



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-095101

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED: YES

In the matter between:

N H SIGWILI

First Applicant

AND TWELVE OTHERS

Second to Thirteenth Applicant

and

MINISTER OF FINANCE

First Respondent

THE NATIONAL TREASURY

Second Respondent

ROAD ACCIDENT FUND

Third Respondent

MINISTER OF TRANSPORT

Fourth Respondent

THE SOUTH AFRICAN REVENUE SERVICE

Fifth Respondent

And

CASE NO.: 2025-102711

In the matter of:

ULRICH LE ROUX BESTER

Applicant

and

THE MINISTER OF FINANCE

First Respondent

THE NATIONAL TREASURY

Second Respondent

ROAD ACCIDENT FUND

Third Respondent

MINISTER OF TRANSPORT

Fourth Respondent

THE SOUTH AFRICAN REVENUE SERVICE

Fifth Respondent

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 8 September 2026.*

JUDGMENT

SUMMARY:

Execution against RAF – is it competent to involve the Minister of Finance and National Treasury in execution steps?

INTRODUCTION:

- [1] The applications before me are the unfortunate result of Third Respondent's ("RAF") conduct in making it virtually impossible for its creditors to execute their judgments. *In casu* those creditors are all victims of road accidents who

had to resort to seeking extraordinary relief to assist execution of judgments exceeding R52 million in value.

[2] In both the Sigwili and Roux matters, Applicant cited the Minister of Finance and National Treasury as First and Second Respondents (I will refer to them merely as "Respondents"). In summary, Applicant sought the following (main) relief against Respondents:

2.1 That Respondents be ordered to maintain the sum of R52,681 831.28 in the National Revenue Fund, pending an attachment thereof.

2.2 That those Respondents be ordered to inform Applicants' attorney of the date and time of allocation of the aforesaid amount to the RAF.

[3] Applicants sought orders in the alternative that Respondents be ordered to disclose the details of the bank account of the RAF into which the funds from the National Revenue Fund would flow.

[4] Further alternative relief was sought against the RAF to maintain the sum owed in its bank accounts and to disclose its banking details to Applicants.

[5] The RAF did not bother to oppose the application or to file a Notice to Abide.

[6] I was however informed from the bench by Applicants' counsel that by the Friday preceding the hearing, the RAF had basically settled all the claims and that only some interest was outstanding in the Bester-matter. The RAF had also tendered the costs of Applicants, but not those of First and Second Respondents. In the circumstances, the relief sought became moot. The only remaining issue was therefore whether Applicants are liable to pay Respondents' costs.

APPLICABLE TEST:

- [7] *"When the merits of a matter have been disposed of ... and only the costs of the whole case remain to be decided, the issue of costs must be decided on broad general lines and not on lines that would necessitate a full hearing on the merits."¹*

APPLICANTS' ARGUMENTS ON COSTS:

- [8] In a nutshell Applicants raised the following arguments:

- 8.1 Section 6(1)(g) of the Public Finance Management Act compels National Treasury to promote and enforce transparency regarding the revenue of public institutions (like the RAF) and to prevent breaches of a public duty.
- 8.2 Even if Applicants would ultimately not succeed on the relief sought against Respondents, the case raises constitutional issues not of a frivolous nature and the Biowatch-principle applies,² i.e. that as a general rule in constitutional litigation, an unsuccessful litigant in proceedings against the State ought not to be ordered to pay costs.

RESPONDENTS' ARGUMENTS ON COSTS:

- [9] Respondents essentially raised three arguments namely:

- 9.1 In the absence of very sound reasons, a party withdrawing its application – formally or tacitly – is equal to an unsuccessful litigant and thus liable for costs.

¹ Van Loggerenberg: Erasmus Superior Court Practice, Volume 2 RS30, 2026, D5–55 (my emphasis).
² Biowatch Trust v Registrar, Genetic Resources and Others, 2009 (6) SA 232 (CC).

9.2 The applications were bad in law as far as First and Second Respondents were concerned.

9.3 The payments made by the RAF – subsequent to the applications having been launched – had nothing to do with any pressure having been exerted on Treasury or the Minister of Finance.

DISCUSSION:

[10] Because the “merits” of the case have become largely academic, little purpose will be served in analysing the complex legal arguments raised on Applicants’ theoretical chances of succeeding against Respondents. Any such “judgment” will therefore be obiter.

[11] Thus, without formally deciding the merits of the initial relief, I will say that *prima facie* the relief sought by Applicants against First and Second Respondents may be problematic in view of the authorities quoted – especially the decision of Minister of Finance v Golden Arrow Bus Services (Pty) Ltd [2010] 2 All SA 237 (SCA).

[12] That however is not the end of the argument because Applicants also rely on the Biowatch-principle. Respondents’ response to this argument was in essence: the application does not concern constitutional litigation; it is simply a means of private debt enforcement; no “right” exists between Applicants and Respondents; and Applicants had no case in law.

[13] In my view this is an appropriate case where I should not order the “unsuccessful Applicants” (*vis a vis* First and Second Respondents) to pay Respondents’ costs because:

13.1 Respondents’ papers contradict their submission that constitutional rights were not at stake. In their application for condonation – for late filing of their Answering Affidavit – Respondents’ own deponent (Ms

Thandeka Ncula, employed by National Treasury as a Director: Corporate Law within the Chief Directorate: Legal Services) stated as follows in paragraph 15 of the Founding Affidavit:

"This matter raised complex constitutional and statutory issues concerning the PFMA, the Road Accident Fund Act ..., the scope thereof, and the relationship between the National Treasury and the RAF. As a result, the process of gathering instructions internally within the National Treasury and preparing a comprehensive answering affidavit necessarily required more time than is usual."

- 13.2 The amounts involved are high and Applicants had been frustrated by the RAF in executing legitimate judgments.
- 13.3 In these circumstances, ordinary citizens are entitled to look at the State (in wider sense) in exploring new methods of obtaining justice. The applications simply cannot be labelled as frivolous or baseless litigation. The fact that the RAF ended up paying their dues is not an irrelevant consideration in these circumstances.

ORDER:

[14] In the premises, I make the following orders:

- 14.1 In the matter of Sigwili & Others v The Minister of Finance & Others (case no: 2025-095101):
 - (1) Third Respondent is ordered to pay Applicants' costs of the application, including the costs consequent upon the employment of two counsel on Scale C.
 - (2) First and Second Respondents are to pay their own costs.

14.2 In the matter of Ulrich Le Roux Bester v The Minister of Finance & Others (case no: 2025-102711):

- (1) Third Respondent is to pay Applicant's costs of the application, including costs consequent upon the employment of two counsel on Scale C.
- (2) First and Second Respondents are to pay their own costs.


F J ERASMUS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Electronically delivered and signed.

APPEARANCES:

APPLICANT: Adv J G Cilliers SC
Adv M van Rooyen SC

INSTRUCTED BY: Podbielski Mhlambi Inc

FIRST AND SECOND
RESPONDENTS: Adv P Ngcongco
Adv S B Nxumalo

INSTRUCTED BY: The State Attorney, Pretoria