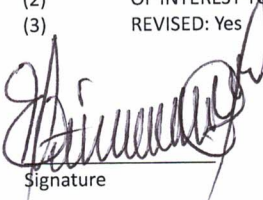




**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case No.: 122882/2023

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED: Yes
	
Signature	05/02/2023 Date

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

SHERIFF OF THE HIGH COURT (CAPE TOWN WEST)

First Respondent

VAN DYK STEENKAMP ATTORNEYS INC.

Second Respondent

PLAINTIFFS LISTED IN ANNEXURE RAF1

Third Respondent

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JUDGMENT

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**KHWINANA AJ**

## **INTRODUCTION**

- [1] This is an urgent application under Rule 6 (12) of the Uniform Rules of the High Court. It specifically seeks permission for the applicant to be exempted from the standard formalities concerning forms and service of process as stipulated in the Uniform Rules. Moreover, it implores the court to prioritize this matter, allowing it to be heard and resolved on an urgent basis.
- [2] The Applicant seeks an order in terms of Rule 45A of uniform rules of court to interdict the first respondent from levying and raising money by way of a public auction to be held on the 05<sup>th</sup> day of December 2023 based on the writs of execution for payment of interest not provided for in court orders.
- [3] That the said interdict shall remain operative pending the finalization of both the following applications:
- 3.1 Road Accident Fund v Sheriff of the High Court (Pretoria East) case no. 056346/2022-application pertaining inter alia to writs of execution for payment of interest not provided for in the court order referred to in the writ of execution.
- 3.2 Road Accident Fund v EM Barnard (Case number 87319/2018 – application for inter alia rescission of judgment and order granted on the 05<sup>th</sup> September 2023.
- [4] That the applicant shall pay wasted costs relating to the public auction scheduled for the 5<sup>th</sup> of December 2023, on a party-and-party scale. That the costs of this application be reserved for determination in the application at 2.1 supra. That the costs of this application be paid by the second respondent on an attorney and client scale.

## **BACKGROUND**

- [5] The Applicant seeks a declaratory order to end an unwarranted practice wherein the first respondent is indemnified by Attorneys to hold auctions based on unlawful writs of execution for payment of interest. The applicant says these writs of execution are unlawful in that they are issued without a court order providing for interest.
- [6] The respondent states interest follows ex lege and that the writs were delivered to the applicant by the sheriff on October 17, 2023, and the applicant did not fulfill the payment obligations specified in the writs. Further, on November 8, 2023, the respondent sent a letter to the Sheriff of Pretoria East, formally notifying the Sheriff of an impending sale of movable assets.

## **POINTS OF LAW and SUBMISSIONS**

- [7] The Respondent raised three points of law namely:

7.1 That the application is not urgent taking into account the period of service which was stated as 17 October 2023 and later changed from the bar to the 07<sup>th</sup> October 2023 taking into account the stamp appearing on the writ which read "Writ Management".

7.1.1 Counsel for respondents submits this matter is not urgent as the applicant knew for over a month about the writ.

7.1.2 Counsel for the applicant submits that the applicant acted after the period of a month and the service by the sheriff was on the 17<sup>th</sup> of October 2023 as per the return of service and he would not be able to make any submissions on the date of

the 07<sup>th</sup> October 2023. He further submitted that they complied with the practice directives in bringing an urgent application before the court.

7.1.3 He says the Form 18 is the writ of execution which requires a date of the order and interest percentage. He says a registrar is not a judge to grant interest. He says the applicant in his replying affidavit has addressed the law and that cannot be done.

7.2 That there was no service on the second and the third respondents to which the respondent's counsel conceded that a power of attorney was filed in terms of Rule 7 of the Uniform Rules of the High Court.

7.2.2 Both counsels conceded that this point *in limine* will no longer stand.

7.3 That the applicant has no legal basis to bring this application as the prescribed interest follows ex lege. Counsel for the respondents relies on caselaw of Saunders<sup>1</sup> and says it remains authority until it is overturned and cannot be changed by a single judge. He says interest is always simple and he relies on section 2A

7.3.3 Counsel for applicant submits that the interest must be granted and he relied on the Prescribed interest rate act and section 17 (3) of the RAF act. He says if there is some doubt the court should grant the stay order.

7.3.4 He says the respondent indemnified the sheriff, and the Minister of Justice does not publicize timeously the interest rate and until then it cannot be changed. He says we cannot rely on caselaw only but the statutes. He says the position has changed since the case of Saunders as the act has changed.

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<sup>1</sup> Saunders N.O vs MEC of Dept of Health: Limpopo 2015JDR 1020 GP



## **THE LEGAL MATRIX**

[8] The law on urgency is crystal clear. Urgent applications must be brought under the provisions of rule 6(12) of the Uniform Rules of Court, with due regard to the guidelines set out in a plethora of caselaw.<sup>2</sup>.

[9] The abovementioned principle was further once again considered in the case of Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others<sup>3</sup> in which this Honourable Court confirmed:

*“I proceed to evaluate the respondent’s submission that the matter is not urgent. The evaluation must be undertaken by an analysis of the applicant’s case taken together with allegations by the respondent which the applicant does not dispute. Rule 6(12) confers a general judicial discretion on a court to hear a matter urgently ... It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the*

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<sup>2</sup> Die Republikeinse Publikasies (Edms) Bpk vs Afrikaanse Pers Publikasies (Edms) Bpk<sup>2</sup> as well as a well-known case of Luna Meubelvervaardigers (Edms) Bpk v Makin and Another 1977(4) SA 135 (W), see further also Sikwe vs SA Mutual Fire and General Insurance 1977 (3) SA 438 (W) at 440G - 441A

<sup>3</sup> Chetty v Chetty and Another (1362/20) [2020] ZAMPMHC 30 (24 June 2020)

respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent's and the administration of justice, the strength of the case made by the applicant, and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."

- [10] In evaluating the respondent's claim that the matter lacks urgency, the court considers both the applicant's arguments and the respondent's undisputed allegations. This court has the discretion to deem a matter urgent. The key factor is whether the applicant faces significant prejudice without an expedited hearing. If such prejudice is confirmed, the urgency of the case is established.
- [11] The essence of this urgency lies in the potential irreparable harm that the applicant would suffer if a preventive order is not granted by the court. The key point of concern is the irreparable nature of the harm. The assets that have been attached and removed in preparation for the auction represent a significant loss for the applicant. Once these assets are sold at the public auction, recovering them would be practically impossible. The sale of these assets at auction would convert a temporary legal action (attachment and removal of assets) into a permanent loss for the applicant, as the assets would then be in the possession of new owners, making retrieval or compensation complex and unlikely.
- [12] The fact that there was service of the writ on the 17<sup>th</sup> of October 2023 as per the affidavit is indicative that the applicant was informed of the order. However, the submissions from the bar by counsel for the respondents that the date has changed is concerning. That being said the service of the writ cannot be viewed in isolation.

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- [12] The fact that there was service of the writ on the 17<sup>th</sup> of October 2023 as per the affidavit is indicative that the applicant was informed of the writ. However, the submissions from the bar by counsel for the respondents that the date has changed is concerning. That being said the service of the writ cannot be viewed in isolation.



Therefore, the urgency of granting an order to halt the auction is underscored by the fact that failing to do so would result in a situation where the damage done to the applicant cannot be undone or adequately compensated.

- [13] The requirements for the granting of an interim interdict were set out in *Setlogelo*<sup>4</sup> and refined, 34 years later, in *Webster*<sup>5</sup>. The test requires that an applicant that claims an interim interdict must establish a prima facie right even if it is open to some doubt; a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; the balance of convenience must favour the granting of the interdict; and the applicant must have no other remedy.

#### **PRIMA FACIE RIGHT**

- [14] The Applicant, indeed is an organ of the state, obliged to administer, bears the responsibility for the prudent and accountable use of public funds in terms of Road Accident Fund Act. Integral to this duty is the obligation of the Applicant to make legitimate payments to claimants. These payments are contingent on court orders issued against the Applicant and in favour of claimants who have legitimately and successfully established their claims.

#### **REASONABLE APPREHENSION OF IRREPARABLE HARM:**

- [15] If the Applicant prevails in their main interest and rescission applications, it will be evident that the current execution against them is unwarranted. Any payments made under these circumstances would lack a valid justification. Thus, the Applicant's efforts to protect against the Respondent's current actions would be justified. The

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<sup>4</sup> *Setlogelo v Setlogelo* 1914 AD 221.

<sup>5</sup> *Webster v Mitchell* 1948 (1) SA 1186 (WLD).



fear of irreparable harm is reasonable, given the uncertainty surrounding the basis for interest claims, especially when the court orders in question do not explicitly address this issue.

13.1 In terms of Section 17(3) of the Road Accident Fund Act 56 of 1996

“No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of subsection (1) shall be payable unless 14 days have elapsed from the date of the courts' relevant order”.

13.2 The legislative reflects a specific intent by the legislature regarding the payment of interest on court-awarded compensation to third parties. According to this provision, interest on such compensation amounts cannot be charged immediately after the court's order. Instead, there is a mandatory waiting period of 14 days from the date of the court's order before any interest can start accruing.

13.3 In terms of the PRESCRIBED RATE OF INTEREST ACT 55 OF 1975 in particular Section 2A Interest on unliquidated debts (1) Subject to the provisions of this section the amount of every unliquidated debt as determined by a court of law, or an arbitrator or an arbitration tribunal or by agreement between the creditor and the debtor, shall bear interest as contemplated in section 1.

#### **BALANCE OF CONVENIENCE:**

- [16] The competing rights and possible prejudices of both the Applicant and Respondents must be weighed up to determine which of the two balances of convenience would favour in the present circumstances. In respect of the Respondents, it is submitted

that the Respondents would suffer no prejudice as the order sought is interim in nature and upon determination of the Main Interest application and Rescission application there will be no ambiguity regarding any legitimate payments, and that the Applicant will be able to process such payments if so determined by the court. Contrarily, the Applicant faces greater possible prejudice should it be forced to make payments so sought in terms of the irregular writs of executions, wherein the court orders relied upon and silent on the aspect of interest, and it is later determined that such payments were unwarranted. Therefore, it is clear that the balance of convenience favours the Applicant.

**NO ALTERNATE REMEDY:**

- [17] In the current situation, the sole recourse for the Applicant is the relief sought in this application: to temporarily halt the enforcement of the writs of execution under Rule 45A and to prevent the Respondents from taking any action based on these writs until the resolution of both the Main Interest application and the Rescission application.

**CONCLUSION**

- [18] I have considered the submissions made by both counsels, the plethora of case law submitted, and the law. I find it inappropriate for the respondent to proceed with the execution, considering the ongoing application brought forth by the Applicant in the Main Interest application. The determination sought in this application is a significant factor that cannot be overlooked.

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**CONCLUSION**

- [18] I have considered the submissions made by both counsels, the plethora of case law submitted, and the law. I find it inappropriate for the respondents to proceed with the execution, considering the ongoing application brought forth by the Applicant in the Main Interest application. The determination sought in this application is a significant factor that cannot be overlooked.

[19] This decision is rooted in the principle of real and substantial justice, which necessitates such a stay under the current circumstances. It is imperative that the judicial process is allowed to unfold in a manner that ensures fairness and a thorough examination of all pertinent issues before execution is carried out.

[20] **Consequently, based on these considerations, I hereby grant the following order order :-**

**1. This application is heard as an urgent application in terms of Rule 6 (12) and the non-compliance with court rules and practice directives is condoned.**

**2. An interim interdict in terms of Rule 45A is hereby issued interdicting the First Respondent from:**

**2.1 Levying and raising money by way of public auction based on writs of execution pertaining to the matters listed in annexure "RAF1" to this application; and**

**2.2 Levying and raising money by way of public auction scheduled for the 5<sup>th</sup> December 2023, based on any writ for payment of interest not provided for in the court orders referred to in the writs.**

**3. The interim interdict shall remain operative pending the finalisation of both the following applications:**

**3.1 Road Accident Fund v Sheriff of the High Court (Pretoria East) Case number 056346/2022- application pertaining inter alia to writs of execution**



DATE OF JUDGMENT: 05<sup>TH</sup> DECEMBER 2023