IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED:

26 March 2025

DATE

[redacted]

SIGNATURE

CASE NO: 019721/2025

In the matter between:

ROAD ACCIDENT FUND Applicant

and

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE First Respondent

MINISTER OF FINANCE Second Respondent

ESKOM Intervening Party

JUDGMENT

TOLMAY J

INTRODUCTION

[1] The Road Accident Fund ("the RAF") is funded by the Road Accident Fund levies ("RAF levies"), which is levied in terms of the Customs and Excise Act, 1964 ("the CEA") on diesel purchases. Taxpayers may claim "diesel refunds" if they comply with the requirements of the CEA. This entails that a taxpayer is refunded the RAF levy and the fuel levy.

[2] The dispute between the RAF and the South African Revenue Service ("SARS") is about "diesel refunds" claimed by Eskom, in terms of the CEA. SARS has the authority to decide whether diesel refunds (which include the RAF levies) claimed by taxpayers, such as Eskom, should be paid to taxpayers. SARS decided that Eskom is not entitled to the diesel refunds for a period of approximately 30 months (2019 to 2021). A dispute arose between SARS and Eskom. SARS and Eskom then entered into a settlement agreement in terms of which SARS contends it is obliged to pay Eskom an amount of approximately R5.1 billion (five point one billion rand).

[3] SARS and Eskom entered into a settlement agreement on 17 October 2024. SARS informed the RAF about this settlement agreement on 12 November 2024. SARS informed the RAF that it will recoup/deduct the R5.1 billion from the RAF levies over a 2-month period. This period was then extended to five months.

[4] On 14 March 2025, Eskom filed an application to intervene, this application was not opposed by any of the parties and was granted.

URGENCY

[5] The matter was set down for 24 February 2025, but on that day the parties agreed that the matter should proceed for facilitation in terms of the Inter-Governmental Relationship Framework Act, 13 of 2005 ("IRF Act"). During December of 2024, the RAF declared a dispute in terms of the IRF Act. This was acknowledged in SARS' email of 31 January 2025. The matter stood down until 28 February 2025 for purposes of facilitation before retired Justices Ngcobo and Nugent. The process started on 28 February 2025.I was requested to avail myself to hear the application on 14 March 2025 if the dispute was not resolved.

[6] On 14 March 2025 Eskom filed the application for intervention and the affidavit and the settlement concluded between Eskom and SARS attached thereto impacted the approach of the parties significantly. The RAF and Eskom agreed to a time restricted interim interdict, but SARS was not amenable to the proposal.

[7] It also transpired that despite the declaration of the dispute, the ongoing dispute resolution process in terms of the IRF Act, SARS has recouped/deducted the first tranche of approximately R1.2 billion (one point two billion rand). The RAF became aware of this on 26 February 2025. To add insult to injury, I was informed by counsel representing SARS that the certificate to Treasury regarding the second tranche will be issued on the same day that I was hearing the matter. This led to me granting an interim order pending the judgment which I undertook to deliver on or before 28 March 2025. The attitude of SARS, which I find rather difficult to comprehend, created even more reason to hear this matter on an urgent basis.

[8] SARS submitted that it had no choice but to proceed deducting/recouping the money because if it did not, Treasury's records will not be accurate. It must be noted that the Minister of Finance is the second respondent in this application but chose not to partake in these proceedings. At this stage, I was informed that neither Treasury nor the Minister of Finance have joined the proceedings in terms of the IRF Act.

[9] The RAF says that if the application for the interim relief is not granted on an urgent basis, the RAF will not receive adequate redress in the normal course. The intended deductions will render the RAF unable to perform its core statutory duty. The operations of the RAF nationwide will also be severely prejudiced. The intended deductions of R5,1 billion constitute approximately 10% of the RAF's annual income. The RAF says that the intended deductions will render the RAF unable to perform its core statutory duty. The operations of the RAF nationwide will also be severely prejudiced. The intended deductions of R5,1 billion (five point one billion rand) constitute approximately 10% of the RAF's annual income.

[10] SARS says that the application is not urgent and that the RAF failed to take the necessary steps since 12 November 2024 to protect its interests, if any urgency exists, it is self-created. SARS, however, does not elaborate on which steps the RAF were supposed to take.

[11] The chronology of events leading up to the launching of the application is important. On 13 January 2025, SARS acknowledged the declaration of a dispute under the IRF Act. On 31 January 2025, a meeting was held between the RAF and SARS. On

3 February 2025 the RAF sent an email to SARS proposing the names of three retired judges to act as facilitator in terms of the IRF Act. On 7 February 2025, the RAF requested a response to the email. On the same day the RAF requested an undertaking from SARS that it would not proceed with the intended deductions until the dispute declared in terms of the IRF Act has been finalised. On 10 February 2025, the RAF delivered a notice in terms of s 96 of the IRF Act, because of SARS' failure to respond to the request to give the aforementioned undertaking. The undertaking was not given and RAF filed the urgent application.

[12] The matter is urgent not only based on the reasons initially provided by the RAF, but also due to SARS' conduct by deducting/recouping the first tranche and insisting that it will proceed doing so despite the pending processes before court and the ongoing processes in terms of the IRF Act.

THE ARGUMENTS

[13] In the initial affidavit filed by the RAF the position was taken that it should have been part of the settlement negotiations between SARS and Eskom. In the supplementary affidavit and heads of argument filed on 10 March 2025, the RAF correctly disavowed that proposition. No such right exists, but SARS could have and should have informed the RAF well in advance of the potential financial consequences, especially seeing that the papers revealed that the dispute between SARS and Eskom is for the period between 2019 up to 2021.

[14] When Eskom's application for intervention was filed, the settlement agreement between Eskom and SARS was attached. This changed the whole approach by the RAF. Counsel representing SARS was highly critical of the new arguments raised on behalf of the RAF and insisted that the RAF should stand or fall based on what was raised in the founding papers. However, the RAF was unaware of the facts until Eskom filed their papers. It needs mentioning that SARS on the other hand was aware of these facts and in my view was duty-bound to reveal it to both the Court and the Justices involved in the facilitation process but inexplicably failed to do so, despite the fact that SARS was empowered by the settlement agreement to disclose it to the RAF.

[15] In this context the settlement agreement makes for interesting reading.

Clause 1.1.17 defines "'settle' and 'settlement' as the meaning referred to in section 77J of the CEA". Section 77J of the CEA states:

"For the purposes of this part 'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to the facts, or of both the facts and the law, and 'settlement' shall be construed accordingly"

[16] Clauses 2.1 to 2.4 of the settlement agreement sets out the issues in dispute between the parties and the processes followed to try and resolve the issues in dispute which remained unresolved.

[17] Clause 4.3 states:

"The parties agree to settle the dispute on the following basis:

ESKOM shall be paid a final amount of 80% of the amount of the refund of levies claimed by ESKOM in respect of all the periods from February 2019 to the latest period in which a diesel refund claim has been filed as at the effective date of the agreement."

[18] Clause 4.4.1 states:

"SARS and ESKOM have performed a reconciliation of the amounts ESKOM has claimed and SARS has refunded."

[19] Clause 5.5 of the settlement agreement states:

"The Settlement does not in any way constitute an admission by any Party as to the true nature or the proper interpretation of any of the issues or applicable legal principles and may not be used by the Parties in relation to any other matter or transaction other than the Settlement of this Dispute" (own underlining).

[20] Paragraph 6.3 states:

"The Commissioner undertakes to adhere to the secrecy provision contained in the CEA with regard to information relating to the persons concerned but ESKOM acknowledges that information concerning this Settlement may be required to be disclosed to inter alia National Treasury and/or the Road Accident Fund and consents to such reasonable disclosure in terms of section 4(3D) (b)of the CEA" (own underlining).

[21] It was argued on behalf of the RAF that from the provisions of section 77J and the settlement agreement, it is apparent that SARS and Eskom are not admitting either party's interpretation of the law or the facts, or both. The nature of the settlement agreement between SARS and Eskom is one that is concluded "because the rights of the parties are uncertain, and they choose not to resolve that uncertainty", as stated in *Wilson Bayly Holmes (Pty) Ltd v Maeyane and Others*[1].

[1] 1995 (4) SA 340 (T) at 345E.

[22] It was held in *Wilson Bayly Holmes* that "*By the very nature of such a contract, there can be little room for finding that the parties must have intended their contract to depend upon the existence of one or other of the factors relevant to their respective rights.*[2]*"*

[23] The above principles were confirmed by the Constitutional Court in inter alia *Mafisa v RAF* where the Constitutional Court held:

"[33] *A compromise is an agreement between the parties to prevent or terminate a dispute by adjudicating their differences by mutual consent. It is trite that the comprise gives rise to new contractual rights and obligations which exist independently of the original cause of action. Once a compromise is reached, the parties are precluded from proceeding on the original cause of action (unless, of course, the compromise provides otherwise)*[3]*."*

[24] In paragraph [42] of the *Mafisa* judgment, the Court held:

"… *In its judgment the Supreme Court of Appeal reiterated the principles outlined in Eke and confirmed that a compromise extinguishes disputed rights and obligations, puts an end to the litigation and has the effect of res judicata*.[4]"

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[2] Ibid.

[3] 2024 (4) SA 426 (CC) at paras [33].

[4] Ibid at para 42. See also Road Accident Fund v Ngobane 2008 (1) SA 432 (SCA) at para [12] and Eke v Parsons 2016 (3) SA 37 (CC).

[25] It was argued on behalf of the RAF that the original cause of action of Eskom was to claim diesel refunds in terms of the CEA. This original cause of action has been extinguished by the compromise agreement as stated in paragraph [42] of the *Mafisa* judgment.

[26] It was argued that in these circumstances SARS cannot contend that it entered into the settlement agreement because it had a liability to refund Eskom the RAF levies. The settlement agreement was entered into to avoid having the issue being resolved by a Court of law. Furthermore, the settlement agreement gives rise to new contractual rights and obligations and the parties are precluded from proceeding on the original cause of action. The original cause of action of Eskom was to claim diesel refunds in terms of the CEA This original cause of action has been extinguished by the compromise agreement as stated in paragraph [42] of the Mafisa judgment.

[27] SARS, so says the RAF, is therefore not entitled to deduct the settlement amount from the RAF levies, as the settlement amount does not constitute a diesel refund of the RAF levies as envisaged in the CEA. Consequently, SARS's decision to deduct/recoup the amount it undertook to pay Eskom in terms of the settlement agreement, cannot be in terms of the provisions of the CEA as the settlement agreement extinguished the original cause of action.

[28] It was argued on behalf of the RAF that the dispute between the RAF and SARS about the deduction/recoupment of the amount of R5.1 billion does not affect Eskom's right to receive payment in terms of the settlement agreement. The settlement agreement between Eskom and the RAF created new rights and obligations which are totally

independent from the previous cause of action (the claim in terms of the CEA), which was extinguished by the settlement agreement.

[29] The RAF was also, and rightly so, aggrieved by the non-disclosure of the taxpayer and the content of the settlement agreement. SARS refused to provide the agreement to the RAF and contended that the secrecy provision applies to the settlement agreement and that SARS is not entitled to disclose it to the RAF. This is directly contrary to clause 6.3 that makes specific provision therefore that the contents of the settlement agreement may be disclosed to the RAF.

[30] This conduct by SARS must have had an effect on the dispute resolution process followed in terms of the IRF Act, as the settlement agreement could not be made available to the parties during that process. The fact that the settlement agreement is now available to all the parties, will in the applicant's view make a significant difference in the continuing negotiations to follow in terms of the dispute resolution process under the IRF Act.

REQUIREMENTS FOR AN INTERIM INTERDICT

[31] The requirements for an interim interdict are trite, they are the existence of a prima facie right, a reasonable apprehension of irreparable harm, that the balance of convenience favours the applicant and the absence of an appropriate alternative remedy.

[32] The presence of a prima facie right was hotly contested by SARS. Eskom initially also had reservations about it, based on the fact that the inter-governmental dispute would remain pending for an indefinite period of time, or until a prescribed result or final

resolution has been reached. Considering the time-restricted interim order agreed on between the RAF and Eskom, the objection by Eskom fell away and during argument Eskom supported the existence of a prima facie right as formulated in the proposed order.

[33] SARS strongly objected to the RAF's developed argument because of the new facts that belatedly became known and insisted that the RAF must stand or fall by the facts set out in the founding affidavit. Ironically, SARS was fully aware of the true circumstances, and despite being empowered to reveal it to the RAF, chose not to do so. The facilitators in terms of the IRF Act was apparently also kept in the dark and so was the Court until 14 March 2025, the day of the hearing. It will be to put form over substance and would be manifestly unjust not to allow the RAF to rely on these new facts.

[34] This is an application for an interim interdict. In *Webster v Mitchell*[5] it was held that: "*The right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "prima facie established though open to some doubt" that is enough*.[6]"

[35] In *Gool v Minister of Justice*[7] some qualification was seemingly applied to the principle set out in *Webster* when the following statement was made:

"*With the greatest respect, I am of the opinion that the criterion prescribed in this statement for the first branch of the enquiry thus far outlined is somewhat too favourably expressed towards the applicant for an interdict. In my view the criterion on the applicant's own averred or admitted facts is: should (not could) the applicant on those facts obtain*

[5] 1948(1) SA 1186 (W).
[6] Ibid at 1189.
[7] 1955 (2) SA 6829(C).

final relief at the trial. Subject to that qualification, I respectfully agree that the approach outlined in Webster v Mitchell . . . is the correct approach for ordinary interdict applications.[8]"

[36] In *Zulu v Minister of Defence and Others*[9] the Court however quoted *Tony Rahme Marketing Agencies*[10] with approval as it held as follows:

"The correct test was, however, correctly and hopefully now finally expressed even more correctly by Goldstein J in Tony Rahme Marketing Agencies SA (Pty) Ltd and Another v Greater Johannesburg Transitional Metropolitan Council 1997 (4) SA 213 (W) D at 215C - 216C, where he writes:

'The applicants seek two interim interdicts pending the determination of review proceedings they intend instituting against the respondent. No answering affidavit has been filed, the respondent arguing that the application ought to be dismissed for reasons of fact and law. Before I address the issues I have to decide, it is necessary to refer to the difference of approach in our case law regarding the test I have to apply to disputes of law. Of course, the principles to be applied to disputes regarding interim interdicts have long ago been authoritatively laid down in such cases as Webster v Mitchell 1948 (1) SA 1186 (W); Ndauti v Kgami and Others 1948 (3) SA 27 (W) at 36 - 7 and Olympic Passenger Service (Pty) Ltd v Ramlagan 1957 (2) SA 382 (D). Are such principles to apply only in respect of factual and not in respect of legal disputes? In Mariam v Minister of Interior and Another 1959 (1) SA 213 (T) Roper JA (as he then was) simply applied Webster to a matter involving disputed legal issues. Viljoen J (as he then was) criticised

[8] Ibid at 668E.
[9] 2005(6) SA 446 (T).
[10] Tony Rahme Marketing Agencies SA Pty Ltd and Another v Greater Johannesburg Transitional Metropolitan Council 1997 (4) SA 213(W).

this approach in Fourie v Olivier en 'n Ander 1971 (3) SA 274 (T). The decision in Webster was intended, he said at 285, to apply to factual disputes and not legal ones. In the case of the former a final decision would be premature but not in the case of the latter. In such a case the court was obliged to give a decision and conclude the matter finally. Viljoen J went to say the following at 285F - :

''Die Regter wat 'n aansoek om 'n interdik pedente lite verhoor wat afgemaak kan word deur 'n regsbeslissing is myns insiens nie geregtig om te sê dat hy die regsvraag halfhartig gaan benader en dit aan sy ampsbroer wat die verhoor waarneem gaan oorlaat H om die saak behoorlik te oorweeg en finaal te beslis nie. Dit sou strydig wees met die beginsels in ons reg ten aansien van res juidicata, dit sou onnodige koste veroorsaak en dit sou die onsuksesvolle party in die pedente lite-aansoek die reg van appèl ontsê terwyl die uitleg van die Regter op daardie stadium aan die regsvraag heg, hoewel dit miskien nie bedoel is om die Verhoorregter te bind nie, hom in 'n groot verleentheid kan stel as hy voel dat hy met die eersgenoemde Regter wil verskil. In die hiëragie I van Howe staan die Verhoorhof nie hoër as die Kamerhof waar die aansoek van die interdik aanhangig gemaak word nie. Dit is albei een-Regter-Howe wat oor dieselfde aangeleentheid moet beslis.''

With respect I differ from the learned Judge. Whilst there may be situations where a Court having to decide an interim interdict, has sufficient time and assistance to arrive at a final view on a disputed legal point - in which event it probably has to express a strong view in order to save costs - situations of urgency arise when decisions on legal issues have to be made without the judicial officer concerned having had the time to arrive at a final considered view. In such a situation he is surely forced to express only a prima facie view. I cannot see how the expression of such a view and the grant of interim relief would conflict with principles of res judicata. I also see no embarrassment in an urgent Court Judge being overridden by a trial Judge. Each of us, privileged to hold this high and responsible office, owe, in the wielding of our considerable power, a duty only to truth and

justice. The interlocutory decisions of Colleagues, and indeed of our own, are not binding at later stages of proceedings and should, and I trust, do yield easily to persuasive arguments indicating error or oversight.[11]*"*

[37] SARS insisted that I was duty bound to not only determine the matter based on the case made out in the founding affidavit, but also to make a final determination on the rights of SARS and the obligations of the RAF in relation to the recoupment/deduction of the levies in terms of the CEA. This is not what the law requires.

[38] I agree with the approach set out in *Zulu* above. This matter and how it was conducted illustrates in what an unenviable and difficult situation Judges often are in the urgent court. There is simply no way that this Court can arrive at a final view on what exactly the parties' rights are. SARS insisted that I should do just that. The best a court can do in these circumstances is to express a prima facie view.

[39] This matter was enrolled for 14 March 2025 as set out above on the insistence of the parties. Eskom filed their heads of argument late in the afternoon of 13 March 2025 and the application for intervention on 14 March 2025. SARS filed further heads of argument during the evening of 13 March 2025 and in response to this application the RAF filed a third set of heads of argument on 14 March 2025. This judgment must be delivered as quickly as possible. The situation here is exactly what was envisaged in *Tony Ramhe Agencies*. The court is duty bound to act within the constraints of the urgent court and is ill-equipped to come to any final decision.

[11] Supra note 9 at para 41.

[40] This matter does not only involve the interpretation of complex legal issues but also will have far reaching consequences not only for the RAF, but more importantly for motor vehicle accident victims. In my view this Court is obliged, especially in circumstances where it is only called upon to grant an interim interdict, to express only a prima facie view and on this basis, I am persuaded that the RAF established the existence of such a right.

[41] As far as the argument is that the RAF is limited to what was stated in the founding affidavit there simply is no merit in that argument. SARS withheld crucial information from the RAF and the Court, and it would make a mockery of justice and fair play to uphold this argument.

[42] As far as the requirements of balance of convenience and irreparable harm is concerned, the RAF's precarious financial position is undeniable. The consequences thereof are illustrated in several matters before our courts where the courts have granted inter alia moratoriums on writs of execution and warrants of attachments against the RAF[12]. SARS submitted that these moratoriums would assist the RAF and, if I understand the argument correctly, will alleviate the financial position of the RAF. This argument does not consider the history and the financial position that the RAF is in and which is public knowledge. The reduction/recoupment of R1,2 billion (one point two billion rand) per month for the next remaining four months may indeed lead to the financial collapse of the RAF. SARS on the other hand will not suffer any irreparable harm, as the amounts may

[12] The latest of these is The Road Accident Fund v The Legal Practice Council and Others (21 February 2025) Caseno.134420 (Gauteng Division, Pretoria).

still be recouped/deducted when the matter is resolved or the time limit set by this Court comes to an end. If that happens, the RAF will have to approach the courts again for assistance as provided for in the order.

[43] As far as an alternative remedy is concerned, SARS says that the RAF should rather have approached Treasury for assistance. The RAF says that the process will take too long and will not prevent the immediate problems that the RAF faces. In any event, it was pointed out that the RAF did declare a dispute in terms of s 96 and therefore exhausted any other available remedy. S 96 of the CEA provides as follows:

(*1)(a) No legal proceedings shall be instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act until one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings this section referred to as (in "litigant") and the name and address of his attorney or agent, if any.*

(ii) such notice shall be in such form and shall be delivered in such a manner and at such places as may be prescribed by rule.

(iii) no such notice shall be valid unless it complies with the requirements prescribed in this section and such rules

(b) Subject to the provisions…'

[44] SARS complained that the notice is defective and the notice should be disregarded on that basis. In *Mohlomi*[13] the purpose for notification was explained and the following was said in relation to prior notice to state organs:

"*The conventional explanation for demanding prior notification of any intention to sue an organ of government is that, with its extensive activities and large staff which tends to shift, it needs the opportunity to investigate claims laid against it to consider them responsibly and to decide, before getting embroiled in litigation at public expense, whether it ought to accept, reject or endeavour to settle them*.[14]"

[45] In *Dragon Freight*[15] the Court held:

"*The Supreme Court of Appeal has been critical of the state and organs of state raising technical hurdles instead of facilitating the expeditious finalisation of cases. In Safcor Forwarding (Pty) Ltd v NTC 1982 930 SA (A) at 672H to 673A (judgment of Corbett JA as he then was) the Court relying on the judgment of Shreiner JA in Trans – African Insurance Co. Ltd v Maluleka 1956 (2) SA 273 at 278 F –G held as follows:*

"there is no indication that the Commissioner was in anyway prejudiced by the alleged non-joinder of its Chairman. In the circumstances it is to me, a matter of some surprise that a public body like the Commission should raise such a technical procedural hurdle to the expeditious despatch of what appears to have been an urgent review application."

Although the Court found that the appellant should have cited the Chairman, the point was dismissed, for "technical objections to less than perfect procedural steps should not

[13] Mohlomi v Minister of Defence 1997(1) SA 124 (CC).
[14] Ibid at para 9.
[15] Dragon Freight (Pty) Ltd and Others v CSARS and Others [2021] 1 ALL SA 553(GP).

be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.[16]"

[46] In the context of this matter, the same should apply and SARS should not be allowed to rely on a technical hurdle. SARS was at all times aware of the RAF's dispute and it did not suffer any prejudice as a result of any deficiency in the notice. The RAF met all the requirements for an interim interdict as set out above.

DEVELOPMENTS AFTER THE JUDGMENT WAS RESERVED.

[47] On 24 March 2025, my Registrar informed me that SARS emailed an application to file a further supplementary affidavit. They were informed that this will not be allowed. On the same day, a letter by the RAF was emailed to my Registrar by the attorneys of the RAF. I then perused the affidavit and the letter. The essence of SARS' affidavit is that the facilitation process has been terminated and my order will be rendered moot as a result. New factual issues were also raised. The letter filed on behalf of the RAF indicated that the RAF does not agree that the facilitation process should be terminated. The goal posts in this matter is constantly being shifted. I have heard the matter and I make an order based on what was argued before me. On 25 March 2025 Eskom withdrew from the application. I granted the intervention application during the hearing, but considering the withdrawal, I've removed that from my order as well as any reference to the status of the settlement between SARS and Eskom.

[16] Ibid at para 64.

The following order is made:

1. Condonation is granted to the applicant for its non-compliance of the Rules of Court relating to forms and service and the matter is enrolled and heard as one of urgency in terms of Rule 6(12).

2. The statutory one month notice period provided for in section 96(1) (c) (ii) of the CEA is reduced to 13 February 2025.

3. An interim interdict is granted against the first respondent in the following terms:

    3.1 The first respondent is interdicted and prohibited from deducting the amount of R5.1 billion or any part thereof which the first respondent is obliged to pay to the third respondent (Eskom) in terms of the settlement agreement between Eskom and SARS of 18 October 2024, from the monthly Road Accident Fund levies collected by it.

    3.1. SARS will still be entitled to make such statutory monthly deductions as provided for in section 5(2) of the Road Accident Fund Act, 56 of 1996 read with section 75(1) of the Customs and Excise Act, 91 of 1964, which are not related to the R5.1 billion which is in dispute.

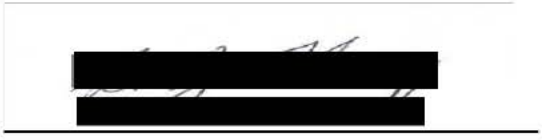
4. The interim interdict set out in paragraph 4 hereof will remain operative until such time as the dispute that was declared between the applicant and the first respondent in terms of section 41 of the Intergovernmental Relations

Framework Act, 13 of 2005, has been resolved or the process has been terminated.

5. The process to be followed in terms of the Intergovernmental Relations Framework Act, referred to above, must be finalised within 45 business days from the date of this judgment.

6. If the dispute is not resolved between the applicant and the first respondent within the 45-business day period referred to above, or the process is terminated, then the applicant will be entitled to institute proceedings against SARS to prohibit it from deducting/recouping the R5.1 billion from the applicant, along with any other legal proceedings to recover from SARS any deductions/recoupments already made.

7. The First Respondent is ordered to pay the costs of the Applicant, including costs of two counsel on scale C.



R TOLMAY

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

Counsel for applicant: Adv C Louw SC and Adv AJ Wessels instructed by Mpoyana Ledwaba Inc.

Counsel for first respondents: Adv J Peter SC and Adv B Ramela instructed by VDT Attorneys.

Counsel for Intervening party: Adv AP Joubert SC and Adv LJ Du Bruyn instructed by Edward Nathan Sonnenbergs.

Date heard: 14 March 2025

Date of Judgment: 26 March 2025