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IN THE HIGH COURT OF SOUTH AFRICA
**Gauteng Local Division, Pretoria**

CASE NO: **2023-134420**

In the matter between:

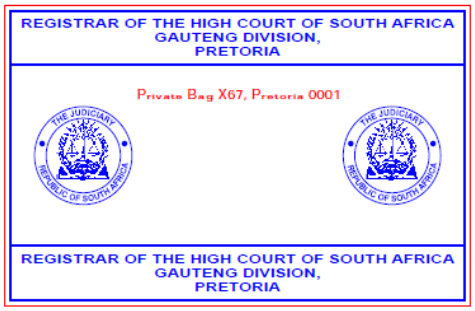
| | |
|---|---|
| **THE ROAD ACCIDENT FUND** | Plaintiff / Applicant / Appellant |
| and | |
| **THE LEGAL PRACTICE COUNCIL,THE BOARD OF SHERIFFS,THE SHERIFF PRETORIA CENTRAL,THE SHERIFF PRETORIA EAST,THE SHERIFF CENTURION EAST,THE SHERIFF JOHANNESBURG CENTRAL,THE SHERIFF CAPE TOWN,THE SHERIFF EAST LONDON,THE SHERIFF DURBAN CENTRAL,THE PRETORIA ASSOCIATION OF ATTORNEYS,THE JOHANNESBURG ATTORNEYS ASSOCIATION** | Defendant / Respondent |

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**Notice (Other)**

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**NOTE:** **This document was filed electronically by the Registrar on 21/12/2023 at 1:41:05 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**




ELECTRONICALLY SIGNED BY:

**Registrar of High Court of South Africa , Gauteng Local Division,Pretoria**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

CASE NUMBER:

In the matter between:

| | |
|---|---|
| **THE ROAD ACCIDENT FUND** | APPLICANT |
| and | |
| **THE LEGAL PRACTICE COUNCIL** | FIRST RESPONDENT |
| **THE BOARD OF SHERIFFS** | SECOND RESPONDENT |
| **THE SHERIFF, PRETORIA CENTRAL** | THIRD RESPONDENT |
| **THE SHERIFF, PRETORIA EAST** | FOURTH RESPONDENT |
| **THE SHERIFF, CENTURION EAST** | FIFTH RESPONDENT |
| **THE SHERIFF, JOHANNESBURG CENTRAL** | SIXTH RESPONDENT |
| **THE SHERIFF, CAPE TOWN** | SEVENTH RESPONDENT |
| **THE SHERIFF, EAST LONDON** | EIGHTH RESPONDENT |
| **THE SHERIFF, DURBAN CENTRAL** | NINTH RESPONDENT |
| **THE PRETORIA ASSOCIATION OF ATTORNEYS** | TENTH RESPONDENT |
| **THE JOHANNESBURG ATTORNEYS ASSOCIATION** | ELEVENTH RESPONDENT |

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

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**RULE 16A NOTICE**

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1.

**TAKE NOTICE THAT** the applicant intends to make application on a date to be arranged with the Registrar, for an order in the following terms:

1.1 That condonation be granted for any non-compliance with the Uniform Rules of Court.

1.2 That all writs of execution and warrants of attachment against the Road Accident Fund ("the RAF") based on court orders already granted or settlements already reached in terms of the Road Accident Fund Act, 1996 (**'the RAF Act'**), as amended, which are not older than 180 calendar days as from the date of the court order or settlement in question, are hereby suspended for a period of 180 days calendar days from the date of the order or settlement in question.

1.3 That all writs of execution and warrants of attachment against the RAF based on orders already granted or settlements already reached in respect of legal costs for a plaintiff in personal compensation claims against the RAF are hereby suspended -

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Private Bag X67, Pretoria 0001

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

1.3.1 In matters where the bill of costs has been settled with the RAF internally within six months from the date that the order was granted, or from when the settlement was reached, then the suspension will be for 180 days determined from the date of the settlement of the bill of costs;

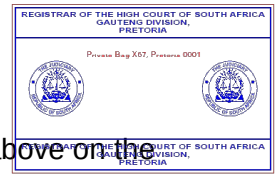
1.3.2 In matters where the bill of costs has been settled with the RAF internally, but the date when it was settled exceeded six months from when the order was granted, or the settlement was reached, then the suspension duration will be calculated as follows – 180 days, reduced by each day beyond the six month mark, until reaching a minimum suspension of 45 days;

1.3.3 In cases where the bill of costs is not settled internally with the RAF but had to be taxed by the Taxing Master, then the suspension will be for 45 days post-taxation by the Taxing Master;

1.3.4 The suspension period shall be the earlier of the three conditions set by the orders above.

1.4 That all writs of execution and warrants of attachment against the RAF based on claims for interest on capital amounts already paid to claimants which are not older than 180 days from the date of payment of the capital amount are suspended for a period of 14 days.

1.5 That all attorneys who represent a claimant and whose matters have not been placed on the RNYP list, are to provide the RAF with a list of matters which do not appear on the RNYP list by email to 45A-order@raf.co.za within 30 Court days from the date of this order.




1.6 That the RAF is ordered to place all matters referred to in paragraph 1.5 above on the RNYP list within 30 court days from the date mentioned in paragraph 1.5 and should the RAF fail to load such matters on the RNYP list, and a period of 14 days has lapsed after the RAF's attorneys of record in this matter had been informed thereof, then the matter may be executed, notwithstanding the age of the judgment. This order shall not deprive the RAF of the right to contest such execution in terms of any law.

1.7 That the RAF is ordered to pay all personal capital compensation claims based on court orders already granted in terms of the RAF Act, 1996, which are older than 180 days from the date that the RAF was informed thereof by email to 45A-order@raf.co.za within 30 days from the date set out in paragraph 1.6, provided that the RAF has been properly notified by an attorney who represents the claimant that have such claims that are older than 180 days of the existence of such claims within 30 days from the date of this order by email to as set out in paragraph 1.5. This order shall not deprive the RAF of the right to contest the order in terms of any law.

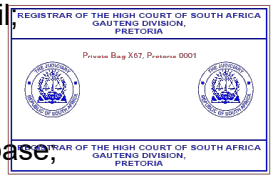
1.8 The applicant is to continue distributing the RNYP list to the attorneys on its database on a bi-monthly basis.

1.9 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*.

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

1.11 The above order will be published by the applicant:

1.11.1 to all practicing attorneys through the Legal Practice Council;




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

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

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

1.12 Directing that any party who opposes the relief sought be ordered to pay the applicant's costs, including the costs of three counsel.

1.13 Further and/or other alternative or just and equitable relief.

2.

The RAF operates under a funding mechanism which is deeply impacted by variables beyond its direct influence. The inherent financial instability of the Fund stems from fluctuating payment of the Levy to the RAF, and it is dependent on external market dynamics and the sheer number

of claims against the Fund which grows each year. The initial design of the RAF framework did not envision that the RAF would be a fully self-sufficient entity, capable of meeting all claims with one lump sum immediate payment where there are hundreds of thousands of claims against the Fund that it must administer and process.

3.

The RAF's financial problems further stem from the fact that approximately 500 000 people are injured in motor vehicle related accidents *per annum*.




4.

The damages claims that flow therefrom are not only for the direct damage caused through injury but also the indirect damages that flow from such injuries which the RAF is liable for. The RAF's structure markedly differs from insurance models, where there is a direct correlation between the premium collected and the risk assumed by the insurer. The RAF's financial situation is intricately tied to a legislative process. The RAF Fuel Levy is managed by SARS, and it is integrated into the Customs and Excise Act through specific schedules, thus making its allocation to the RAF a matter of legislative discretion.

5.

Such funds, transferred from the National Treasury to the RAF, represents the limit of financial resources available.

Consequently, the RAF is compelled to meticulously manage its disbursements through limited resources controlled by external variables. The RAF has no alternative but to execute payments as its financial situation permits to prevent a collapse of the Fund. In stark reality, the RAF faces a significant fiscal challenge.

6.1 The RAF lacks the capital to settle all claims by lump sum as they fall due;




6.2 The Court makes orders that the RAF must make payment of capital compensation to claimants within 14 days that the order is made;

6.3 The RAF is unable to make payment of claims as they fall due within 14 days from the date that an order is made. The RAF is only able to process payments within 180 days;

6.4 Because there are thousands of orders that the RAF must make payment of the RAF must queue the claims on its Requested But Not Yet Paid list (**"the RNYP list"**) and then implement a structured payment of claims that is equitable;

6.5 Therefore, the RAF prioritizes the settlement and processing of the oldest claims first that have passed the quality assurance and fraud prevention protocols;

6.6 In order to do so, the RAF requires a suspension on writs to prevent parties from, for instance, attaching the RAF's assets after 15 days to obtain preferential payment before other vulnerable claimants that have been waiting 180 days;

6.7 The majority of parties agree to wait in a queue to receive payment of their claims from the RAF. The minority of parties however refuse to wait unless the Court has granted the orders sought herein;

6.8 The calamitous situation, therefore is:

6.8.1 If the RAF does not approach the Court for the orders sought then a minority of parties will rush to attach the RAF's assets (as they did before April 2021, and again during September 2021 to August 2023 when there was no reprieve) for orders that state that payment must be made within 14 days of the order;




6.8.2 Such parties do so regardless of the fact that thousands of claimants are waiting in the queue, and have been doing so for much longer than they have, which is intrinsically unfair and prejudicial to their rights, and the RAF's ability to regulate, manage and administer payments equitably;

6.8.3 This causes a snowball effect where more and more parties refuse to wait in a queue and they then rush to attach the RAF's (very limited) assets as well;

6.8.4 Not long thereafter the RAF will collapse under the overwhelming pressure of thousands of writs of execution;

6.8.5 The RAF was on the verge of collapse in November 2020 as set out in the applicant's main application;

6.8.6 The RAF therefore continues to require a suspension every six months because of the conduct of a minority of parties that refuse to agree to wait 180 days without this Court granting a moratorium.

6.9 The RAF requires a suspension on the execution of writs based on orders already granted, or settlements already entered into *in re* personal capital compensation awards, interest thereon and legal costs in such matters. The terms of the suspensions sought are set out herein above.

7.

**PLEASE TAKE NOTICE THAT** an electronic copy of the applicant's notice of motion, founding affidavit and annexures thereto, can be found at www.mcinc.africa/news/RAF.




8.

In August 2023 the High Court, Pretoria, granted orders which lapse in February 2024. The RAF therefore approaches the Court for orders to ensure that the RAF can stay operational, can manage, and administer the claims against the Fund, and to ensure that it can do so by making payment on an equitable basis.

9.

The application raises the following constitutional issues:

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

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

9.3 The powers of the RAF are set out in section 4 of the Act and *inter alia* include

the stipulation of the terms and conditions upon which claims for the compensation contemplated in section 3 of the Act, shall be administered and the management and utilization of the money of the RAF for purposes connected with or resulting from the exercise of its powers or the performance of its duties.

9.4 The RAF is not in a financial position to make payment of all claims as they fall due, by lump sum. The RAF can only make payment of claims on a structured and equitable basis as prayed for above;




9.5 The relief the applicant will seek will have an impact on the person's rights in terms of the Bill of Rights of the Constitution of South Africa, 1996, and more specifically on the following rights:

9.5.1 the right to equality in terms of section 9;

9.5.2 the right to dignity in terms of section 10;

9.5.3 the right to life in terms of section 11;

9.5.4 the right to freedom and security of persons in terms of section 12;

9.5.5 the right to healthcare, food, water and social security in terms of section 27; and

9.5.6 the right to access to Courts in terms of section 34.

10.

The relief sought will have an impact on those fundamental rights, but the relief will however also protect those rights by ensuring that persons/claimants are treated equally and in ensuring that their rights and claims are secured. The RAF accepts that persons have a right to execute

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

11.

The RAF does not seek a moratorium on the payment of claims; it seeks a moratorium on execution steps, as set out above.




12.

Supplier claims, as defined in the Road Accident Fund Act, 1996, are excluded from the above moratorium sought by the RAF in this application.

13.

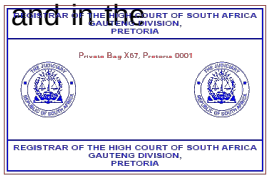
**TAKE NOTICE THAT:**

13.1 As the Court's August 2023 orders are set to lapse in February 2024 should any further party wish to participate in the RAF's application, then such party should acknowledge the below truncated time periods.

13.2 Any interested party in the aforesaid constitutional issues may, with the written consent of all the parties to the proceedings, **given not later than 10 days after the filing of this notice** or may be admitted as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties. The written consent contemplated in Rule 16 A (2) shall, **within 3 day of it having been obtained,** be lodged with the Registrar

and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument. If the interested party contemplated in sub-rule (2) of Rule 16A is unable to obtain the written consent as contemplated therein, **that party may, within 3 day of the expiry of the period above**, apply to the Court to be admitted as an *amicus curiae* in the proceedings.

13.3 Due to the fact that the current orders are set to lapse in February 2024 the RAF will request that the Court dispense with the specific time frames set out in Rule 16A and to direct that the above time frames are reasonable in the circumstances and in the interest of justice.




13.4 An application to be admitted as an *amicus curiae* must briefly describe the interests of the *amicus curiae* in the proceedings, clearly and succinctly set out the submissions which will be advanced, the relevance thereof to the proceedings and the party's reasons for believing that the submissions will assist the Court and are different from those of the parties. The submissions must furthermore be served upon all parties to the proceedings considering the truncated periods.

**PUBLISHING OF NOTICE:**

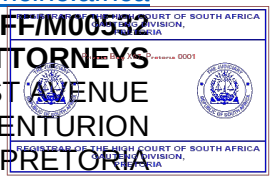
14.

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

**DATED AT JOHANNESBURG ON THIS THE 21ST DAY OF DECEMBER 2023.**



**MALATJI & CO ATTORNEYS**
Attorneys for the applicant
5th floor, The Ridge
1 Discovery Place
Sandton
Tel: (011) 072 2600
Email: tmalatji@mcinc.africa
seloff@mcinc.africa
**REF: T. MALATJI/S ELOFF/M00532**
**C/O DITSELA ATTORNEYS**
4th FLOOR, 467 WEST AVENUE
DIE HOEWES, CENTURION
PRETORIA
Tel: 012 051 9953
Email: jones@ditsela.com



TO: **THE REGISTRAR OF THE HIGH COURT**
**PRETORIA**