orders, it appears that the fund was represented in the fourth and seventh respondents' matters. The orders were, therefore, not granted in the absence of the Fund and do not fall within the ambit of rule 42(1)(a). Consequently, the relief sought against the fourth and seventh respondents stands to be dismissed. The Fund is at liberty, if so advised, to seek leave to appeal the orders.
- [7] Insofar as the remainder of the respondents are concerned, the only factual allegation supporting the rescission relief is contained in paragraph 28 of the founding affidavit and reads as follows:
- “The respective Court Orders were delivered to the Applicant for payment and upon consideration of the **content** of these Court Orders, it came to the attention of the Applicant that the Presiding Officers in these matters awarded the Respondent the costs for past medical expenses which should not have been awarded when regard is had to the provisions of the Act. I return to this point later in the affidavit when I deal with the merits of the application.”* (own emphasis)
- [8] It is not clear on what basis the content of the court orders could provide a factual basis for a rescission application. Be that as it may, in support of the rescission relief, the Fund relies on an interpretation of section 17(5) and section 17(6) of the Road Accident Fund, 56 of 1996, read with regulation 8 of the Medical Scheme Regulations.
- [9] These legal conclusions are, however, devoid of any factual averments. The applicant simply does not know whether the past medical expenses awarded to

the remainder of the respondents were paid by medical aid schemes. When this dilemma was highlighted in court, Mr D Mosama, counsel for the Fund, indicated that the Fund still had to establish whether the expenses were indeed paid by a medical aid scheme.

[10] In amplification of the Fund's lack of knowledge, Mr Vermeulen SC, counsel for the first respondent, referred to an affidavit signed by the first respondent in which she stated in no uncertain terms that she paid for her past medical and hospital expenses. The affidavit forms part of the documents that were before the court that granted judgment in her favour.

[11] It is untenable for a litigant to allow a default judgment to be granted and to thereafter seek rescission of the judgment to investigate facts that might or might not exist. Even if such conduct is countenanced, the law does not allow a litigant to obtain relief, even on an interim basis, if the ultimate relief has no factual basis whatsoever.

[12] Whether the applicant is correct in its legal conclusions can only be determined once facts justifying the conclusions are averred.

[13] In the result, the applicant has failed dismally to establish a *prima facie* right to claim rescission of the orders. Without a right to claim rescission of the orders, the interim relief cannot be granted and stands to be dismissed.

Costs

[14] Costs should follow the result. Counsel's fees on scale B.

Order

1.The application is dismissed.

2.The applicant must pay the costs of the first respondent. Costs of counsel on scale B.

JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

DATE OF HEARING : 10 February 2026

DATE OF JUDGMENT : 15 April 2026

APPEARANCES

Counsel for the plaintiff: Adv D. Mosoma
Instructed by: State Attorney

Attorney for the defendant: Adv P. Vermeulen SC
Adv C. Nell
Instructed by : Hagerman and Associates

