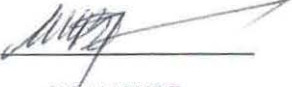




**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 30076/2021**

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
<u>29/04/2022</u>	
DATE	SIGNATURE

**In the matter between:**

**ROAD ACCIDENT FUND**

**Applicant**

**And**

**H.W. THERON INC. ATTORNEYS  
SOUTH AFRICAN LEGAL PRACTICE COUNCIL  
SHERIFF OF THE COURT, PRETORIA EAST  
ABSA BANK**

**First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent**

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## JUDGMENT

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**MBONGWE J**

### INTRODUCTION

- [1] There are presently two applications before me concerning this matter and both emanate from the judgment that was delivered on 4 October 2021. The first is the application for leave to appeal against the judgment and orders granted and the second is the counter application by the Applicant in terms of the provisions of section 18(4) of the Superior Courts Act in response to the approval of the Court sought by the First Respondent to execute writs attachments against the Applicant, despite the application for leave to appeal or the outcome thereof.
- [2] In the initial urgent application, the Applicant had sought an order, in Part A, that it pays court ordered or settled capital amounts and taxed costs in respect of certain listed matters directly to the successful claimants, not their attorneys (First Respondent) as ordered, and that the execution of the writs of attachment issued at the behest of the First Respondent be suspended pending the determination of Part B of the application. The application was dismissed with costs.
- [3] The Applicant now seeks leave to appeal against that judgment. The First Respondent has simultaneously approached the Court in terms of Sections 18(1) and (3) seeking its approval for the execution of the warrants of attachments against the Applicant, despite the application for leave to appeal or the outcome thereof. To counter the First Respondent, the Applicant brought an application in terms of section 18(4) seeking an order that the execution sought by the First Respondent be stayed pending the outcome of the hearing of the appeal.

## SUMMARY OF THE MERITS (INITIAL HEARING)

- [4] It is necessary to consider the merits or lack thereof, in the application for leave to appeal. The First Respondent has had orders granted for payments by the Applicant, into its trust account, of the capital amounts and taxed bills of costs in some 9 listed matters in which it represented the successful claimants. The Applicant's refusal to make the payments is premised on problems it previously had with the First Respondent and in respect of which the Applicant laid complaints with the Legal Practice Council (LPC) and criminal charges against the First Respondent some four years ago. No action has been taken against the First Respondent. The problems concerned were resolve and the parties continued to work normally.
- [5] The court had considered each of the grounds raised by the Applicant for refusal to pay as ordered and concluded that the refusal lacked legal grounding and/or justification and, therefore, dismissed the urgent application on 4 October 2021. It is necessary to state that, according to an uncontested version of the First Respondent, the Applicant had shortly after the judgment was handed down, effected payments in respect of all, but one of the matters concerned. In so doing, the Applicant had correctly complied with the initial orders, as well as the order in the judgment appealed against. It is not the Applicant's case that the payments were made without prejudice and the contention that the relevant payments were made in error lack merit as the Applicant had not demanded the repayments thereof. It is, therefore, impossible to find the basis upon which the present application for leave to appeal premised.
- [6] It is apposite to refer to a judgment of the Full Court in *Road Accident Fund v Legal Practice Council & Others* [58145/2020] handed down on 09 April 202, wherein it was stated:

*"[39] I have referred to the objections raised by the attorneys acting on behalf of the clients who are successful claimants against the RAF. I do not believe that payments should be withheld from successful claimants*

*because of a dispute between the RAF and the attorneys acting for them, or pending the repayment of double payments by attorneys. Such exceptions may cause hardships on and be unfair to successful claimants. In such instances, the RAF should approach the court, on a case-by-case basis, if it believes or is advised that it has valid grounds to obtain an order suspending writs of execution and warrants of attachments against it...The RAF, as it undertook to do, must pay all claims based on court orders already granted or settlements already reached in terms of the RAF Act, which are older than 180 days as from the date of the court order or date of the settlement already reached in terms of the RAF Act, on or before 3 April 2021, provided that it has been notified by any attorneys who represent claimants that have such claims in accordance with paragraph 3 of this order made on 16 March 2021. ”*

- [7] There is no allegation by the Applicant that the First Respondent has not complied with the principle(s) in the judgment of the Full Court. Instead, the Applicant sought to opportunistically rely on the Public Finance Management Act (PFMA) and the Constitution for the relief it sought notwithstanding the unjustifiable prejudice to the business of and interference with the agreement between the First Respondent and the successful claimants it represents.
- [8] The principles in the matters mentioned paragraph 6 finds application in the present matter. The invocation of the provisions of the PFMA and the Constitution is misplaced in the face of the unjustified prejudice caused by conduct of the Applicant, which is nothing short of an abuse of power. Neither the provisions of the Constitution nor the Public Finance Management Act offer refuge to the Applicant in the circumstances of this case.
- [9] In particular, it is of no moment that the Applicant differs with the views expressed in the judgment of this court with regard to the distinguishable circumstances and facts in this matter and the matters before Basson J and Van der Schyff J, respectively. The matters before the two Courts concerned the erroneous double payments the RAF had made to the attorneys involved as parties in those respective matters. The reference to those matters came as

a result of the First Respondent's assertion that it had itself been a recipient of double payments, but had returned the second payments on its own accord to the Applicant – implying that there was no justification for the Applicant to refer to those decisions and for the relief sought against it in the present matter.

- [10] It necessary to state that I have since become aware of a similar application the Applicant had brought on urgency before Mabuse J in *Road Accident Fund v Ehlers Attorneys and Others* [Case No. 32968 /2021 in which judgment was handed down on 28 July 2021. The relevance of that judgment lies in the similarities of the facts and in the Applicant's approach to both Courts. Notably are the similarities in the interim orders sought in PART A. Both matters were heard in the same month and were dismissed with costs.
- [11] Both the Applicant's applications for leave to appeal and in terms of Section 18(4) were dismissed, correctly so, by Mabuse J. The Applicant's subsequent appeal to the Full Court in this division against Mabuse J's refusal and dismissal of the application in terms of section 18(4) were also dismissed by the Full Court on 9 December 2021, thereby cementing the way for the First Respondent in that matter to proceed with the execution of the warrants. I am bound by the decision of the Full Court which I coincidentally fully embrace.

## CONCLUSION

- [12] The Applicant's persistence with this type of unwarranted and harmful litigation ought to frowned upon. As indicated in this and the earlier judgment, there is no justification for the Applicant conduct in bringing this appeal, all the circumstances considered. The applications consequently ought to fail.
- [13] I could think of no reason why the Applicant's attorneys, having been instructed in both matters, had not brought the two applications simultaneously for hearing by the same court at the same time. The engagement of two counsel, including Senior Counsel, in each matter points to a disregard of the precarious financial position of the Applicant. This fact, viewed against the unreasonableness and

unjustified refusal to pay the Court ordered or settlement amounts as per Court orders is egregious and contemptuous.

[14] The appeal has no prospects of success nor are there compelling Circumstances for the appeal to be heard.


## **COSTS**

[15] The general principle that costs follow the outcome of the matter applies.

## **ORDER**

[16] In light of the findings in this judgment the following order is made:

1. The application for leave to appeal is dismissed
2. The application in terms of section 18(4) is dismissed.
3. The First Respondent is granted approval to proceed with the execution of the warrants of attachment in respect of payments that have not been made relating to the matters of the claimant concerned in this case.
4. The Applicant is ordered to pay the costs which shall include the costs consequent upon the employment of two senior counsel.

  
**M MBONGWE J**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA.**

## **APPEARANCES**

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With him Adv P. Nyapholi-Motsie

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For the Respondents: Adv J.F Grobler S.C  
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Date of Hearing: 26 November 2021

**JUDGMENT WAS ELECTRONICALLY TRANSMITTED ETC ON 29 APRIL 2022.**