

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

Case NO: 58145/2020

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

THE LEGAL PRACTICE COUNCIL

First Respondent

THE BOARD OF SHERIFFS

Second Respondent

ABSA BANK

Third Respondent

**THAKA F SEBOKA N.O.
(SHERIFF, PRETORIA CENTRAL)**

Fourth Respondent

LANA NEL N.O. (SHERIFF, PRETORIA EAST)

Fifth Respondent

**SHOKENG E DHLAMINI N.O.
(SHERIFF, CENTURION EAST)**

Sixth Respondent

**MARKS THAPELO MANGABA N.O.
(SHERIFF, JOHANNESBURG CENTRAL)**

Seventh Respondent

**NELSON NTSIBANTSU N.O.
(SHERIFF, CAPE TOWN WEST)**

Eighth Respondent

**NOMANDLA NDABENI N.O.
(SHERIFF, EAST LONDON)**

Ninth Respondent

**G S NDLOVU N.O.
(SHERIFF, DURBAN CENTRAL)**

Tenth Respondent

AD DANDALA & ASSOCIATES

Eleventh Respondent

GODLA & PARTNERS

Twelfth Respondent

SITHOMBE ATTORNEYS

Thirteenth Respondent

K MALAO INCORPORATED

Fourteenth Respondent

MDUZULWANA ATTORNEYS

Fifteenth Respondent

ROBERT MUVHIMI

Sixteenth Respondent

MOTLHOLO KOOS TLHAOLE

PHILADIPHIA NOMTHANDAZO MEMELA

SIPHO SKHOSANA

LINDIWE MACAKA



JUSTINE CHEPETE

EVIDENCE SHAVA

DVDM INCORPORATED

DE BROGLIO ATTORNEYS INC.

VDS ATTORNEYS

ROETS & VAN RENSBURG

PERSONAL INJURY PLAINTIFF'S

LAWYERS ASSOCIATION

ADVOCATE RAF FEE RECOVERY ASSOCIATION

KHOROMMBI MABULI INCORPORATED

PRETORIA ATTORNEYS ASSOCIATION

GENERAL COUNCIL OF THE BAR

Seventeenth Respondent

Eighteenth Respondent

Nineteenth Respondent

Twentieth Respondent

Twenty-First Respondent

Twenty-Second Respondent

Twenty-Third Respondent

First *amicus curiae*

Second *amicus curiae*

FOUNDING AFFIDAVIT

I, the undersigned,


COLLINS PHUTJANE LETSOALO

do hereby declare under oath that:

1

1.1 I am a major male and the Chief Executive Officer of the applicant.

1.2 The facts herein contained fall within my personal knowledge save in certain instances where the facts are gleaned from documents of the RAF which are under my custody and control in the aforesaid capacity. The facts contained herein are both true and correct.


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- 1.3 Where reference is made to issues of law, the RAF does so on the advice of its legal representatives.

THE PARTIES

2

The applicant is the Road Accident Fund ("the RAF"), a national public entity per schedule 3A of the Public Finance Management Act, 1 of 1999, duly established in terms of section 2 (1) of the Road Accident Fund Act, 1996 ("the RAF Act"), with its principal place of business situated at 2 Eco Glades office park, 420 Witch-Hazel Avenue, Centurion, Pretoria, Gauteng.

3

The respondents and *amici* were cited in the RAF's original application brought back in November 2020, or thereafter in the parties' various affidavits, joinder- and counter-applications and their citations are respectfully incorporated herein by reference. A broad overview of their details is as follows:

- 3.1 The 1st respondent is the Legal Practice Council, a national, statutory body established in terms of section 4 of the Legal Practice Act, 28 of 2014. The LPC and its provincial councils regulate the affairs of and exercise jurisdiction over all legal practitioners. The LPC has its national office at Building 20, Thornhill office park, 94 Bekker road, Vorna Valley.



- 3.2 The 2nd respondent is the Board of Sheriffs, a national statutory body established by section 7 of the Sheriff's Act, 90 of 1986, as amended, regulating the affairs of all Sheriffs of the Court, with its head office situated at 88 Loop street, Cape Town.
- 3.3 The 3rd respondent is Absa Bank of Absa Towers, 15 Troy street, Johannesburg, Gauteng.
- 3.4 The 4th respondent is the Sheriff, Pretoria Central, in its capacity as the Sheriff for the district of Pretoria Central appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, with its main place of business situated at 424 Pretorius street, Pretoria Central.
- 3.5 The 5th respondent is Mrs. Lana Nel, the Sheriff, Pretoria East, in her capacity as the Sheriff for the district of Pretoria East, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986.
- 3.6 The 6th respondent is Shokeng Emily Dlamini, in her capacity as the Sheriff Centurion East, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 33 Kersieboom Crescent, Swatkop.
- 3.7 The 7th respondent is Marks Thapelo Mangaba, in his capacity as the Sheriff Johannesburg Central, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 21 Hubert street, Westgate.

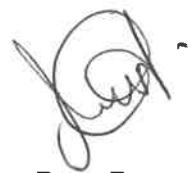


- 3.8 The 8th respondent is Nelson Ntsibantsu, in his capacity as the Sheriff, Cape Town West, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 60 Commercial Street, Cape Town.
- 3.9 The 9th respondent is Nomandla Ndabeni, in her capacity as the Sheriff, East London, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 2 Currie Street, Quigney, East London.
- 3.10 The 10th respondent is GS Ndlovu, in his capacity as the Sheriff Durban Coastal, appointed as such in terms of section 2 of the Sheriffs Act, 90 of 1986, situated at 25 Adrain Road, Windermere, Berea, Durban.
- 3.11 The 11th respondent is AD Dandala & Associates, a firm of attorneys practicing at 9 Essenwood road, Musgrave, Durban.
- 3.12 The 12th respondent is Godla & Partners, a firm of attorneys practicing at Waalburg building, 28 Wale street, Cape Town, in its capacity as instructing attorneys to the Sheriff Durban Coastal.
- 3.13 The 13th respondent is Sithombe attorneys, a firm of attorneys practicing as such at 107 Albertina Sisulu street, Johannesburg, in its capacity as instructing attorney to the Sheriff, Johannesburg.
- 3.14 The 14th respondent is K Malao Incorporated, a firm of attorneys practicing as such at 1st floor, B105 Menlyn Square Office Park, Lois avenue, Menlo Park, Pretoria, Gauteng.



- 3.15 The 15th respondent is Mdzulwana Attorneys and Legal Consultants, a firm of attorneys practicing as such at Hatfield Bridge office park, 3rd floor, office 3A, 213 Richard Street, Hatfield Pretoria.
- 3.16 The 16th respondent is a number of claimants that joined the RAF's main application in 2020 as represented by Spruyt Incorporated situated at Hatfield Gardens, Block B, 333 Grosvenor Street, Hatfield.
- 3.17 The 17th respondent is DVDM Incorporated, a firm of attorneys situated at 224 Sefako Makgatho Drive, Sinoville, Pretoria.
- 3.18 The 18th respondent is De Broglio Attorneys, a firm of attorneys situated at Brooklyn Bridge office park, 2nd floor, Parkdev building, 570 Fehrsen street, Brooklyn, Pretoria.
- 3.19 The 19th respondent is VDS attorneys, a firm of attorneys situated at 142 Haak & Street avenue, Wonderboom, Pretoria.
- 3.20 The 20th respondent is Roets & Van Rensburg attorneys, a firm of attorneys situated at 40 Van Ryneveld street, Pierre van Ryneveld.
- 3.21 The 21st Respondent is the Personal Injury Plaintiff's Lawyers Association, a juristic person and non-profit organization that exists as a body corporate distinct from its office bearers and members, that was represented by Selwyn Drobis Attorneys, situated at 13 Spiral close, Wendywood.

- 3.22 The 22nd respondent is the Advocate RAF Fee Recovery Association, a voluntary association that was represented by De Bruyn & Morkel Attorneys, situated at 72 Delky Road, Waterkloof.
- 3.23 The 23rd respondent is Khorommmbi Mabuli Incorporated, a firm of attorneys situated at 66 Glenwood Road, Argentum Building, 2nd Floor, suite 25, Lynnwood glen, Pretoria, which has at all material times been represented by Shapiro and Ledwaba Incorporated, situated at No. 20 Burea lane, Shapiro Chambers, Pretoria, Gauteng.
- 3.24 The 1st *amicus curiae* is the Pretoria Attorneys Association, a voluntary association of attorneys with independent *locus standi* and a body corporate with independent legal capacity in terms of its constitution, situated at Room 5.15, Fifth floor, High Court Building, Madiba Street, Pretoria, which has at all material times been represented by Adams & Adams attorneys, which is situated at Lynnwood Bridge office park, 4 Daventry street, Lynnwood ridge, Pretoria, Gauteng.
- 3.25 The 2nd *amicus curiae* is the General Council of the Bar, which is constituted by 14 member societies from every Province within the Republic of South Africa, which has at all material time hereto been represented by Bernhard van der Hoven Attorneys, situated at 2nd floor, Parc Nouveau Building, 225 Veale street, Brooklyn, Pretoria.




No relief is sought against any respondent or *amicus* and they are merely joined hereto insofar as they may have an interest in the outcome of the relief sought. In fact, many of the parties cited have not actively participated in the relief sought for some time now and the RAF only continues to give notice to them out of abundance of caution as they were previously involved.

Should any respondent oppose the relief however, then the RAF will move for an order of costs against such party.

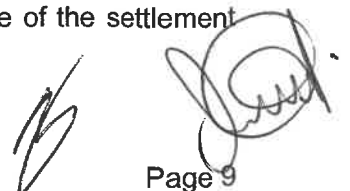
RELIEF SOUGHT IN THIS APPLICATION:

This is an application for the following relief:

- 6.1 Dispensing with the forms, service and time periods prescribed in terms of the Uniform Rules of Court, directing that the matter be heard as one of urgency in terms of rule 6 (12) of the Uniform Rules of Court and condoning the service of this application by substituted service.
- 6.2 That a *rule nisi* be issued calling upon any interested parties to show cause, if any, to the above Honourable Court on a date to be arranged with the Judge President why an order in the following terms should not be made final:



- 6.2.1 That the order that was granted by the above Honourable Court on 25 August 2022 extending the orders that were granted by the Full Court on the 9th of April 2021 for six months (under the same case number), in terms of which writs of attachment and warrants of execution, based on Court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996, which are not older than 180 days from the date of the court order or the date of the settlement reached, are suspended, be extended for a 12 month period from the date of this Court's order.
- 6.2.2 All attorneys who represent a claimant and whose matters have not been placed on the Requested Not Yet Paid list ("RNYP") is to provide the applicant with a list of such claimants' claims which do not appear on the RNYP list within 30 calendar days from the date of this order.
- 6.2.3 The applicant is ordered to place all matters referred to in paragraph 6.2.2 above, on the applicant's RNYP list within 30 Court days from the expiry of the date mentioned in paragraph 6.2.2 above.
- 6.2.4 The applicant is to pay all capital claims based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 1996, which are older than 180 days from the date of the court order or the date of the settlement



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reached, within 60 Court days from the date of this order, provided that the applicant has been properly notified by an attorney who represents the claimant that have such claims that are older than 180 days of the existence of such claims within 30 days from the date of this order.

6.2.5 All writs of attachments and warrants of execution based on Court orders already granted or settlements already reached for payment of legal costs which are not older than 180 days from the date of taxation, are suspended until those costs have aged 180 days from the of taxation.

6.2.6 The applicant is to continue distributing the RNYP list to the attorneys on its database on a bi-monthly basis.



6.2.7 The applicant is to continue with its process of making payment of the oldest claims first by date of court order or date of written settlement agreement *a priore tempore*.

6.2.8 Supplier claims, as defined in the Road Accident Fund Act, 1996, are excluded from the above moratorium on payments.

6.3 The above order will be published by the applicant:

6.3.1 to all practicing attorneys through the Legal Practice Council;

6.3.2 by email to all of the applicant's list of attorneys on its database;



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6.3.3 to the Minister of Transport by service on the State Attorney;

6.3.4 by publication in 2 newspapers with national distribution.

6.4 Paragraph 6.2 and 6.3 above shall operate as an interim order with immediate effect pending the confirmation or discharge of the *rule nisi*.

6.5 Directing that any party who opposes the relief sought be ordered to pay the applicant's costs, including the costs of two counsel.

NOTICE AND SERVICE OF THIS APPLICATION:

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As this is firstly an application for a *rule nisi* the applicant will do its best to give notice to as many parties as possible before the hearing of the application. The applicant will moreover request the court's leave to publish the order through national newspapers which will have even greater reach of notifying as many persons as possible that the applicant will seek to confirm any interim that the Court may grant at a later stage on a date to be arranged with the Judge President.

8

What is however important to note at this stage already is that since 2020 the above cited respondents and *amici* have been the only parties that have directly or indirectly been involved in the RAF's applications for such relief.



This is so despite the RAF giving notice by substituted service through national newspapers and the filing of a Rule 16A notice.

The applicant will give notice of this application, before substituted is sought, to the following parties:

- 10.1 All respondents and *amici*;
- 10.2 The LPC will be requested to disseminate a copy of this application amongst all of its members who are legal practitioners;
- 10.3 The legal practitioners that are given notice through the LPC have a duty to their clients (those that may have an interest in the outcome hereof) to inform them hereof;
- 10.4 The RAF previously requested the LPC's assistance in this regard and it greatly assisted;
- 10.5 A Rule 16A notice will be published;
- 10.6 The RAF has on its database over 3000 firms of attorneys who are part of its mailing list. Those firms have represented plaintiffs and/or the RAF in




the past and this application will be emailed to those attorneys whose details the RAF has on its database;

10.7 The RAF has cited the Board of the Sheriff with the request that it disseminates this application to all of its members, which are, the Sheriffs and Deputy Sheriffs from all over the country;

10.8 This application will be served on the offices of the State Attorney, for the attention of the Minister of Transport and the Minister of Finance.

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The RAF will seek the Court's leave to publish the interim order through newspapers to notify as many persons as possible that the RAF will seek the confirmation thereof at a later date to be arranged with the Judge President. The RAF has prepared a draft advertisement to be published as such, for the Court's consideration, a copy of which is attached as Annexure "RAF1".

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The advertisement, furthermore, has an imbedded link to an electronic copy of this application and therefore if any person enters that link on their computer, or cellphone, an electronic copy hereof will be downloaded and they can then consider the content hereof and decide whether to oppose or not.



There are approximately 189 000 claims matters and service by any other manner is not possible. By giving notice as aforesaid, as many persons as reasonably possible would have received notice of the relief sought.

Leave is therefore sought in terms of rule 4 (2) of the Uniform Rules of Court for substituted service.

JURISDICTION:

This Honourable Court has jurisdiction as *inter alia*:

- 15.1 the Full Court granted the main application in April 2021, and the orders were extended by this Court in August 2022;
- 15.2 the majority of road accident fund matters are heard and decided in Gauteng;
- 15.3 the majority of writs of execution issued against the RAF are issued and executed in Gauteng;
- 15.4 most of the RAF's movable property, including its right, title and interest in and to its bank account is situated in Gauteng;
- 15.5 in respect of the RAF's bank account, the writs of execution are delivered to Absa Bank's various branches throughout the country. The writs are then

assembled at Absa Bank Limited's heads office in Johannesburg. Absa Bank's head of legal then decides on the validity and enforceability thereof in Johannesburg. Should the decision be that the writs are valid, and there are funds to the credit of the RAF, then attachment occurs in Johannesburg.


16

The above Honourable Court may furthermore assume jurisdiction in circumstances over other respondents who are otherwise not amenable to this Court's jurisdiction on any of the recognised grounds of jurisdiction and this may be done to avoid inconvenience. In those circumstance, this Honourable Court has jurisdiction over at least a large part of the RAF's cause of action. Considerations of convenience, justice and good sense therefore justify the exercise of jurisdiction over the whole cause. The relief sought in this application is furthermore an extension of a full court judgment by the above Honourable Court which was already extended once by this Court.

17

Furthermore, section 21 (2) of the Superior Courts Act states that

“[a] division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the person resides or is within the area of jurisdiction of any other division.”



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To exercise jurisdiction in this matter over all parties a multiplicity of actions and applications will be avoided with all inconvenience and expense that it would furthermore involve and to avoid conflicting judgments on the same cause of action. The RAF therefore respectfully submit that the above Honourable Court clearly has jurisdiction to hear this application.

SECOND EXTENSION APPLICATION:

This is an urgent application for interim orders, with immediate effect, pending the confirmation or discharge thereof.

The relief sought is to allow the RAF to make structured payments of compensation on an equitable basis, whilst balancing the parties' rights, instead of being forced by parties, through abusing the execution process, to make illegal payments. In the context of the RAF, which must balance the rights of 189 000 claims, this can only be done through a structured and balanced approach otherwise it would lead to a complete collapse of the system and nationwide chaos.

The relief is therefore to stop any abusive and illegal conduct by parties that wish to circumvent an equitable payment structure of public funds.



The history to this application is shortly summarized as follows:

- 22.1 The RAF launched an application in 2020 to suspend all writs for a period of time as parties were abusing the execution process to obtain preferential and illegal payments through obfuscating means;
- 22.2 In April 2021 the Full Court granted the applicant's application and ordered a balanced approach to payments by the RAF. A copy of the Full Court's judgment is attached as Annexure "RAF2";
- 22.3 Because of the Court's intervention, the RAF was able to implement a structured and equitable system that works for all claimants;
- 22.4 The RAF was able for instance to make payment of compensation from oldest to newest claims, *a priore tempore*;
- 22.5 Had the Full Court not intervened as it did it would have led to the implosion of the Road Accident Fund;
- 22.5 The Full Court's relief lapsed in 2021 and the RAF applied for an extension thereof in 2021;
- 22.6 Whilst the RAF was awaiting the finalization of its first extension application the RAF had no general protection against parties abusing the system which led to significant setbacks;



- 22.7 Parties again attempted to obtain preferential payment regardless of the impact that it would have on others;
- 22.8 Thereafter, during August 2022, this Court intervened and granted the RAF's extension application;
- 22.9 The Court's above order again provided for a structured and balanced approach to protect the rights of thousands of claimants, whilst ensuring that the RAF does not collapse;
- 22.10 A copy of this Court's above order is attached as Annexure "RAF3" and the content thereof is incorporated herein.

23


This Court's above order, *inter alia* extending the Full Court's relief that was granted in April 2022, expires at the end of February 2023.

24


This application is in effect a second application to extend the protection needed by the RAF to operate as a social security provider.

25

The RAF confirms that it complied with this Court's order granted in August 2022 extending the Full Court's relief.


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- 25.1 Attorneys who represent claimants, and whose matters did not appear on the RNYP list, provided the RAF with a list of such claimants' claims and the RAF placed such matters on its list;
- 25.2 It is noteworthy however that not all attorneys complied with the Court's order in this regard. In December 2022 the RAF issued a notice to attorneys requesting that all court orders and settlements older than 180 days that have not been paid, be submitted to a specific email address. The invitation caused an influx of thousands of court orders and settlements the RAF had no record of before and gave rise to a liability of at least R1.8bil in claims payments. The number is increasing daily. These claims also attract interest which is an additional liability that could have been prevented, or at least limited, had the RAF been placed in possession of these orders/settlements earlier. In processing these orders/settlements, the RAF identified R640mil in orders/settlements which had already been paid but were submitted for payment a second time. This is indicative of either the attorney failing to reconcile its trust bank account and failing to pay over the compensation to the claimant, alternatively an attempt at defrauding the RAF by submitted already paid orders/settlements a second time.
- 25.3 The RAF paid claims, based on Court orders already granted, or settlements already reached, in terms of the RAF Act, which were older than 180 days as from the date of the Court order, or the date of the settlement, on or before 30 October 2022;



- 25.4 Where claims were not paid it was because the attorneys did not inform the RAF timeously, or at all, documents or information were outstanding and/or there was a hold on payment due to
- 25.4.1 impropriety regarding the claim that was submitted;
- 25.5.2 there was suspicion of fraud regarding the claim;
- 25.5.3 the claim or party was under investigation by the RAF, the LPC, NPA or SIU, for potential criminal conduct.
- 25.5 The RAF furthermore, continued making payment of claims from oldest to newest, *a priore tempore*, it lifted the block that was placed on the 23rd Respondent and the RAF continued to circulate the RNYP list on a bi-monthly basis.

26

In seeking the relief herein, the RAF must prove that it has a *prima facie* right, a reasonable apprehension of harm, absence of an alternative remedy, that the balance of convenience favors the granting of the relief, and that this application is urgent. The RAF submits that a competent case in fact and in law is made out.



PRIMA FACIE RIGHT:

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For all of the reasons set out herein the applicant submits that it has a *prima facie* and clear right to the relief sought.

28

The right is premised on the following:

- 28.1 Section 3 of the RAF Act states that the object of the RAF shall be the payment of compensation in accordance with the Act for loss or damage wrongfully caused by the driving of a motor vehicle;
- 28.2 The RAF makes payment of compensation in accordance therewith from the RAF Fuel Levy which fluctuates, and is dependent on various factors outside of the control of the Fund;
- 28.3 The RAF receives thousands of new claims per year which increases the RNYP list and its liabilities;
- 28.4 Attorney's legal fees amount to billions of Rands per year that the RAF must pay which means less money to pay to claimants;
- 28.5 The RAF does not have the funds available to make payment of all claims by lump sum as they fall due. The RAF is only able to make payment of

claims within 180 days from the date that the Court order is granted or the settlement is entered into;

28.6 Because of this, the RAF must delay payment for 180 days for all claims and make payment as funds become available through the levy starting with the oldest claims first;

28.8 The structured approach is the only equitable and fair way in which all claims can be paid;

28.9 The RAF's approach is based on section 7, 9, 10, 12 and 27 of the Constitution, 1996:

28.9.1 Section 7 (1) of the Constitution states that the bill of rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom;

28.9.2 Section 7 (2) states that the State must respect, protect, promote and fulfil the rights in the bill of rights;

28.9.3 Section 9 (1) of the Constitution state that everyone is equal before the law and has the right to equal protection and benefit of the law;


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- 28.9.4 Section 10 of the Constitution states that everyone has inherent dignity and the right to have their dignity respected and protected;
- 28.9.5 Section 12 (1)(c) of the Constitution states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources;
- 28.9.6 Section 27 (1) of the Constitution states that everyone has the right to have access to health care services, sufficient food and water and social security, including if they are unable to support themselves and their dependants, appropriate social assistance;
- 28.9.7 Section 27 (2) of the Constitution states that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of those rights.
- 28.10 Therefore, the RAF's *prima facie* and clear right is in fact a duty placed upon the RAF by statute and the constitution.

Some parties agree to wait 180 days to receive their compensation, and some attorneys agree to wait 180 days from payment of the capital award to receive payment of their legal



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fees but some are recalcitrant and refuse to act reasonably which led to the dire situation the RAF set out in detail in its November 2020 affidavit. There is therefore clear evidence of what occurs if the Court's protections are not in place as a comparison can be made between the RAF's almost collapse before April 2021 and its situation thereafter. The same can be said for the period when the Full Court's order had lapsed until the date that this Court extended the relief in August 2022.

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If the orders are not granted then the RAF's assets will again be executed against which will cause irreparable damage to the RAF and thousands of claimants. By granting the relief the Court would be preventing substantial injustice, parties abusing and using the execution process for ulterior and illegal means and will be ensuring that the RAF is able to fairly administer thousands of claims.

- 30.1 If the relief sought is not granted, then the RAF's assets will again be attached by parties to obtain payment before their claims are next in line to be paid from its limited resources;
- 30.2 The removal of operational assets impedes the rights of thousands of other claimants who are awaiting payment of their debts as well as those who have undertakings for medical expenses;
- 30.3 The removal and sale of the RAF's assets render the RAF operationally paralyzed which inevitably result in claims not being processed and victims not being compensated.

The RAF has reasonable prospects of success that an interim order be granted and that it be confirmed thereafter. *Inter alia* the Full Court's judgment and this Court's extension thereof in August 2022 is clear evidence thereof.

The only prayer that is new in the notice of motion is to suspend all writs for legal costs for 180 days after the date of taxation. Practically what happens is that attorneys seek to enforce their cost orders before a period of 180 days have a lapsed from date of taxation. They do so knowing that the RAF has a duty to pay capital compensation for claimants first and thereafter costs. This is clear from *inter alia* section 3 of the RAF Act read with the Constitution. The same principle as set out above applies; that the RAF does not have the necessary funds to make payment of all claims, by lump sum, as they fall due and must therefore make payment equitably. Attorneys are entitled to their reasonable fees, and no doubt they will argue that they should not have to wait for their fees to be paid, but in order of importance the payment of compensation for life-saving reasons must take preference over the payment of legal fees. Before taxation or settlement of a bill of costs, the RAF has no way to accurately determine its liability in respect thereof which makes planning the allocation of cash resources extremely difficult. Once taxation or settlement of a bill has taken place, the RAF is then in a position to plan for the payment of that liability within the 180 day period.

There is no intention not to pay legal costs where same has been properly incurred for the preparation of a plaintiff's claim. However, a writ or attachment for legal costs seems absurd in circumstances where a plaintiff could be benefitting from those funds for serious injuries sustained. Section 3 of the RAF act brings the focus of the RAF squarely on the payment of claims and not on litigation costs. The RAF's *raison d'être* must therefore be the payment of claimants first, and thereafter on a structured basis legal fees can be paid. The RAF is financially able to pay legal costs 180 days after the taxation or settlement of a bill of cost. It would be just and equitable to suspend all writs *in re* legal costs that have already been granted for a period of 180 days as prayed for.

The RAF therefore submits that it has a *prima facie* and clear right to the relief sought herein.

REASONABLE APPREHENSION OF HARM:

For all of the reasons set out herein, the RAF has a reasonable apprehension of harm should the order not be granted.

Furthermore,

- 36.1 thousands of claimants in the long run would suffer tremendous prejudice if the order is not granted;
- 36.2 it will ensure that payments are paid in a just and equitable way that will promote the interests of justice;
- 36.3 the granting of the order sought is necessary to prevent the RAF's implosion and resultant constitutional crisis wherein the RAF will no longer be able to fulfil its obligations to provide social security and access to health services for claimants and section 21 (2)(a) of the RAF Act will be triggered, which will lead to a dire situation of thousands of injured uncompensated road accident victims;
- 36.4 the RAF will be overrun with writs (as it was before April 2021 and whilst the Full Court's relief had lapsed) leading to parties abusing the execution process and attempting to obtain preferential or illegal payment through the RAF Fuel Levy;
- 36.5 from or about October 2021 to August 2022 the RAF received thousands of writs as it did before April 2021.

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The result of the above will be significant chaos and prejudice to thousands of claimants from all over South Africa.

- 37.1 The RAF's internal safeguards will be left unprotected;


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- 37.2 The internal reconciliation processes will be put in disarray;
- 37.3 The execution process will be abused, and as before, attorneys will attempt to obtain duplicate payments;
- 37.4 Claimants will not know by when they can expect payment;
- 37.5 The RAF will be overrun by attachments and removals of its assets which in turn threatens its stability;
- 37.6 The removal of assets and the sale thereof will wreak havoc on the RAF's offices, and essential operations;
- 37.7 Once execution is completed, the steps that were taken against the RAF cannot be undone;
- 37.8 The attachment of assets will mean that the RAF would not be able to meet its statutory object and mandate and the rights of thousands of claimants would be detrimentally affected;
- 37.9 The RAF would lose the tools of its trade which will impede the rights of thousands of other claimants who are presently awaiting the satisfaction of judgment debt;



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37.10 The attachment and sale of the RAF's assets would have a seriously detrimental effect on its ability to perform its statutory mandate for all claimants throughout the country.

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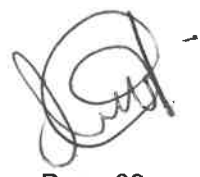
The unintended consequences of the order sought not being granted will be that the expected date of payment, which is currently about 180 days, will increase as it did before the Full Court's April 2021 order.

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Before that order the projection was that the payment delay from settlement to payment would have increased gradually from 187 days to 331 days.

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The reasonable apprehension of harm is therefore not only to the RAF but also for thousands of claimants. This application is therefore furthermore not only brought on behalf of the RAF but also in terms of section 38 of the Constitution as the RAF submits that if the order is not granted it would threaten the rights of thousands of unrepresented claimants as well. The Court may therefore grant appropriate relief to prevent such injustice for occurring on an urgent basis.



BALANCE OF CONVENIENCE:

41

This application is aimed at keeping the RAF operational and avoiding injustice being done to thousands of road accident victims.

- 41.1 Because of the Court's intervention the RAF has made progress in implementing an equitable payment system. If the order is not extended then the RAF's progress will be negatively impacted;
- 41.2 When the Full Court's protection lapsed in 2021 and the RAF was left unprotected until August 2022 the RAF was again overrun by writs and parties attempted to circumvent the payment principles determined by the Court that claims should be paid from oldest to newest;
- 41.3 Because of the Court's intervention in April 2021 and thereafter in August 2022 the RAF has been able to focus on creating an improved, efficient claims processing system, which has accessible services, effective financial systems, optimal ICT services, improved people management and an assured control environment to ensure the RAF's future viability. The progress that has been made in that regard is threatened if the extension is not granted;
- 41.4 The Court's assistance in April 2021 and August 2022 led to the RAF being able to stop parties from abusing its system and to ensure fair payment of the RAF Fuel Levy which is a constitutional imperative;

- 41.5 The Court's previous intervention drastically improved the rights of unrepresented claimants who were manifestly impacted by the historical abusive conduct before April 2021 as their claims could not be paid promptly as other claimants attached the RAF's assets;
- 41.6 During the periods when the RAF was protected the RAF was able to make payment in a structured manner. Since 01 September 2022 to 07 February 2023 the RAF processed and paid approximately 71 920 capital transactions, 2154 interest transactions and 40 507 claims related costs transactions.
- 41.7 During the period that the RAF was not protected attorneys made it exceedingly harder to make payment from oldest to newest as they again attempted to jump the queue and to receive preferential payment.
- 41.8 On average claims are paid within 180 days, but where the RAF receives a larger windfall during a specific period then more claims are paid as was originally budgeted for that period (payment is made from oldest to newest, *a priore tempore* whilst the Court's safeguards are in place);
- 41.9 There are still newly requested claims that contribute to the high number of matters 180 days and over, which is exacerbated by parties who delay informing the RAF thereof or who do not cooperate.

From April 2021 to present the RAF has had the benefit of the Court's protection for a cumulative period of about 12 months. During those 12 months the RAF was able to make

progress in ensuring that the RAF's financial position does not worsen and by ensuring that claims can be paid on an equitable basis. Therefore, when the RAF has the Court's protection the RAF makes progress, however, when the RAF does not have the Court's protection it is placed under immense and unnecessary pressure by parties who attempt to game the system in their favour.

43

The balance of convenience therefore favors the granting of the interim relief and thereafter the confirmation thereof on a date to be arranged.

ABSENCE OF ALTERNATIVE REMEDY:

44

The applicant has no other effective remedy to balance the rights of the RAF and that of all claimants. The only other remedy would be for the RAF to bring an application to suspend each writ that is issued by parties nationwide. This will effectively lead to the RAF being in Court every week with hundreds of matters. With respect that is not an effective alternative remedy and will lead to wasted costs.

URGENCY:

45

The RAF submits that the matter is urgent and that the RAF will not obtain substantial redress at a hearing in due course. The basis for the relief is premised on section 1, 7, 12, 27 and 173 of the Constitution read with the RAF Act and the PFMA and the scope thereof



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is manifestly urgent to ensure that the RAF and thousands of claimant's rights are safeguarded in a balanced manner.

46

The Constitutional Court has held that applications for extensions of time must be granted if that course is considered by this Court to be in the interests of justice. The RAF submit that in context of what has been stated above that the relief must be granted in the interest of justice. This is clear as *inter alia* the purpose of the relief is to prevent substantial injustice to claimants throughout South Africa, especially those who are undefended and to allow the RAF to continue to make progress.

47

By granting the relief the Court would be ensuring that all claimants are treated equally and with dignity whereas the converse would happen if the relief is not granted. Furthermore, by making the orders as prayed for the Court would ensure that the RAF fuel levy is safeguarded against any impropriety, which is urgent, as the funds are public funds and must be protected.

48

By granting the orders sought on an urgent basis the Court will be promoting the functional and orderly distribution of public funds and the administration of the RAF and thereby preventing chaos and the collapse of the RAF. If this application is not heard urgently then the application will only be heard at the end of 2023 leaving the RAF exposed to abusive conduct for months.



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The RAF is only seeking interim relief to allow the parties enough time to file answering affidavits, if any, in the time leading up to the return date to ensure that the Court who will hear the matter for final relief will have full, detailed pleadings to consider the matter in depth.

CONDONATION:

The RAF respectfully requests that this Honourable court grant the RAF condonation for the deviation from the normal rules or practice directives in order to obtain an urgent hearing and for substituted service, as prayed for. Furthermore, in the time available the RAF was not able to enumerate all details and information and we will seek leave to supplement after the interim order is granted.

RULE 16A:

A Rule 16A Notice has been prepared and by the time this application is heard, proper publication of same would have taken place.

SPECIAL ALLOCATION:

The RAF will address a letter to the Judge President requesting a special allocation for the application to confirm the *rule nisi*. The allocated date will however depend on when





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the next available date is. The RAF should not with respect be left unprotected until the matter can be finally decided.

CONCLUSION:

53

Wherefore, the RAF respectfully moves for an order in terms of the notice of motion.

DEPONENT

Signed and sworn before me at Sandton this 27th day of FEBRUARY **2023** after the deponent declared that **HE** is familiar with the content of this statement and regards the prescribed oath as binding on **HIS** conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R 1258, dated 21 July 1972 [as amended].



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