

# State Accountability and the Enforcement of Court Orders

*Lessons from Newnet v RAF (932/2024)*

## INTRODUCTION

The recent decision in *Newnet Property v The Road Accident Fund & Another*<sup>1</sup> addresses a significant issue in South African law: what happens when an organ of state refuses to honour its legal and constitutional obligations?

At its core, this case is not about whether money is owed. It is about whether a state entity may place itself above the authority of the courts, and what remedies remain available to litigants when traditional enforcement mechanisms fail.

## BACKGROUND OF THE MATTER

Newnet Property (Pty) Ltd ("**Newnet**"), trading as "Sunshine Hospital", operated a hospital that treated patients who had sustained severe injuries in motor vehicle accidents. A significant proportion of these patients were referred to Newnet by the Road Accident Fund ("**RAF**" or "**the Fund**"), a state entity established under section 2(1) of the Road Accident Fund Act 56 of 1996. In those cases, the merits of the patient's claim had already been determined, and the RAF had furnished an undertaking to pay the patient's future medical expenses<sup>2</sup>.

In accordance with this arrangement, Newnet rendered medical services, including those of its associated medical practitioners, and invoiced the RAF for payment. Although there had been historical delays, matters escalated significantly in March 2020, when the RAF ceased making payment altogether, notwithstanding that many of these claims had already been audited, approved and recorded on its internal "Requested Not Yet Paid" ("**RNYP**") system, which signifies that an invoice has been verified and is due for payment<sup>3</sup>.

Faced with mounting debt, Newnet approached the High Court on an urgent basis in 2020, seeking payment of the approximately R353 million then outstanding in respect of its RNYP claims. The parties reached an agreement, which was made an order of court in December 2020, in terms of which the RAF would pay the indebtedness in monthly installments of

approximately R36.9 million. This was not a matter of mere administrative convenience: it represented the minimum monthly operational funding required for the hospital to continue functioning and to avoid the displacement of critically ill patients<sup>4</sup>.

For a period, the RAF complied. However, after approximately eighteen months it defaulted on the arrangement. Newnet was again forced to litigate, and on 25 July 2022 the High Court granted a further order compelling payment of the outstanding amounts; leave to appeal against that order was refused by the High Court, the Supreme Court of Appeal and the Constitutional Court. Despite these repeated interventions, the RAF continued to fall into non-compliance. Over time Newnet obtained several judgments against the RAF, some by agreement and others by default, none of which was appealed or rescinded. Collectively, these judgments required the RAF to pay Newnet R403 812 884.05, of which only R336 316 021.13 was paid, leaving approximately R92 million (R92 085 106.36) outstanding at the time of the 2024 application<sup>5</sup>.

In an attempt to enforce these judgments, Newnet pursued execution. A writ was issued for the attachment, removal and sale of the RAF's movable property, with a sale scheduled for 26 March 2024. When the Sheriff attempted to remove the attached movables, he was restrained from doing so by members of the RAF and members of the South African Police Service, whom the RAF had enlisted to assist. The RAF then launched its own urgent application to stay the execution, which the High Court dismissed with costs on the same day; the auction nonetheless failed because the RAF alone attended and simply bought back its own assets. Newnet's efforts did not end there. It sought to recover the levy income allocated to the RAF by serving warrants of execution on the South African Revenue Service, the South African Reserve Bank and the National Treasury, each of which advised that it did not pay the relevant fuel and road accident levies to, or hold attachable funds for, the RAF. A similar approach to the Department of Transport, and attempts to attach the RAF's bank accounts, proved equally ineffective<sup>6</sup>.

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At the same time, the RAF's internal payment processes deteriorated further. It withheld updated RNYP lists from Newnet, having furnished none since May 2023, and, from October 2023, ceased adjudicating and placing Newnet's approved claims on the system altogether, which Newnet alleged to be aimed at preventing Newnet from approaching a court for payment of amounts due<sup>7</sup>. This had the practical effect both of preventing payment and of shielding the RAF from further enforcement. Despite this, Newnet continued to treat patients, many requiring ongoing and critical care, at its own expense and under increasing financial strain. The position became unsustainable, and in April 2023 the hospital was forced to close, resulting in the transfer of critically ill patients to other facilities and the retrenchment of staff. Although limited payments by the RAF enabled the hospital to reopen in August 2023, its financial position remained precarious<sup>8</sup>.

With no effective remedy available through ordinary execution, Newnet approached the High Court afresh in June 2024, seeking to enforce payment of the outstanding judgment debt of R92 085 106.36 together with related relief – including orders requiring the RAF to furnish and regularly update its RNYP lists and to adjudicate accounts within fixed periods, and a *mandamus* directing the Chief Executive Officer of the RAF to ensure compliance. Rather than file an answering affidavit, the RAF delivered a notice under Rule 6(5)(d) (iii) of the Uniform Rules of Court raising points of law only: urgency, non-joinder, no cause of action and *res judicata*. The High Court found the application urgent but dismissed it on the ground that the relief sought was *res judicata*<sup>9</sup>. On appeal, the Supreme Court of Appeal set aside that decision and substituted it with an order granting the relief sought.

## ANALYSIS

At the heart of the judgment lies a simple but important distinction: between asking a court to decide a matter afresh and asking it to enforce what it has already decided. Under the principle of *res judicata*, once a court has given a final judgment, any subsequent litigation between the same parties, on the same subject matter and based on the same cause of action, is impermissible<sup>10</sup>. The Supreme Court of Appeal held that Newnet was not seeking to relitigate its claim or to obtain a fresh judgment for the R92 million; instead, it was seeking compliance with existing court orders. On that footing, the defence of *res judicata* could not arise.

A notable feature of the judgment is the Court's frank recognition that ordinary enforcement mechanisms are not always effective, particularly where an organ of state adopts a posture of resistance. The facts demonstrate how far that resistance can extend, from the physical obstruction of execution to the withholding of internal payment processes.

It is in this context that the *mandamus* assumes both relevance and necessity. Drawing on the Constitutional Court's decision in *Nyathi v MEC for Department of Health, Gauteng*<sup>11</sup>, the Court reaffirmed that a *mandamus* (often in the form of a mandatory interdict or order for specific performance) is an extraordinary but frequently necessary remedy by which a judgment creditor may compel a public body to perform a statutory duty, including payment of a judgment debt, where no other means can achieve that outcome<sup>12</sup>. The relief granted went well beyond a bare order for payment: the RAF was directed to pay R92 085 106.36 within seven days, to furnish and update its RNYP lists, to adjudicate accounts within 120 days, and to pay the amounts due on the May 2023 RNYP list (R158 890 967.70) within 30 days. The relief granted bears some of the hallmarks of supervisory relief, in that it is directed at securing ongoing compliance rather than a once-off act of payment.

Of particular significance is the Court's treatment of the *mandamus* directed at the RAF's executive management. The RAF contended that, because its Board is the accounting authority under section 49 of the Public Finance Management Act 1 of 1999 ("**the PFMA**"), any such order ought to have been sought against the Board rather than the Chief Executive Officer. The Court rejected that argument. While the Board is the accounting authority, the CEO is, under section 12 of the RAF Act, responsible for the executive and operational management of the Fund, including the utilisation of its money, and therefore bears a statutory duty to ensure that judgment debts are paid. Nothing prevented the Court from directing the acting CEO (Mr Radikwena Phora, who was substituted for the former CEO during the appeal) to ensure compliance. This reflects a deliberate effort to locate accountability with the individuals responsible for an institution's executive functioning, rather than allowing it to dissipate into the abstraction of the entity itself.

The RAF's conduct must be assessed against its constitutional and statutory obligations. The Court confirmed, following *Mafisa v Road Accident Fund*<sup>13</sup>, that the RAF is an organ of state performing a public function within the meaning of Section 239 of the Constitution. As such, it is bound by Section 165(3) and (4) of the Constitution, which prohibit any person or organ of state from interfering with the functioning of the courts and oblige organs of state to assist and protect the courts so as to ensure their independence, dignity, accessibility and effectiveness. Integral to that duty is the obligation to obey court orders.

As the Constitutional Court emphasised in *Pheko v Ekurhuleni Metropolitan Municipality*<sup>14</sup>, disobedience of court orders risks rendering the courts impotent and judicial authority a mockery<sup>15</sup>.

The RAF's defiance here was neither inadvertent nor private, as its spokesperson publicly announced on national television, a policy of not paying the judgment debts and of buying back its own attached assets at auction "until we resolve these issues", which conduct is compounded by the enlistment of the police to obstruct lawful execution. Allegations of corruption levelled at Newnet to justify non-payment were investigated by the Fund's own bodies and found to be baseless.

The real-world consequences of this non-compliance were neither abstract nor merely commercial. The RAF's failure to honour its payment obligations contributed to the closure of a hospital, the transfer of critically ill patients and the loss of employment for staff, with the lives of vulnerable patients placed at risk. Although the Court grounded its decision in the rule of law and the authority of the courts rather than in a free-standing Bill of Rights analysis, these outcomes plainly engage values that lie close to the rights to life, dignity and access to healthcare, and they underscore why judicial insistence on compliance matters. Where an organ of state defaults on its obligation to obey a court order, the court is compelled to assume the invidious task of overseeing state action to secure compliance. The judgment thus reinforces a principle that should be beyond question: organs of state are bound by court orders and must comply with them.

## CONCLUSION

This judgment reiterates a principle that, although self-evident, bears reaffirmation. Organs of state are not above the law. They are bound by it, just as any other litigant would be.

Court orders are not suggestions. They are binding legal obligations, and they exist to be complied with. Where that compliance is not forthcoming, the courts are not powerless. As this case shows, they are willing to step in and, where necessary, make use of stronger remedies to ensure that their authority is not undermined.

What makes this case particularly striking is that the consequences of non-compliance were not abstract. They were real and immediate. A hospital was forced to close. Patients were displaced. Their lives were endangered. These are the kinds of outcomes that the law is meant to prevent. In the end, this judgment does more than resolve a dispute. It reaffirms a principle that sits at the heart of our legal system: accountability is not optional, and it does not fall away simply because the party in question is the state.

*Please note: Each matter must be dealt with on a case-by-case basis, and you should consult an attorney before taking any legal action.*

<sup>1</sup> *Newnet Property v The Road Accident Fund & Another* (932/2024) [2026] ZASCA 35 (24 March 2026).

<sup>2</sup> *Ibid* at para 2.

<sup>3</sup> *Ibid* at para 3.

<sup>4</sup> *Ibid* at para 4.

<sup>5</sup> *Ibid* at paras 5 - 6.

<sup>6</sup> *Ibid* at paras 12 - 18.

<sup>7</sup> *Ibid* at para 9.

<sup>8</sup> *Ibid* at paras 10 - 11.

<sup>9</sup> Where a court has given a final judgment in a matter, any subsequent litigation between the same parties in respect of the same subject matter and based on the same cause of action is impermissible.

<sup>10</sup> See also *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A).

<sup>11</sup> *Nyathi v MEC for Department of Health, Gauteng* 2008 (5) SA 94 (CC).

<sup>12</sup> Note 1 above at para 25.

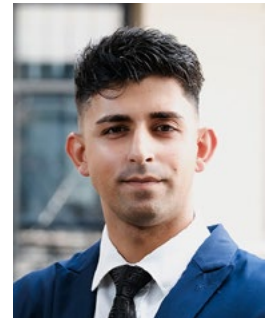
<sup>13</sup> *Mafisa v Road Accident Fund* 2024 (4) SA 426 (CC).

<sup>14</sup> *Ekurhuleni Metropolitan Municipality* 2015 (5) SA 600 (CC).

<sup>15</sup> Note 1 above at para 34.



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