

**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

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EVIDENCE SHAVA	
DVDM INCORPORATED	Seventeenth Respondent
DE BROGLIO ATTORNEYS INC.	Eighteenth Respondent
VDS ATTORNEYS	Nineteenth Respondent
ROETS & VAN RENSBURG	Twentieth Respondent
PERSONAL INJURY PLAINTIFF'S	
LAWYERS ASSOCIATION	Twenty-First Respondent
ADVOCATE RAF FEE RECOVERY ASSOCIATION	Twenty-Second Respondent
KHOROMMBI MABULI INCORPORATED	Twenty-Third Respondent
WE EMERGENCY RESPOND TEAM (Pty) LTD	Twenty-Fourth Respondent
PRETORIA ATTORNEYS ASSOCIATION	First <i>amicus curiae</i>
GENERAL COUNCIL OF THE BAR	Second <i>amicus curiae</i>
BRITS & BEUKES INCORPORATED	Third <i>amicus curiae</i>
FEARLESS AZANIAN LAWYERS ASSOCIATION	Fourth <i>amicus curiae</i>
NOSICELO PRINCESS QIKANI	Intervening party

FOUNDING AFFIDAVIT

I, the undersigned,

RAMOTLHATLHANE JOHANNES MOATSHE

do hereby declare under oath that:

I am a major male and the Acting Regional General Manager of the applicant's ("the RAF") Pretoria branch. I am also currently the acting Chief Claims Officer. My office is situated at the RAF's Menlyn branch situated at 38 Ida Street, Menlopark, Pretoria.

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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. I am duly authorized to depose hereto.

The RAF seeks an urgent intervention suspending and interdicting warrants of execution for the attachment of and execution against the applicant's assets, where such attachment and execution are based upon:

- 3.1 costs orders/settlements where such costs orders/settlements have not aged to 180 days from date of taxation/settlement; and
- 3.2 claims for interest on the capital amounts already paid to claimants, where such claims for interest have not aged 180 days from date of payment of the capital:-

pending adjudication of the main application under the above case number which is currently awaiting a special allocation court by the Deputy Judge President.

THE PARTIES:

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.

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The respondents and *amici* have been identified in the RAF's application that was brought in November 2020 and thereafter in the parties' various affidavits, joinder and counter-applications and their citations are respectfully incorporated herein by reference. The respondents are, in particular, the respondents in the application brought by the applicant on 22 February 2023, wherein the applicant *inter alia* sought an order allowing the applicant to pay the taxed costs, 180 days after such costs have been taxed or settlement reached in respect of such costs.

A broad overview of their citations is as follows:

- 6.1 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.
- 6.2 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.
- 6.3 The 3rd respondent is Absa Bank of Absa Towers, 15 Troy street, Johannesburg, Gauteng.
- 6.4 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

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Act, 90 of 1986, with its main place of business situated at 424 Pretorius street, Pretoria Central.

- 6.5 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.
- 6.6 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.
- 6.7 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, Johannesburg.
- 6.8 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.
- 6.9 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.
- 6.10 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.

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- 6.11 The 11th respondent is AD Dandala & Associates, a firm of attorneys practicing at 9 Essenwood road, Musgrave, Durban.
- 6.12 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.
- 6.13 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.
- 6.14 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.
- 6.15 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.
- 6.16 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.
- 6.17 The 17th respondent is DVD M Incorporated, a firm of attorneys situated at 224 Sefako Makgatho Drive, Sinoville, Pretoria.

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- 6.18 The 18th respondent is De Broglie Attorneys, a firm of attorneys situated at Brooklyn Bridge office park, 2nd floor, Parkdev building, 570 Fehrsen street, Brooklyn, Pretoria.
- 6.19 The 19th respondent is VDS attorneys, a firm of attorneys situated at 142 Haak & Street avenue, Wonderboom, Pretoria.
- 6.20 The 20th respondent is Roets & Van Rensburg attorneys, a firm of attorneys situated at 40 Van Ryneveld street, Pierre van Ryneveld.
- 6.21 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 has throughout the above application been represented by Selwyn Drobis Attorneys, situated at 13 Spiral close, Wendywood, Sandton.
- 6.22 The 22nd respondent is the Advocate RAF Fee Recovery Association, a voluntary association that was throughout the above proceedings represented at all material times by De Bruyn & Morkel Attorneys, situated at 72 Delky Road, Waterkloof, Pretoria.
- 6.23 The 23rd respondent is Khorommbi 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.
- 6.24 The 24th Respondent is WE Emergency Respond Team (Pty) Ltd, a private company with registration number 2015/31087/07, duly incorporated in terms of the

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laws of the Republic of South Africa with its registered address at E820 Mandela Village, Hammanskraal, Pretoria. No relief is sought against the 24th Respondent.

- 6.25 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 herein by Adams & Adams attorneys, situated at Lynnwood Bridge office park, 4 Davenry street, Lynnwood ridge, Pretoria, Gauteng.
- 6.25 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.
- 6.26 The 3rd *amicus curiae* is Brits & Beukes Incorporated, a firm of attorneys situated at 1 Geldenhuys Street, Delmas, Mpumalanga Province.
- 6.27 The 4th *amicus curiae* is Fearless Azanian Lawyers Association a non-profit company with registered office address at 33 Loveday and Fox Street, The Rand Club Building, Marshaltown, Johannesburg, 2107.
- 6.28 The intervening party is Nosiselo Princess Qikani, who is representing by RM Sodo attorneys c/o Roets van Rensburg attorneys of 40 van Ryneveld Street, Pierre van Ryneveld, Pretoria. Ms Qikani's application for joinder as 25th respondent is still pending before this court.

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SERVICE:

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The RAF will give notice of this application in the manner in which it has done so in the main application and service will therefore be effected as follows:

- 7.1 The application will be served on all respondents and *amici curiae*;
- 7.2 The Legal Practice Council ("LPC") will be requested to disseminate a copy of this application amongst all of its members who are legal practitioners;
- 7.3 The RAF will also email the application to the firms of attorneys on its database. There are more than 3000 firms of attorneys who are part of the RAF's mailing list. In terms of 7.2 above and 7.3, it is submitted that the legal practitioners once informed in this manner, have a duty to inform their clients of this application;
- 7.4 The Second Respondent is also requested to disseminate this application to all of its members over the country;
- 7.5 The application will also be served on the offices of the State Attorney for the attention of the Minister of Transport and the Minister of Finance;
- 7.6 A Rule 16A notice will be published.

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NATURE AND PURPOSE OF THIS APPLICATION:

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- 8.1 This application is sequential and concomitant to the application lodged by the RAF on 22 February 2023, wherein the RAF sought an order for the extension of the order granted by the Full Court and the order granted by Van Der Westhuizen J for a period.
- 8.2 The RAF, in the application of 22 February 2023, also sought an order that the RAF be granted a suspension in respect of the payment of the costs relating to matters which have become settled or in terms of which court orders have been granted. The RAF seeks relief, allowing it to pay these costs 180 days after the costs have been settled or taxed and allocators issued in respect thereof. This aspect has been postponed for determination by a special court to be appointed by the Deputy Judge President.
- 8.3 The RAF intends to supplement the application of 22 February 2023 as was made provision for in the order granted by the Court.
- 8.4 Notwithstanding the above, claimants and plaintiffs have persisted in seeking to execute cost orders and interest on capital against the RAF. It is in these circumstances that the RAF seeks the order interdicting claimants from executing against the RAF's property in respect of the cost orders and interest on capital (younger than 180 days from date of taxation or date of payment of capital as the case may be) until such time that the relief sought in the application of 22 February 2023 is determined by the special court allocated by the Deputy Judge President.

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THE FACTUAL AND HISTORICAL MATRIX TO THE RAF MAKING PAYMENTS IN
RESPECT OF CAPITAL ON 180 DAYS:

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On 9 April 2021, the Full Court, led by Meyer J with Adams J and Van der Westhuizen J concurring, handed down judgement granting the RAF extraordinary relief in the form of suspending all warrants and execution thereof against the Applicant for a period of 6 (six) months (180 days). The rationale underpinning the judgement and order was *inter alia* to enable the RAF to make payment of claims, which were at the date of the order, already older than 180 days. A copy of the Full Court's judgment and order is attached as Annexure "RAF1".

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The Full Court's order read as follows:

"[45] In the result the following order is made:

- (a) The temporary order made by the full court of this division on 9 December 2020, and extended by this court on 16 March 2021, is discharged.
- (b) All writs of execution and attachments against the applicant based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 56 of 1996 (the RAF Act) are suspended until 30 April 2021.
- (c) The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 April 2021, provided that the applicant has been notified by any attorneys who represent claimants that have such claims that are older than 180 days of the existence of such claims in accordance with paragraph 3 of this court's order made on 16 March 2021.
- (d) All writs of execution and warrants of attachment against the applicant based on court orders already granted or settlements already reached in terms of the RAF Act, which are not older than 180 days as from the date of the court order or date of the settlement reached, are suspended from 1 May 2021 until 12 September 2021.
- (e) The applicant is to take all reasonable steps to:

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- (i) register court orders or written settlement agreements for claims instituted in terms of the RAF Act against the applicant, on its list of payments in order of the date that the court order was granted or the date of the settlement agreement;
- (ii) ensure that court orders or written settlement agreements for claims in terms of the RAF Act for payment are registered on the applicant's payment list within 30 business days of receipt of the court order or settlement agreement;
- (iii) ensure that court orders or settlement agreements for claims as set out above that have not been captured on its payment list will be captured in historical chronological order from the date that the court order was granted by the court or the written settlement agreement was entered into;
- (iv) provide all attorneys on its database of email addresses of attorneys involved in third-party matters against the Road Accident Fund with updated payment lists on a bi-monthly basis from April 2021 onwards.
- (f) 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.
- (g) Any party may approach the court during September 2021 to vary, extend or amend this order.
- (h) This order and the order made by this court on 16 March 2021 shall forthwith be published by the applicant:
 - (i) to all practicing attorneys through the Legal Practice Council;
 - (ii) by email to all of the applicant's list of attorneys on its database;
 - (iii) to the Minister of Transport and the Minister of Finance by service on the State Attorney;
 - (iv) by publication in two national newspapers.
- (i) No order is made in respect of each counter application, except that the applicant is to pay the costs of each counter application.
- (j) The applicant is to pay the costs of each opposing respondent's opposition of the application, including all reserved costs and the costs of two counsel, one of whom a senior counsel, whenever so employed."

The Full Court suspended all writs of execution and warrants of attachment, against the Applicant based on court orders already granted or settlements already reached in terms of the RAF Act which were older than 180 days from the date of the court order or date of the settlement reached, from 1 May 2021 until 12 September 2021.

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The court order of the Full Court permitted any party to approach the court during September 2021 to vary, extend or amend the order.

The RAF, pursuant to the relief granted by the Full Court, lodged an application to extend the relief granted by the Full Court for a further period of six months. This extension application served before Van der Westhuizen J on 25 August 2022 and the RAF was granted a further extension.

The above order is attached hereto as Annexure "RAF2" and it reads as follows:

- "1. That the order of the full court dated 09 April 2021, in terms of which writs of attachment and warrants of execution based on court orders already granted or settlements reached in terms of the Road Accident Fund Act, 56 of 1996, which are not older than 180 days as from the date of the date of the court order or the date of the settlement reached, are suspended, is hereby extended for six months from the date of this order.*
- 2. All attorneys who represent a claimant and whose matter has not been placed on the Requested Not Yet Paid ("RNYP") is to provide the Applicant with a list of such claimants' claims which do not appear on the RNYP list by no later than 30 September 2022.*

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3. *The Applicant is ordered to place all matters as referred to in paragraph 2 above, on the RNYP list by no later than 30 October 2022.*
4. *The applicant is to pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement reached, on or before 30 October 2022, provided that the applicant has been notified by an attorney who represents the claimant that have such claims that are older than 180 days of the existence of such claims by no later than 30 September 2022.*
5. *The applicant is to continue distributing the RNYP list to the attorneys on its database on a bi-monthly basis.*
6. *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.*
7. *In respect of suppliers' claims as raised by the 24th respondent (W E Emergency Respond), the extension of the moratorium on payments is excluded.*
8. *The internal block against the 23rd Respondent is lifted.*
9. *That this order will be published by the applicant:*
 - 9.1 *to all practicing attorneys through the Legal Practice Council;*
 - 9.2 *by email to all of the Applicant's list of attorneys on its database;*
 - 9.3 *to the Minister of Transport by service on the State Attorney;*

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9.4 by publication in major newspapers in Gauteng, Western Cape, Northern Cape, Eastern Cape, Kwazulu-Nata, Free State, Limpopo, North-West and Mpumalanga.

10. The applicant will pay the party and party costs herein of the 15th respondent, the 19th respondent, the 20th respondent, the 23rd respondent and the 24th respondent, including the costs of the intervention application, and the costs of two counsel where employed.

11. The 11th and 14th respondent will be liable for their own costs."

As mentioned previously, on 22 February 2023, the RAF launched a further application in terms of which sought the following relief:

- "1. Dispensing with the forms, service and time periods prescribed in terms of the Uniform Rules of Court and 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 Deputy 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 order of the Full Court dated 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 date of the court order or the date of the settlement reached, are suspended, be further extended for 12 months, 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 ("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 order 2.2 above, on the RNYP list within 30 Court days from the expiry of the date mentioned in paragraph 2.2;

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- 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 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 that the capital amount has been paid are suspended until those taxed costs have aged 180 days.
- 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 major newspapers in Gauteng, Western Cape, Northern Cape, Eastern Cape, Kwazulu-Natal, Free State, Limpopo, North-West and Mpumalanga.
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.
6. Directing that any party who opposes the relief sought be ordered to pay the applicant's costs, including the costs of two counsel.
4. Further and/or other alternative or just and equitable relief."

On 9 March 2023 the parties to the application agreed to an order, a copy of which is attached as "RAF3", in the following terms:

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- "1 The matter is referred to the Deputy Judge President for special allocation.
- 2 The orders that were granted by Justice Van der Westhuizen on 25 August 2022, a copy of which is attached hereto marked "A", under paragraph 1 to 7 are reinstated, and ordered pending the resolution of this matter.
- 3 The following orders are varied and ordered to read as follows:
- 3.1 By deleting paragraph 1 of the above order and substituting it with "All writs of execution and attachment against the applicant based on court orders already granted or settlements against the applicant already reached in terms of the Road Accident Fund Act, 56 of 1996 as amended, are suspended until the order or the settlement has aged 180 days from the date of that court order or that settlement agreement. This order will be (sic) take effect immediately, and will be effective, for six months or until this matter is heard by the date arranged by the Deputy Judge President for a special allocation, whichever date is the earlier."
- 3.2 The date referenced in paragraph 2 of the above order is varied to read "by no later than 31 March 2023";
- 3.3 By inserting "by email to 45A-order@raf.co.za" after "claims which do not appear on the RNYP list" as referenced in paragraph 2 of the above order;
- 3.4 The date referenced in paragraph 3 of the above order is varied to read "by no later than 28 April 2023. If the RAF fails to load such matters on the RNYP list as stated herein then the party may take execution steps against the applicant, if the party has demonstrated that they have sent the details of the matter to the above email address as ordered herein, and if the party has demonstrated that it has also informed the applicant's attorneys of record in this matter of the fact that the matter or matters were still not uploaded by the applicant as set out herein, within 5 days thereafter. The party can then execute on the order if nothing further in this regard is done within 5 Court days."
- 3.5 The first date referenced in paragraph 4 of the above order is varied to read "on or before 28 April 2023";
- 3.6 The second date referenced in paragraph 4 of the above order is varied to read "by no later than 31 March 2023";
- 3.7 By inserting "by email to 45A-order@raf.co.za" after "of the existence of such claims" as referenced in paragraph 4 of the above order.
- 4 The applicant is ordered to pay all claims currently on the RNYP list, which are older than 180 days by 13 April 2023, but this order shall not deprive the RAF of the right to contest the order in terms of any law.
- 5 ...
- 6 Should any further party wish to apply to join as either a respondent or as an amicus curiae then such party shall file its application for joinder supported by an affidavit on or before the 11th of April 2023.

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7 *The applicant is ordered to file a supplementary affidavit, or replying affidavit,*
 if any, by 28 April 2023.

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15.1 The parties did not agree to the suspension of the payment of costs until such costs aged 180 days from the date upon which costs were agreed to between the parties or the allocatur issued, following the taxation of the bill of costs.

15.2 The parties agreed that the matter be referred to a special court, to be appointed by the Deputy Judge President, for adjudication.

THE PRAGMATIC RESULT OF THE AFOREMENTIONED APPLICATIONS:

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The fundamental pragmatic consequence of the decisions in the matters referred to in the preceding paragraphs is that the RAF now pays the capital in respect of claims lodged in terms of the RAF Act within 180 days from the date upon which the claim is settled or a court order is granted in respect of such a claim.

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19.1 The reprieve in allowing the RAF to pay the capital within 180 days from the date upon which the matter had become settled or a court order is granted in respect of the matter, has allowed the RAF to budget, and efficiently and effectively allocate the

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monies periodically received from the RAF Fuel Levy so that victims of road accident fund accidents receive the maximum benefit.

19.2 The budgetary system enables the RAF to avoid fruitless and wasteful expenditure and in doing so to comply strictly with its constitutional obligations in terms of Section 27(2) of the Constitution of the Republic of South Africa, 108 of 1996 (**"the Constitution"**), which requires the RAF to take all reasonable legislative and other measures to ensure the realization of the rights of victims of motor vehicle accidents is contained in the Bill of Rights, and Section 195 of the Constitution, which requires the RAF to use its resources efficiently, economically and effectively, and in doing so to apply a high ethical standard.

19.3 The budgetary system also ensures that the RAF complies with the requirements of the Public Finance Management Act, 1 of 1999 (**"the PFMA"**) by allowing the RAF to act with fidelity, integrity, and honesty in managing its financial affairs.

19.4 By being able to budget and deal with the RAF Fuel Levy efficiently and effectively, the RAF is able to entertain its liquidity and thereby avoid a constitutional crisis of insolvency.

The fact that the RAF now makes payments in respect of the capital within 180 days has also allowed the RAF to properly investigate settlements so as to ensure that fair and reasonable compensation is paid to the victims of motor vehicle accidents. This process also allows a system of checks and balances to ensure that there has been no impropriety in the settlement of the claims and that there are no duplicate payments, which had plagued the RAF in the past.

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The RAF has also instituted the Requested Not Yet Paid System ("the RNYP"). The system allows the RAF to ensure compliance with the court orders, which require the RAF to pay the oldest claims first. The RNYP system also generates a list, which indicates that payment had been requested from the treasury and granting claimants an indication of when the payment of their particular claim may be expected. This creates certainty in the relationship between the RAF and the victims of motor vehicle accidents and also ensures the victims of motor vehicle accidents their dignity.

Period	Opening / Closing	RNYP Balance	% Movement
Reprieve 1 - 9 Apr 2021 - 12 Sep 2024	Opening	R 15 060 894 437	
	Closing	R 13 406 577 717	-11%
No Reprieve	Opening	R 13 406 577 717	
	Closing	R 16 499 141 271	23%
Reprieve 2 - 25 Aug 2022 - 25 Feb 2023	Opening	R 16 499 141 271	
	Closing - 31 Jan	R 15 620 805 710	-5%

The aforesaid table indicates that during the periods where the RAF was allowed a reprieve, the RAF was able to manage its finances most efficiently and significantly reduce outstanding payments.

THE DILEMMA PRESENTED BY THE ISSUE OF COSTS AND INTEREST ON CAPITAL:

The court order granted by the Full Court and subsequently extended by the court order granted by Van der Westhuizen J seems to limit the RAF to make payment of the capital within 180 days from the date of settlement or court order and exclude the aspect of the costs of

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litigation and interest on capital. In any event, this is the claimants and their representatives interpretation of the court order. As a result, claimants seek payment of the costs immediately after the costs had been taxed or settled with the RAF, and interest on the capital, immediately after the RAF had paid the capital.

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Consequently, there has been a significant increase in the number of writs of execution issued against the RAF, as is demonstrated by the table below.

Period	Avg. Monthly of Writs Received
Reprieve 1: Apr - Sep 2021	175
No Reprieve: Oct - Aug 2022	399
Reprieve 2: Sep - Feb 2023	485

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Hence, the movable property of the RAF, its fundamental tools of trade, being computers, tables, and chairs, are continuously and consistently attached by the sheriff, to be sold in execution.

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In the event that the RAF should lose its tools of trade, it would not be able to process the thousands of claims of victims of motor vehicle accident, it would not be able to assess these claims, it would not be able to verify these claims, it would not be able to make offers in respect of these claims, it would not be able to determine the chronological position of these claims on the RNYP list, it would not be able to settle these claims, it would not be able to make

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payment of the compensation due to victims of motor vehicle accidents. In short, the RAF would not be able to meet the object of the RAF Act to compensate victims of motor vehicle accident thereby promoting the constitutional right to bodily integrity.

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The RAF would also not be able to comply with the court orders set out in the preceding paragraphs. This leads to contempt applications, which have to be defended by the RAF at significant and unnecessary cost.

28

Also, the costs paid to the sheriff have increased significantly as indicated in the tables below.

These costs, I respectfully submit, at best should rather be allocated to compensate victims of motor vehicle accidents, rather than paying the sheriff to avoid the sale of execution of the RAF's tools of trade.

Period	Interest Cost	Other Costs (Sheriff & Writ Costs)	Total Count
Reprieve 1: Apr - Sep 2021	428	2 031	2 459
No Reprieve: Oct - Aug 2022	5 493	4 119	9 612
Reprieve 2: Sep - Feb 2023	2 154	2 542	4 696
Total	8 075	8 692	16 767

Period	Interest Cost	Other Costs (Sheriff & Writ Costs)	Total Paid
Reprieve 1: Apr - Sep 2021	R 7 466 042	3 270 742	R 10 736 784
No Reprieve: Oct - Aug 2022	R 246 924 734	7 156 721	R 254 081 455
Reprieve 2: Sep - Feb 2023	R 87 877 577	3 014 170	R 90 891 747
Total	R 342 268 353	13 441 633	R 355 709 986

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However, more significantly is the fact that once claimants issue a writ of execution for the taxed costs or the interest on capital, the RAF is obliged to use the monies allocated to pay the capital compensation of victims of motor vehicle accidents for that particular month to pay the costs and interest on capital of other claims.

- 29.1 Consequently, claimants who were supposed to have received payment of the capital compensation during that particular month are denied such payment.
- 29.2 The chronological sequence of payments of capital compensation to victims of motor vehicle accidents on the RNYP is further delayed, causing tremendous hardship to these victims of motor vehicle accidents who will have to further await the payment of their compensation.
- 29.3 The RAF is unable in many instances to verify the correctness of taxed costs. There have been instances where there has been impropriety in the taxation of bills of costs, resulting in an investigation by the Office of the Chief Justice and the dismissal of a registrar/taxing master of the High Court in Pretoria. In this regard I attach hereto an affidavit by the Chief Registrar of the above Honorable Court, evidencing the outcome of her investigation, see Annexure "RAF4".
- 29.4 In a similar vein, the RAF is in many instances unable to verify the correctness of the interest calculations as many of the court orders do not provide for the payment of interest.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'Hm' and the initials below it are 'RS'.

PRIMA FACIE RIGHT:

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It is well known that the RAF's cash resources are not sufficient to cover claims as and when they arise. The RAF's payment system accordingly provides for priority payment of capital claims before costs and interest. Once payment for capital has been made, the RAF is then able to budget accordingly and then loads claims for costs and interest. The RAF has no split allocation of cash resources against its obligations. Currently there is about R1.9 billion of costs matters to be paid. If the RAF had to start paying all cost matters without a structured plan in place, this will create liquidity challenges which in turn will affect the current system of payment of capital in place and resulting in most matters having to wait longer than 180 days allowed for by the court. This will put the system in total disarray which may lead to a total collapse of the payment arrangement of claims *prior tempore*.

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The removal of operational assets and tools of trade will impede the rights of thousands of other claimants who are presently awaiting the satisfaction of their judgment debts as well as those claimants who have active undertakings for medical expenses. It will wreak havoc on the RAF's various regional office operations.

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A stay of execution is not only warranted but also necessary in this matter as a real and substantial injustice will result if execution is not stayed. The RAF has a statutory duty to process claims and to compensate the victims of road accidents. Allowing the removal and

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sale of the RAF's operational assets will render the RAF operationally paralyzed. This will inevitably result in claims not being processed and victims not getting compensated during the period that the RAF is unable to operate, which given the RAF's financial woes, may be an extended period.

REASONABLE APPREHENSION OF HARM

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If the relief is not granted, many other claimants will be prejudiced in that:

- 33.1 The continued system in place ensuring that capital payments are prioritized will be affected;
- 33.2 If the relief is not granted, the RAF will be overrun by writs leading to the system being once more abused in that unlawful preferential payment will be made;
- 33.3 The RAF will continue to lose millions of Rands in Sheriff and writ costs, which amounts could have been used to pay either capital, costs or interest claims;
- 33.4 The internal reconciliation processes will be severely affected and may lead to more resources diverted to attend and correct to this;
- 33.5 The removal of the RAF's assets through execution will halt the operations of the RAF and lead to RAF being unable to fulfil its statutory object and mandate and as such the rights of thousands of claimants will be detrimentally affected;


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33.6 The reasonable apprehension of harm will not only prejudice the proper system of functioning of the RAF but will prejudice payment to claimants as well.

BALANCE OF CONVENIENCE

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The balance of convenience favors the granting of the interdict in that the respondents will have an opportunity to oppose the granting of the final relief at a hearing to be scheduled by the Deputy Judge President.

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This application is aimed at ensuring that the RAF remains operational and avoid further injustices being done to road accident fund victims.

ABSENCE OF ALTERNATIVE REMEDY

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There is no other effective remedy. The only other remedy available to the applicant is issuing applications suspend each and every writ of attachment that is executed on the RAF. This will not only cause financial prejudice to RAF but also further delays in payment to claimants. This remedy will not be effective as over a certain period there were about 8000 related writs that were executed on the RAF. It will be impossible to be in court for 8000 matters over a period, accordingly, there is no other effective alternative remedy.

URGENCY

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The Applicant's attorneys have written a letter to the Office of the DJP for a special allocation, the date has not been confirmed as yet but a case management has been scheduled for 13 April 2023. As it stands, the applicant has been served by both the Sheriff Pretoria East and the Sheriff Centurion East with warrants of execution for cost and interest related matters which will be executed by way of auction scheduled, usually, for the last Tuesday of any month i.e. 25 April 2023 for this month. Thus far, 59 warrants have been served although the execution list for the month of April 2023 has not closed yet and this number will rise. After the reinstatement of the Judgement of Van Der Westhuizen J by Justice Swanepoel and not adjudicating on the point of costs and interest, attorneys continued to issue instructions to the sheriff to execute in that regards. The relief sought cannot consequently wait until the hearing of the main application at a later stage after being specially allocated by the Deputy Judge President.

The case management meeting with the DJP has been set for 13 April 2023.

The matter is inherently urgent to ensure continued stability of the functioning of the RAF and to maintain the status as is in terms of payments.

CONCLUSION:

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

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DEPONENT

Signed and sworn before me at Sandton this 27th day of March 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].



COMMISSIONER OF OATHS

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