

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 122825/2023

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

A handwritten signature in black ink, appearing to read 'De Vos'.

Date: 19 February 2024

In the matter between:

**THE ROAD ACCIDENT FUND**

APPLICANT

and

**SHERIFF OF THE HIGH COURT FOR THE**

**DISTRICT OF CENTURION EAST**

FIRST RESPONDENT

**PARTIES LISTED IN ANNEXURE "A"**

**TO THE NOTICE OF MOTION**  
RESPONDENT

SECOND

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**JUDGMENT**

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## [1] DE VOS AJ

- [1] The Road Accident Fund argues it should not be liable for past medical expenses where the injured person is a member of a medical scheme. This is not the first time the RAF makes this argument. So far, the RAF has been unsuccessful in its argument. The Supreme Court of Appeal,<sup>1</sup> this Court<sup>2</sup> and several other divisions<sup>3</sup> have all dismissed the RAF's argument. This is another chapter in this saga.
- [2] The RAF makes this argument in the context of the R 33 million it owes the second respondents in past medical expenses. The second respondents are all persons who were injured in car accidents, with medical aids, who successfully obtained court orders for past medical expenses. The RAF did not pay. The second respondents obtained writs of execution. Staring down a sale of execution of R 33 million, the RAF urgently brought an application to stay the execution of these writs pending applications to rescind the court orders, it has yet to launch.
- [3] The central controversy to be decided is whether the RAF has met its onus to stay the execution of the writs. I was not persuaded that the RAF had met this onus and on 13 December 2023, after hearing argument, I dismissed the RAF's urgent stay application and granted an order in the following terms:
- i) The application is dismissed.
  - ii) The applicant is to pay the costs, including the costs of two counsel on an attorney and client scale.
- [4] On 2 January 2024 the RAF requested reasons for the order. These are those reasons.

### The legal relationships

- [5] All those that claim from the RAF suffered a physical injury. Some are rushed from the accident in an ambulance to a hospital. Many require surgery. Many have

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<sup>1</sup> Bane v D'Ambrosi 2010 (2) SA 539 (SCA); Road Accident Fund v Abdool- Carrim and Others (293/07) [2008] ZASCA 18; [2008] 3 All SA 98 (SCA); 2008 (3) SA 579 (SCA) (27 March 2008)

<sup>2</sup> Discovery Health (Pty) Limited v Road Accident Fund and Another (2022/016179) [2022] ZAGPPHC 768 (26 October 2022) ("Discovery v RAF"); Road Accident Fund v Sheriff of the High Court For the District of Centurion East and Others (083710/2023) [2023] ZAGPPHC 1122 ("RAF v Sheriff")

<sup>3</sup> Rayi NO v Road Accident Fund (9343/2000) [2010] ZAWCHC 30 (22 February 2010); Watkins v Road Accident Fund (Reasons) (19574/2017) [2023] ZAWCHC 14 (8 February 2023); Van Tonder v Road Accident Fund (1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023)

multiple follow-up visits to heal their injuries. The road to recovery is one aided by medical treatment.

- [6] If they are members of a medical scheme, their medical aid pays for these medical expenses. In time, they will claim these medical expenses (termed past medical expenses) from the RAF. If successful the RAF pays the person. The person then pays the medical aid back.
- [7] The legal relationships are: a contractual one between the person and the scheme, which obliges the person to pay back the monies received from the RAF to the scheme. As well as a statutory relationship: between the RAF and the person which obliges the RAF to pay the injured person's damages, which includes past medical expenses.
- [8] Our courts have considered the legal relationships in the context of past medical expenses. Two principles have been considered central, the first is that there is no double compensation and the second is the application of *res alios inter actos*.

#### No double compensation

- [9] The purpose of compensation is to place a person in the position they were in before the accident.<sup>4</sup> If both the RAF and the medical scheme pays for the same expenses, then the injured person is not placed in the position they were before the accident, but in a better position – financially speaking. This double compensation seems unfair. Especially if it is being funded by the RAF levy. But, this is not what happens.
- [10] The agreements between the medical aid and the persons provide that when the RAF pays the person, the person must pay back the medical scheme. This is not disputed on the papers. The second respondents have pleaded that they are all obliged to reimburse/refund the medical scheme for payments made to the member

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<sup>4</sup> *Zysset and Others v Santam Ltd* 1996 (1) SA 273 (C) at 277H - 279C; *Erasmus Ferreira & Ackermann v Francis* 2010 (2) SA 228 (SCA) para 16 the court expressed the nature of an injured person's claim thus:

"As a general rule the patrimonial delictual damages suffered by a plaintiff is the difference between his patrimony before and after the commission of the delict. In determining a plaintiff's patrimony after the commission of the delict advantageous consequences have to be taken into account. But it has been recognised that there are exceptions to this general rule."

by the RAF in respect of past medical expenses.<sup>5</sup> The RAF has not denied this obligation.

[11] It appears that this is the factual position beyond the facts before this Court. In *Discovery v RAF*, Discovery presented the Court with a press release by the Council for Medical Schemes dated 12 March 2012. The press release refers to rule 14.5 of the Model Rules of the Council for Medical Schemes which states, in relation to past medical expenses paid by the scheme, that a member undertakes to submit the claim to the RAF and “to refund the medical aid scheme”. The Rules of the Council for Medical Schemes obliges members to claim from the RAF and to refund the scheme.<sup>6</sup> Discovery has made this part of its internal rules.<sup>7</sup>

[12] In any event, it is a settled principle that a plaintiff, however, who has received full indemnity for loss under a contract of insurance, and has afterwards recovered compensation in an action for damages against the wrongdoer, is not entitled to a double satisfaction. As the insured is obliged to hand over to the insurer whatever money received from the wrongdoer.<sup>8</sup>

[13] Practically, there is no double compensation as the injured person pays the money received from the RAF to their medical scheme.

*Res inter alio actos*

[14] The RAF contends it ought not be liable to pay damages if a person has insurance for the damage. Whilst the general rule is that when determining damages, advantageous consequences of the delict has to be taken into consideration. There are exceptions to the general rule.<sup>9</sup> One of these exceptions is benefits received in

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<sup>5</sup> AA para 3.11

<sup>6</sup> *Discovery v RAF* (see n 2 above) para 33

<sup>7</sup> *Discovery v RAF* para 34

<sup>8</sup> *Ackerman v Loubser* 1918 OPD 31 at 36, applied in *Rayi NO v Road Accident Fund* (9343/2000) [2010] ZAWCHC 30 (22 February 2010)

<sup>9</sup> *Erasmus Ferreira & Ackerman v Francis* 2010 (2) SA 228 (SCA) restated the principle as follows in para 16:

“As a general rule the patrimonial delictual damages suffered by a plaintiff is the difference between his patrimony before and after the commission of the delict. In determining a plaintiff's patrimony after the commission of the delict advantageous consequences have to be taken into account. But it has been recognized that there are exceptions to this general rule.”

terms of insurance contracts.<sup>10</sup> The reason for these exceptions are that the “law baulks at allowing the wrongdoer to benefit from the plaintiff’s own prudence in insuring himself or from a third party’s benevolence or compassion in coming to the assistance of the plaintiff.”<sup>11</sup>

[15] Whilst the RAF is not the factual wrongdoer, the RAF Act places the RAF in the shoes of the wrongdoer.<sup>12</sup> The RAF must not benefit – by not paying for damages – when the person has been prudent enough to obtain insurance.

[16] The principle of *res inter alio actos* has been consistently applied by our courts. This principle informs the precedent established in these types of cases and runs through it like a golden thread. In *RAF v Sheriff*,<sup>13</sup> Davis J held that the payment of the medical expenses by a medical scheme in circumstances as above, “is something collateral” a claim against the RAF”.<sup>14</sup> The participation in a medical aid scheme and their contractual right to demand payment from the scheme is “something between the member and the scheme”.<sup>15</sup> It is irrelevant to the obligations of the RAF and it is said to be *res inter alios acta*, that is something which is a matter between other parties, but not as between a plaintiff and the RAF as defendant. The judgment concludes that “as the law stands”, the RAF is “obliged to compensate the plaintiffs for the past medical expenses incurred as a result of injuries suffered in motor

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<sup>10</sup> *Zysset and others v Santam Limited* 1996 (1) SA 273 (C) at 278C-D the Court explained that

“it is well established in our law that certain benefits which a plaintiff may receive are to be left out of account as being completely collateral. The classic examples are (a) benefits received by the plaintiff under ordinary contracts of insurance for which he has paid the premiums and (b) moneys and other benefits received by a plaintiff from the benevolence of third parties motivated by sympathy. It is said that the law baulks at allowing the wrongdoer to benefit from the plaintiff’s own prudence in insuring himself or from a third party’s benevolence or compassion incoming t the assistance of the plaintiff.”

<sup>11</sup> *Id*

<sup>12</sup> *Road Accident Fund v Abrahams* 2018 (5) SA 169 (SCA para 13, the court explained the position as follows:

“Section 21(1) abolishes the right of an injured claimant to sue the wrongdoer at common law. Section 17(1), in turn, substitutes the appellant for the wrongdoer. It does not establish the substantive basis for liability. The liability is founded in common law (delictual liability). Differently put, the claim against the appellant is simply a common - law claim for damages arising from the driving of a motor vehicle, resulting in injury. Needless to say, the liability only arises if the injury is due to the negligence or other wrongful act of the driver or owner of the motor vehicle.”

<sup>13</sup> See n 2 above

<sup>14</sup> *RAF v Sheriff* para 13 referring to *Mooldeen v RAF* (Case nr 17737/20155)

<sup>15</sup> *Id*

vehicle accidents . . . even if the plaintiffs' medical aid schemes have paid for those expenses."<sup>16</sup>

[17] In recognition of the same principle Mbongwe J in *Discovery v RAF* held that benefits received by a claimant from the benevolence of a third party or a private insurance policy are not considered for purposes of determining the quantum of a claimant's damages against the RAF.<sup>17</sup>

[18] In *Ntlhabyane v Black Panther Trucking (Pty) Limited*<sup>18</sup> the court expressed the principle in the following terms: "a plaintiff's insurance, her indemnification in terms of it, and the consequent subrogation of her insurer are all matters of no concern to the third party defendant."<sup>19</sup>

[19] This principle has been part of our law for years, it has been recognised in the context of RAF matters by the Supreme Court of Appeal more than a decade ago in *Bane v D'Ambrosi*.<sup>20</sup> The principle has been applied consistently, and bears the weight of precedent.

[20] Having considered the principles and precedent in this context, I must consider the RAF's specific reliance on section 19(d)(i) of the RAF Act.

#### The RAF's reliance on section 19(d)(i)

[21] The RAF argues before this Court that, despite this precedent and the principle of *res alios inter actos*, section 19(d)(i) excludes these types of claims. Section 19(d)(i) provides that the RAF shall not be obliged to compensate any person in terms of section 17 for any loss or damage "where the third party has entered into an agreement with any person in accordance with which the third party has undertaken to pay such person after settlement of the claim, a portion of the compensation in respect of the claim".

[22] In short, the RAF argues section 19(d)(i) excludes its liability when people enter into agreements with medical schemes.

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<sup>16</sup> RAF v Sheriff para 14

<sup>17</sup> Discovery v RAF para 21

<sup>18</sup> 2010 JDR 1011 (GSJ)

<sup>19</sup> Quoted with approval in *Watkins v Road Accident Fund (Reasons)* (19574/2017) [2023] ZAWCHC 14 (8 February 2023) para 22

<sup>20</sup> 2010 (2) SA 539 (SCA)

[23] I draw heavily on the reasoning in *RAF v Abdool-Carrim*.<sup>21</sup> In *RAF v Abdool-Carrim*, medical service providers relied on a company A-Fact to assist them in recovering the costs of their services by the RAF. Practically, an injured person's claim was submitted by an attorney working for A-Fact. When the RAF approved the claim, it paid the attorney, who paid A-Fact, A-fact deducted its fees and paid the nett amount to the supplier. After some four years, the RAF stopped paying these claims after it took the view that the agreements between A-Fact and the medical services suppliers fell foul of s19(d) – thus precluding the RAF's liability by relying on section 17 and 19(d)(i) of the Act.<sup>22</sup> The specific claim in *RAF v Abdool-Carrim* concerned a total value claim of R 284 million.

[24] Section 17 permits the supplier of services to claim directly from the Fund<sup>23</sup> if the claim is not excluded by section 19(d)(i) of the Act. The RAF argued that as the claims were excluded by section 19(d)(i) the suppliers could not claim from Fund. The Supreme Court of Appeal rejected this argument. The reasons provided by the Court is directly relevant to this dispute.

[25] The Supreme Court of Appeal had regard to the object of the RAF Act which is to provide the widest possible protection to third parties (injured persons).<sup>24</sup> The benefit to the supplier is that the Fund guarantees payment subject only to the condition that the third party must be entitled to claim the amount as part of his or her compensation and that the amount that the supplier may recover may not exceed the amount which the third party is entitled to recover. The advantage to third parties, who are often indigent, is that they receive medical services comforted by the knowledge that their medical costs are covered and that they are less likely to be faced with a claim before having been paid. So while the subsection was enacted for the benefit of suppliers, it sits neatly with the Act's main purpose referred to above. This is the statutory lens through which the contentious phrase must be interpreted.<sup>25</sup>

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<sup>21</sup> *Road Accident Fund v Abdool- Carrim and Others* (293/07) [2008] ZASCA 18; [2008] 3 All SA 98 (SCA); 2008 (3) SA 579 (SCA) (27 March 2008)

<sup>22</sup> *Id* at para 6

<sup>23</sup> *Id* at para 7

<sup>24</sup> *Id* at para 7

<sup>25</sup> *Id* para 8

[26] The Supreme Court of Appeal also had regard to the purpose of section 19(d)(i) is to protect injured persons from entering into champertous agreements.<sup>26</sup> A champertuous agreement is one where a person, not a party in a suit, bargains to aid in or carry on the suit, in consideration of a share of the matter in suit. The agreement between a medical aid and an injured person is an insurance agreement, and not champertuous.

[27] The Court held that the legislature intended to make the supplier's right to claim from the RAF conditional upon the validity and enforceability of the third party's claim and not to render the supplier's claim unenforceable against the Fund.<sup>27</sup> The Court held –

“if a third party's claim is valid and enforceable and the supplier's is not, the Fund would still be liable to compensate the third party who in turn remains contractually liable to the supplier. The consequence is that a third party may be faced with a claim from a supplier without having been paid and would be denied the benefit of s 17(5) without any fault on his or her part. This result could hardly have been what the draftsman intended. Moreover, it is illogical for the third party claim to be valid and enforceable but the supplier's accessory claim not (except where the supplier has not complied with the prescribed formalities).<sup>28</sup>

[28] Our courts have applied the precedent in *RAF v Abdool-Carrim* subsequently. In *Van Tonder v RAF*<sup>29</sup> Van Zyl AJ considered the same argument by the RAF. The Court identified the issue it had to determine whether the RAF could reject any claim for past medical expenses on the basis that such a claim is excluded by virtue of s 19(d)(i) of the RAF Act. The RAF's argument, in *Van Tonder v RAF* was that “in relation to s 19(d)(i) is that because the plaintiffs, as members of their medical aid schemes, agreed to reimburse such scheme any amounts paid over by the scheme to service providers, this amounts to an agreement falling within the exclusionary provision of that subsection”.<sup>30</sup> It is the same argument which the RAF presented to this Court.

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<sup>26</sup> Id para 13

<sup>27</sup> Id para 11.

<sup>28</sup> Id para 12

<sup>29</sup> *Van Tonder v Road Accident Fund* (1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023)

<sup>30</sup> Id para10



[29] The Court in *Van Tonder v RAF* considered the decision in *RAF v Abdool-Carrim* and held that, “by parity of reasoning this puts paid to the RF’s section 19(d)i argument.”<sup>31</sup> Cloete J held that -

“The RAF was unable to refer me to a single authority to the effect that, despite the long line of decisions to the contrary on the doctrine of subrogation, regulations 7 and 8 of the Medical Schemes Act somehow nevertheless override the well established legal position. I agree with counsel for the plaintiffs that the RAF’s argument on this score is contrived and appears to be an attempt to avoid the consequences of the Constitutional Court’s refusal of leave to appeal in the Discovery Health matter referred to above.”<sup>32</sup>

[30] The RAF provided no basis for this Court to deviate from the reasoning of the Court in *Van Tonder v RAF*. I also, see no such basis.

[31] The second respondents have also referred the Court to *Rayi NO v Road Accident Fund*<sup>33</sup> where the Court held, as a matter of principle that payment by the medical aid does not relieve the RAF “of its obligation to compensate the plaintiff for past medical expenses.” The Court held that the settlement by Bonitas of the plaintiffs past medical expenses does not relieve the RAF of its obligation to compensate the plaintiff for the past medical expenses he incurred. Payment by Bonitas was made in terms of the undertaking made by the plaintiff to Bonitas in terms of which Bonitas agreed to settle the plaintiffs past medical expenses on the understanding that upon a successful recovery from the defendant, the plaintiff would reimburse Bonitas for all the costs it incurred on plaintiff’s behalf in connection with the claim against the defendant. The Court held -

“The obligation which the undertaking imposes on the plaintiff towards Bonitas does not arise until such time that there is a successful recovery of the past medical expenses by the plaintiff from the defendant. The defendant primarily remains liable to the plaintiff for the payment of the past medical expenses and the liability of Bonitas to the plaintiff for the past medical expenses is secondary to that of the defendant. The defendant should pay the past medical expenses to the plaintiff who should upon receipt of payment account to Bonitas in terms of the undertaking.”<sup>34</sup>

[32] For all these reasons, the Courts have dismissed the RAF’s argument in previous matters.

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<sup>31</sup> Id at para 12

<sup>32</sup> Id at pa ra14

<sup>33</sup> (9343/2000) [2010] ZAWCHC 30 (22 February 2010)

<sup>34</sup> Id para 16

### The RAF's argument

- [33] The RAF argues that the purpose of this application is to “protect the second respondents from the champertous agreements they have entered into with the medical aid schemes who are suppliers”. The Courts have repeatedly held that the nature of the agreement between the medical aid and a person is one of insurance.
- [34] The RAF seeks to distinguish the authority of *RAF v Abdool-Carrim* by arguing that the Court only decided the issue whether the RAF should pay the supplier directly for past medical expenses despite the fact that the supplier has entered into agreements with other companies regarding payment of the same past medical expenses.
- [35] However, that is a limited reading of the Supreme Court of Appeal decision. The Court was not only deciding whether payments should be made directly, but also whether these types of claims were excluded by section 19(d). This is clear from the Court's consideration of the purpose of section 19(d) was to protect injured persons from entering into champertous agreements.<sup>35</sup> The Court also expressly approved the manner in which section 19 is functioning: “For if a third party's claim is valid and enforceable and the supplier's is not, the Fund would still be liable to compensate the third party who in turn remains contractually liable to the supplier.”<sup>36</sup>
- [36] The Court concluded in the clearest of language:
- “It follows that s 19(d) is not applicable to the agreements which are the subject of this appeal. The Fund was therefore wrong to impugn the agreements and to refuse to process the respondents' claims.”<sup>37</sup>
- [37] The Court was not only deciding whether suppliers should be paid directly, but also if these types of claims were excluded by section 19(d)(i). The Court concluded, in categorical language, that it was not. This Court is bound by the reasoning of the Supreme Court of Appeal. The RAF's attempts to differentiate these proceedings from that before the Court in *RAF v Abdool-Carrim* is not persuasive.
- [38] The RAF contends that *RAF v Abdool-Carrim* postdates *Rayi v RAF* but does not refer to *Rayi v RAF*. The conclusion the Court is being asked to draw is that if the

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<sup>35</sup> Id para 13

<sup>36</sup> Id para 12

<sup>37</sup> Id para 14

Supreme Court of Appeal thought *Rayi v RAF* was correct it would have stated so. I do not see this as a basis to reject the reasoning in *Rayi v RAF*. The RAF has provided no basis in argument, save for an inference to be drawn, as to why the reasoning in *Rayi v RAF* is incorrect.

[39] The Court is presented with clear and binding precedent in *RAF v Abdool-Carrim*, and persuasive authority in *Van Tonder v RAF* and *Rayi v RAF*.

#### Requirements for a stay

[40] The requirements for a stay are akin to those for an interim interdict. I find that, for all the reasons set out above, precedent, principle and pragmatism, the RAF has failed to show a *prima facie* right it wishes to assert. The RAF invites the Court to consider that it need only prove good cause and that it need not illustrate a probability of success, but rather the existence of an issue fit for trial.<sup>38</sup> However, where there is clear and binding precedent on the issue, there is no triable issue for the RAF to pursue.

[41] In any event, the RAF has failed to satisfy any of the other requirements for a stay. This is the second urgent application for a stay involving the exact same writs. The first urgent stay was argued before Davis J in August 2023. Whilst leave to appeal against the judgment in *Discovery v RAF* was winding its way up the judicial ladder,<sup>39</sup> the RAF launched an urgent application to stay these exact same writs of execution pending the outcome of the leave to appeal. This first urgent stay of the R 33 million writs resulted in the judgment of this Court in *RAF v Sheriff of Centurion East*.<sup>40</sup> Davis J dismissed the first urgent stay application with costs.

[42] The RAF initially sought leave to appeal against the judgment in the first urgent stay, but abandoned it once the Constitutional Court<sup>41</sup> rejected leave to appeal in *Discovery v RAF*. After abandoning leave to appeal against the judgment of Davis J, the RAF launched the present, and second urgent stay application, for the same writs.

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<sup>38</sup> *Hassim Hardware v Fab Tanks* [2017] ZASCA 145 (13 October 2017)

<sup>39</sup> The RAF's application for leave to appeal to the SCA was refused on 23 January 2023, and on 23 February 2023 the Supreme Court of Appeal refused special leave.

<sup>40</sup> *Road Accident Fund v Sheriff of the High Court For the District of Centurion East and Others* (083710/2023) [2023] ZAGPPHC 1122 ("RAF v Sheriff")

<sup>41</sup> 18 October 2023 the Constitutional Court refused the application for leave to appeal with costs.

[43] Davis J held that even assuming the RAF had a prima facie right, it has failed to show irreparable harm or that it has no alternative remedies. The reasons provided by Davis J are equally applicable to this urgent stay. In the first urgent stay, Davis J held -

“In none of the 62 matters listed in said Annexure A has the RAF delivered a rescission application. Even though the papers intimated that this may happen in future, counsel for the RAF could not furnish any firm indication as to what the RAF’s intention would eventually be in respect of those matters, should it be successful in changing the law by way of its directive and by way of the related successful litigation on the Constitutional Court.”<sup>42</sup>

[44] This reasoning of Davis J, in September 2023 in the first urgent stay application, has only strengthened over time. In December 2023 when hearing the second urgent stay application, the RAF had still not launched its rescission applications.

[45] Davis J also held the RAF is no stranger to writs of execution “but has not claimed a feared ‘implosion’ as it did in *RAF v LPC*, should the execution not be stayed”.<sup>43</sup> The Court then set out four reasons why real and substantial injustice did not demand a stay. First, there is no ongoing dispute between the RAF and the second respondents, no rescission applications have been brought and the “RAF is simply litigating about a generalised proposition put forward by it to change the law as it stands”.<sup>44</sup> Second, the RAF is “unilaterally refusing to comply with procedurally validly obtained existing court orders”.<sup>45</sup> Section 165(5) of the Constitution demands compliance with court orders. Third, all the orders were granted in terms of Rule 34A, meaning they “can be revisited at a later stage”.<sup>46</sup> Fourth, the RAF has not proven the “irreparability of any interim payment”.<sup>47</sup> For these reasons, Davis J rejected the first application for an urgent stay as the Court found “that there are no other grave injustices which might occur, should execution of the writs not be stayed.”<sup>48</sup>

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<sup>42</sup> *RAF v Sheriff* para 20

<sup>43</sup> *Id* at para 23

<sup>44</sup> *Id* at para 26

<sup>45</sup> *Id* at para 27

<sup>46</sup> *Id* at para 28

<sup>47</sup> *Id* at para 29

<sup>48</sup> *Id* at para 30

[46] These reasons apply equally to the matter brought before this Court. The Court is, similarly, not persuaded that the requirements for a stay have been met.

### Urgency

[47] The RAF claimed the matter was urgent as it was facing a stay of execution involving R 33 million of its assets. The RAF contended that this was enough to interfere with its daily functioning. The second respondents contended that the RAF has been aware of these writs for lengthy periods of time and that the judgments which underpin them were granted more than a year ago.

[48] Whilst the RAF's grounds for urgency were weak, the Court was swayed by the duplication of work it would cause another court were it to strike the matter. The Court also considered, in light of the history of the matter, as well as the uncertain position it would place the parties to only strike the matter, to consider and decide the case on the merits of the matter. This was possible only because the Court's roll permitted the matter and it would be a travesty if the second respondents had to remain in a position of limbo, particularly as this was the second urgent stay they were faced with.

### Costs

[49] The second respondents contended that the present application was an abuse of process. The RAF was raising a legal argument which was untenable, and against clear precedent. The second respondents referred to the fact that the RAF had not requested the second respondents to suspend the implementation of the writs and had this been done the litigation could have been avoided.

[50] The Court is being presented with an urgent application premised on an argument rejected by the Supreme Court of Appeal, against the tide of 10 years of precedent in our courts, a deviation from the principle of *res alios inter actos* and three existing judgments on this exact point.

[51] It is also the second urgent stay brought by the RAF against the exact same writs. The RAF has not cured the defects in the case it lost before Davis J.

[52] In these circumstances the Court accepted the second respondents' submissions that costs should be granted on a punitive scale.



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I de Vos  
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	SS MAELANE
Instructed by:	Malatji & Co Inc
Counsel for the respondent:	F ARNOLDI SC B STEVENS
Instructed by:	A Wolmarans Inc
Date of the hearing:	13 December 2023
Date of request for reasons:	2 January 2024
Date of judgment:	19 February 2024