REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 43873/20

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

Date: 10/9/2020 Signature: ESchuyff

In the matter between:

ROAD ACCIDENT FUND APPLICANT

and

LANA NEL N.O. FIRST RESPONDENT

VAN DER MERWE ATTORNEYS N.O. SECOND RESPONDENT

ORDER AND REASONS

Having considered the documents filed of record and submissions made in argument, the following order is granted:

1. A Rule Nisi is hereby issued, calling on all interested and affected parties to show cause on Wednesday 28 October 2020, at 10h00 or as soon as the matter can be heard in the unopposed motion court, why an order in the following terms should not be made final:
   1.1. Pending the finalisation of an application in terms of Rule 45A of the Uniform Rules of Court, which application is to be instituted within 20 days of the grant of the order:
      1.1.1. The first respondent is to restore, at the applicant's costs, the applicant's possession of the movable property attached and removed in terms of writs of execution, to 38 Ida Street Menlo Park, Pretoria, where the first respondent removed the movable property from;
      1.1.2. The first respondent is restrained from removing any of the movable property in the applicant's possession.
2. Pending the return day, the *Rule Nisi* operates as an interim interdict with immediate effect;
3. The Order is to be published in a national newspaper before 25 September 2020, published on the websites of the Gauteng and Pretoria's Attorney's Associations respectively within 3 days, and served by the Sheriff on the second respondent.
4. The applicant is to enrol the matter in accordance with the general practise in this Division.

BY ORDER OF COURT

REASONS

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1. It is trite that the Road Accident Fund Act 56 of 1996 (RAFA) was promulgated to ensure security of recovery of damages claimable by road accident victims. As a result, all road accident victims has an interest in the optimal functioning of the Road Accident Fund (RAF).

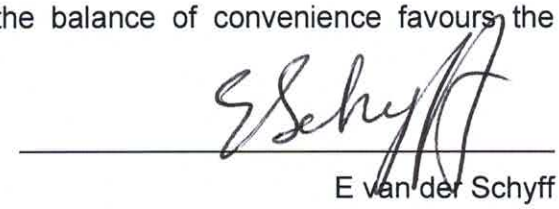
2. It is statutorily determined that the Road Accident Fund shall procure the funds it requires to perform its functions by way of a Road Accident Fund levy. This levy, less any amount of such levy refunded in terms of the Custom and Excise Act of 1964, is a direct charge against the National Revenue Fund for the credit of the fund.

3. The RAF's precarious financial position, is a matter of public record. It is a well-known fact that road accident victims, who secured court orders in their favour, receive their compensation long after the award are made. This is not a new development and can actually be described as the *status quo.* Generally, the prejudice they suffer are countered by adding *mora interest* to the claim amounts after a court order was obtained.

4. The applicant *inter alia* relies on the factual prospect of allocations awaited from the South African Revenue Service to satisfy the requirement of good cause for the grant of relief in terms of Rule 45A of the Rules of Court.

5. The removal of movable property from the RAF's offices will seriously impede on the Fund's ability to perform the function the Fund was created for. Allowing the removal and subsequent sale of property will benefit a limited number of claimants to the detriment of thousands of successful and prospective claimants. In addition, cognisance can be taken that a liquidation application against the RAF is pending. To allow assets to be sold to meet a few creditor's claims in circumstances where it is common knowledge that a substantial body of creditors exist, without affording the applicant to proceed with its intended application, will benefit a few creditors to the exclusion of the whole body of creditors. It is thus in the public interest and just and equitable to provide all interested and affected parties with the opportunity to address the Court before a final order is made regarding the applicant's request to be allowed to approach the Court with its proposed Rule 45A application.

6. The second respondent's clients will not suffer irreparable harm if an interim order is granted, and in the circumstances, the balance of convenience favours the granting of the interim order.



E van der Schyff
Judge of the High Court, Gauteng, Pretoria

Counsel for the applicants:	Adv M Manala
	Adv H Legoabe
Instructed by:	Malatji & Co Attorneys
Date of the hearing:	8 September 2020
Delivered:	10 September 2020