

**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

THE BOARD OF SHERIFFS

ABSA BANK

THAKA F SEBOKA N.O.

(SHERIFF, PRETORIA CENTRAL)

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

SHOKENG E DHLAMINI N.O.

(SHERIFF, CENTURION EAST)

MARKS THAPELO MANGABA N.O.

(SHERIFF, JOHANNESBURG CENTRAL)

NELSON NTSIBANTSU N.O.

(SHERIFF, CAPE TOWN WEST)

NOMANDLA NDABENI N.O.

(SHERIFF, EAST LONDON)

G S NDLOVU N.O.

(SHERIFF, DURBAN CENTRAL)

AD DANDALA & ASSOCIATES

GODLA & PARTNERS

SITHOMBE ATTORNEYS

K MALAO INCORPORATED

MDUZULWANA ATTORNEYS

ROBERT MUVHIMI

MOTLHOLO KOOS TLHAOLE

PHILADIPHIA NOMTHANDAZO MEMELA

SIPHO SKHOSANA

LINDIWE MACAKA



First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh Respondent

Eighth Respondent

Ninth Respondent

Tenth Respondent

Eleventh Respondent

Twelfth Respondent

Thirteenth Respondent

Fourteenth Respondent

Fifteenth Respondent

Sixteenth Respondent

JUSTINE CHEPETE

EVIDENCE SHAVA

DVDM INCORPORATED

DE BROGLIO ATTORNEYS INC.

VDS ATTORNEYS

ROETS & VAN RENSBURG

PERSONAL INJURY PLAINTIFFS

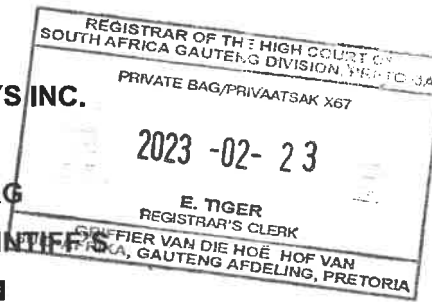
LAWYERS ASSOCIATION

ADVOCATE RAF FEE RECOVERY ASSOCIATION

KHOROMBI 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*

RULE 16A NOTICE

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TAKE NOTICE THAT the applicant intends to make application to the above Honourable Court on **TUESDAY, 7 MARCH 2023** at 10H00, or as soon thereafter as counsel may be heard, for an order in the following terms:

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.
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:

- 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, 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.
- 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.
- 2.3 The applicant is ordered to place all matters referred to in paragraph 2.2 above, on the applicant's RNYP list within 30 Court days from the expiry of the date mentioned in paragraph 2.2 above.
- 2.4 The applicant is to pay all 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 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.

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 or settlement of the bills of costs, are suspended until those costs have aged 180 days from the date of taxation or settlement of the bill.

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

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*.

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

2.9 The above order will be published by the applicant:

2.9.1 to all practicing attorneys through the Legal Practice Council;

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

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

2.9.4 by publication in 2 newspapers, with national distribution.

3. Paragraph 2 above shall operate as an interim order with immediate effect pending the confirmation or discharge of the *rule nisi*.
4. That any party who wishes to oppose confirmation of the *rule nisi* file its opposing papers within 15 days of date of this order, after which the Applicant will file its replying affidavit, if any, within 10 days.
5. That this matter is referred to the Deputy Judge President for allocation of a hearing date.
7. Directing that any party who opposes the relief sought be ordered to pay the applicant's costs, including the costs of two counsel.
6. Further and/or alternative or just and equitable relief.

In April 2021 the Full Court, Pretoria, granted the applicant extraordinary relief which was thereafter extended by the High Court in August 2022. The relief the applicant will seek in this second extension application is concomitant therewith. The application raises the following constitutional issues:

- 7.1 The RAF was established in terms of section 2 of the Road Accident Fund Act, 56 of 1996 ("the Act").

- 7.2 The object of the RAF, as set out in section 3 of the Act is the payment of compensation in accordance with the Act for loss or damage wrongfully caused by the driving of a motor vehicle.

- 7.3 The powers of the RAF are set out in section 4 of the Act and *inter alia* include the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3 of the Act, shall be administered and the management and utilization of the money of the RAF for purposes connected with or resulting from the exercise of its powers or the performance of its duties.

- 7.4 In terms of section 21 (1) of the Act, no claim for compensation in respect of loss or damage resulting from bodily injury to or the death of any person caused by or arising from the driving of a motor vehicle shall lie against the owner or driver of a motor vehicle or against the employer of the driver. In terms of section 21 (2) of the Act, subsection 21 (1) does not apply if *inter alia* the RAF or an agent is unable to pay any compensation.

- 7.5 The RAF is not in a financial position to make payment of all claims as they fall due, by lump sum. The RAF can only make payment of claims on a structure and equitable basis from oldest to newest, *a priore tempore*, as and when funds become available.
- 7.6 The RAF is able to make payment of capital claims within 180 days from the date of the Court order, or the settlement.
- 7.7 The RAF is able to make payment of legal costs within 180 days from the date that the capital award is paid.
- 7.8 The relief the applicant will seek will have an impact on the person's rights in terms of the Bill of Rights of the Constitution of South Africa, 1996, and more specifically on the following rights:
- 7.8.1 the right to equality in terms of section 9;
 - 7.8.2 the right to dignity in terms of section 10;
 - 7.8.3 the right to life in terms of section 11;
 - 7.8.4 the right to freedom and security of persons in terms of section 12;
 - 7.8.5 the right to healthcare, food, water and social security in terms of section 27; and
 - 7.8.6 the right to access to Courts in terms of section 34.

The relief sought will have an impact on these fundamental rights, but the relief will however also protect these rights by ensuring that all persons are treated equally, with dignity and that their rights are secured.

The RAF accepts that persons have a right to execute a judgment order against the RAF. The RAF submits that the limitation of those rights is reasonable and justifiable in the circumstances to continue to protect the stability of the RAF, its operations and its functioning for the future and to ensure the protection of all claimants' rights equally and with dignity.

The RAF does not seek a moratorium on the payment of claims; it only seeks a moratorium on execution steps.

TAKE NOTICE THAT:

- 11.1 The RAF submits that this is an urgent matter that requires immediate intervention;
- 11.2 The application is to be heard on or during the week of **7 March 2023**.

Should any further party wish to participate in the RAF's application, then such party should acknowledge the below truncated time periods.

Any interested party in the aforesaid constitutional issues may, with the written consent of all the parties to the proceedings, **given not later than 3 days after the filing of this notice** or may be admitted as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties. The written consent contemplated in Rule 16 A (2) shall, **within 1 day of it having been obtained**, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument. If the interested party contemplated in sub-rule (2) of Rule 16A is unable to obtain the written consent as contemplated therein, **that party may, within 1 day of the expiry of the period above**, apply to the Court to be admitted as an *amicus curiae* in the proceedings.

Due to the urgent nature of the relief sought, the RAF will ask that the Court dispense with the specific time frames set out in rule 16A and to direct that the above time frames are reasonable in the circumstances and in the interest of justice.

An application to be admitted as an *amicus curiae* must briefly describe the interests of the *amicus curiae* in the proceedings, clearly and succinctly set out the submissions which

will be advanced, the relevance thereof to the proceedings and the party's reasons for believing that the submissions will assist the Court and are different from those of the parties. The submissions must furthermore be served upon all parties to the proceedings considering the truncated periods.

PUBLISHING OF NOTICE:

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The Registrar is requested to immediately display this notice on a public notice board at the High Court at a prominent position.

DATED AT JOHANNESBURG ON THIS 22nd DAY OF FEBRUARY 2023.



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