



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA

Case Number: **006088/2022**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE: 13 September 2022

SIGNATURE: *N. JANSE VAN NIEUWENHUIZEN*

In the matter between:

**NEUNET PROPERTIES (PTY) LTD
t/a SUNSHINE HOSPITAL**

Applicant

and

THE ROAD ACCIDENT FUND

First Respondent

THE SHERIFF PRETORIA EAST

Second Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

1. This is an application in terms of section 18(1) of the Superior Courts Act, 10 of 2013, that the operation and execution of the order granted by this court on 25 July 2022 ("the Act") be put into effect pending the finalisation of the application for leave to appeal and any appeal noted.

Background

2. The dispute between the applicant ("Newnet") and the first respondent, the Road Accident Fund ("the RAF") pertains to the payment by the RAF of Newnet's outstanding invoices.
3. Newnet is a hospital dedicated to the treatment of patients injured in motor vehicle accidents in circumstances where the initial medical facility (mostly State hospitals) that the patients were admitted to, do not have the resources to treat such patients.
4. It is common cause that the amounts due to Newnet stems from services rendered to the aforesaid patients.
5. It is furthermore common cause that the amount of R 301 721 492,50 was audited and evaluated by the RAF'S internal merits and bill review sections as being due and payable to Newnet.
6. In the result, the applicant launched an application for payment of the amount in monthly instalments of R 45 581 098, 50 with the initial payment in the amount of R 90 000 000, 00.
7. The RAF did not deny that it owed the amount but averred that it is prohibited from paying the amount due to a Proclamation issued by the President in terms of which the Special Investigating Unit ("SIU") has been appointed to investigate the affairs of the RAF.

8. The RAF alleges that Newnet is under investigation by the SIU and that the amounts claimed cannot be paid until the SIU has cleared the invoices submitted by Newnet.
9. The aforesaid allegations were not substantiated by any proof and were denied by Newnet. The RAF did, furthermore, not refer to any legal principle in support of its contention that the invoices could only be paid once the SIU has cleared the invoices.
10. In the premises, the court granted judgment against the RAF on 25 July 2022 for payment of the amount of R 301 721 492, 50 in monthly instalments.
11. The RAF brought an application for leave to appeal the aforesaid order on the basis that the court should have found that Newnet is being investigated by the SIU and that the amount claimed by the applicant may only be paid once the SIU has cleared the invoices. The application was dismissed on 16 August 2022.
12. The RAF, thereupon, lodged an application for leave to appeal to the Supreme Court of Appeal, which application is still pending.
13. This in turn, prompted Newnet to launch the present application.

Legal principles

14. Section 18(1) of the Act provides that a party that wishes to enforce a court order pending the finalisation of an application for leave to appeal or an appeal must establish exceptional circumstances. Section 18(3), furthermore, provides that a party must also prove on a balance of probabilities that it will suffer irreparable

harm if the court order is not enforced whilst the other party will not suffer irreparable harm if the order is enforced.

Facts

15. In support of its application, Newnet states that it presently has approximately 53 patients in its care. Some of the patients suffer from serious injuries and are in need of constant specialised treatment. The specialised treatment includes seven patients that are on ventilators. Newnet states that the RAF is its only significant debtor and without payment of the claimed amount, its ability to proceed with its operations and to maintain the treatment and care of patients is severely hampered. The possibility that it will need to close the hospital, if the much-needed funds are not received is a very real prospect.
16. Newnet states that it is not aware of any other medical facility in its area that will be able to accommodate the patients on short notice or at all. Furthermore, it will be a dangerous and even life threatening exercise to move some of the patients to other facilities at this stage.
17. Save to tender to transfer the patients to State hospitals, the RAF does not dispute the aforesaid allegations. The tender is devoid of any details and does not specify which hospitals the RAF has in mind. No proof is attached that these hospitals can accommodate the patients and more importantly whether the hospitals are equipped to render the same specialised care that the patients are presently receiving at Newnet.
18. The RAF's fear that it will act contrary to the Proclamation if it pays the invoices rendered by Newnet, has been allayed by an affidavit of Mr M Maseko from the

Special Investigation Unit. The affidavit dated 30 August 2022 was attached to a supplementary affidavit filed by the RAF.

19. Instead of confirming the RAF's stance that it is prohibited from making any payments at this stage, Mr Maseko states the following:

"It is common cause that the SIU is not a party to the current proceedings. The SIU is acting on behalf of the RAF in the current investigation pursuant to the provisions of section 4(1)(c) of the SIU Act and it will, at the appropriate time, launch any of its proceedings against any relevant party, pertaining to evidence and facts gathered by the SIU, before the Special Tribunal."

Exceptional circumstances

20. The object of the RAF is contained in section 3 of the Road Accident Fund Act, 56 of 1996, to wit:

*"The object of the Fund **shall be** the payment of compensation in accordance with this Act for loss or damage wrongfully caused by the driving of motor vehicles."* (own emphasis).

21. In fulfilling the object of the Act, the RAF performs a public function and its obligation to pay for services rendered to vulnerable victims of motor vehicle accidents places it on a different footing than a normal commercial creditor.
22. A further factor to consider is the fate of the patients that are cared for at Newnet. These patients have a right to receive the benefits bestowed on them by the Act. These benefits include proper and specialised medical treatment. The physical

well-being of the patients should, in my view, play a pivotal role in establishing whether exceptional circumstances exist.

23. Taking the aforesaid considerations into account, I am of the view, that exceptional circumstances exist to order the enforcement of the order.

Irreparable harm

24. It is clear from the facts set out *supra* that Newnet desperately needs funds to enable it to continue treating the patients in its care. The patients in the applicant's care will evidently suffer irreparable harm if the order is not put into operation.
25. To the contrary, the RAF does not suffer any harm if it is ordered to fulfil its obligations in terms of the Road Accident Fund Act.

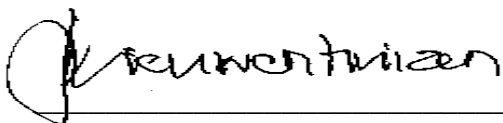
Prospects of success

26. Lastly, I am of the view that the RAF's slim prospects of success on appeal supports the granting of the relief claimed herein.

ORDER

I grant the following order:

1. It is ordered that the operation and execution of the order granted on 25 July 2022 is not suspended and shall operate pending the finalisation of the application for leave to appeal and any appeal noted subsequently.
2. The first respondent is ordered to pay the costs of the application.



N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD: 31 August 2022

DATE DELIVERED: 13 September 2022

APPEARANCES

Counsel for the Applicant:

Advocate JG Cilliers SC
Advocate BD Stevens

Instructed by:

Kritzinger Attorneys

Counsel for the First Respondent:

Advocate R Schoeman

Instructed by:

Malatji & CO Attorneys