



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 616/2024

In the matter between:

ROAD ACCIDENT FUND

APPLICANT

and

**NEWNET PROPERTIES (PTY) LTD t/a
SUNSHINE HOSIPTAL**

FIRST RESPONDENT

THE SHERIFF, PRETORIA EAST

SECOND RESPONDENT

Neutral citation: *Road Accident Fund v Newnet Properties (Pty) Ltd t/a Sunshine Hospital and Another* (616/2024) [2026] ZASCA 15 (11 February 2026)

Coram: PETSE, MBHA and DLODLO AJJA

Heard: 5 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 11 February 2026.

Summary: Section 17(2)(f) of the Superior Courts Act 10 of 2013 – reconsideration of refusal of leave to appeal on petition – alleged contravention of various statutory

provisions of Road Accident Fund Act 56 of 1996 and Health Professions Act 56 of 1974 – stay of execution in terms of rule 45A of Uniform Rules – no contraventions proven – leave to appeal rightly refused – no circumstances exist to justify reconsideration – reconsideration refused.

ORDER

On application for reconsideration: referred to the Court by Molemela P in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013:

- 1 The application to adduce new evidence on appeal is dismissed.
 - 2 The application for the reconsideration of the decision refusing leave to appeal in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 is dismissed.
 - 3 In both instances, the applicant shall pay the first respondent's costs, including the costs of two counsel.
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JUDGMENT

Mbha AJA (Petse and Dlodlo AJJA concurring):

Introduction

[1] The applicant, the Road Accident Fund (the RAF), approached the Gauteng Division of the High Court, Pretoria (the high court), on an urgent basis relying on rule 45A of the Uniform Rules of Court (the Uniform Rules), seeking the following relief against the first respondent, Newnet Properties (Pty) Ltd t/a Sunshine Hospital:

'Suspending the writs of execution attached as Annexure FA1, FA2, FA3 and any attachment pursuant thereto, with immediate effect, pending the outcome of an application to be launched by the Applicant within 20 days of this order.'

In this judgment I will refer to the first respondent as either Sunshine or Newnet, depending on the context.

[2] On 23 November 2023 the high court dismissed the RAF's application for interim relief with costs on a punitive scale. The RAF's subsequent application for leave to appeal in the high court was also dismissed on a punitive scale on 30 January

2024. An application for leave to appeal, brought on petition to this Court, was likewise dismissed with costs on 2 May 2024 on the ground that there was no reasonable prospect of success on appeal and that there was no compelling reason why an appeal should be heard.

[3] Aggrieved by the dismissal of its application for leave to appeal by this Court, the RAF applied to the President of this Court (the President) in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Superior Courts Act), for reconsideration of the dismissal of such application. On 6 August 2025 the President directed that the dismissal of the application for leave to appeal be referred to this Court for reconsideration and, if necessary, variation. She further directed that the parties must be prepared if called upon to do so, to address the Court on the merits. The President then directed the applicant to file six copies each of the initial application for leave to appeal, and the application in terms of s 17(2)(f) of the Superior Courts Act within one month of the order for reconsideration. Clearly, the intention of the President was that in the event that this Court grants leave, the appeal before this Court should itself be finalised on the day of the hearing. Hence the referral now before us.

Background

[4] The RAF's application in terms of rule 45A of the Uniform Rules was to stay the sale in execution of various items listed in three notices dated 28 August 2023. The sale was scheduled to take place on 19 September 2023, and was to be stayed pending the RAF instituting an application to declare that the RAF is not liable for any claims submitted to it by Sunshine. The notices listed 181 case numbers reflected in the respective writs of execution made up of 116 magistrates' court orders, 44 regional magistrates court orders and 21 high court orders, which Sunshine was seeking to satisfy. Sunshine, a private hospital which only admits victims of motor vehicle collisions, had obtained these orders against the RAF in respect of claims for compensation in terms of s 17(5) of the Road Accident Fund Act 56 of 1996 (the RAF

Act),¹ for medical services rendered to persons who were injured in motor vehicle collisions.

[5] It is common cause that all the 181 court orders were valid and not a single one of them was impugned on appeal or reviewed. All 181 orders still stand uncontested. Furthermore, some of the orders were granted following trial, others by agreement between the parties while the remainder were granted by default in consequence of wilful default by the RAF.

[6] According to Sunshine, some of the orders referred to above were granted more than two years prior to the issuing of the urgent application in terms of rule 45A, and that the RAF had in the interim made substantial payments in a number of cases following the granting of the orders by the various courts referred to above. Sunshine further averred that in some instances payments were made even after the urgent application had been issued. All of this is not challenged.

[7] The central issue before the high court related to the so-called combined claims filed by Sunshine (hereinafter referred to as combined or global claims). The RAF described such claims in the papers as global accounts filed by Sunshine. Briefly, combined or global claims include the claims of doctors and service providers relating to a particular patient admitted and treated at Sunshine. The RAF alleged that these claims were unlawful as they flouted the provisions of s 17(5) of the RAF Act.

[8] On 27 November 2007, the RAF and Sunshine concluded a cooperation agreement (the cooperation agreement), expressly affirming primarily the RAF's

¹ Section 17 of the Road Accident Fund Act provides, in relevant part:

'Liability of Fund and agents

...

(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods (the supplier) may, notwithstanding section 19 (c) or (d), claim an amount in accordance with the tariff contemplated in subsection (4B) direct from the Fund or an agent on a prescribed form, and such claim shall be subject, *mutatis mutandis*, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for this subsection, have recovered.'

commitment to improving service delivery and reducing fraud and corruption by, among other things, 'settling claims efficiently and effectively'. Clause 2.2 of the cooperation agreement records that following on this commitment, the RAF initiated a pilot project with Sunshine in terms of which the RAF undertook to assign its staff to assist Sunshine and road accident victims in submitting third party claims under the RAF Act. Sunshine on the other hand, agreed to provide the RAF's staff with suitable office space and related infrastructure in order to enable the RAF to administer these claims. To this end, Sunshine duly provided free office space to the RAF's staff, access to an activated telephone line, a telephone and active network point and free use of a motor vehicle.

[9] The practice of including the doctors' and service providers' claims with Sunshine's claims when lodging claims with the RAF, i.e. combined claims, was introduced and therefore came into existence at the specific request of the RAF in order to facilitate the evaluation of claims and to avoid duplication of documentation lodged with the RAF. The purpose was to provide the RAF with a bundle of documentation relating to a particular patient that included claims by all service providers related to that particular patient who was treated at Sunshine.

[10] The agreed practice described above relating to combined claims arose during discussions between the RAF and Sunshine that ultimately led to the conclusion of the cooperation agreement in November 2007. During those discussions, the issue was raised specifically by the management of the RAF, that the RAF was confronted with significant duplication of hospital records and documentation relating to the same patients who were treated at Sunshine. At that stage Sunshine, various doctors and service providers would lodge separate claims with the RAF relating to the same patient. Each service provider also had to include the hospital records of Sunshine in their claims. The net result was that separate claims submitted for the same patient led to an enormous duplication of records and documentation lodged with the RAF. This, in effect, was the underlying motivation for the RAF requesting Sunshine to lodge claims relating to a specific patient which not only dealt with Sunshine's claim, but also

incorporated all claims by doctors and other service providers relating to the same patient. The objective was that it would not only limit the unnecessary duplication of records and documentation lodged with the RAF, but also enable the RAF to evaluate a particular claim relating to a particular patient in a proper context.

[11] In terms of the mutually agreed process, the RAF's employees who were assigned to render the services at Sunshine's premises were enabled to collate the necessary information and documentation relating to the lodgement of claims directly with the RAF. In addition, the RAF's employees were enabled to verify all supporting documentation and to complete the claim form so that it conformed with the RAF's requirements and substantially with the provisions of the RAF Act.

[12] The cooperation agreement entitled the RAF to appoint a case manager with sound clinical knowledge and training to assess the medical needs of the patient. Sunshine was obliged to grant such case manager free access to the relevant medical practitioners responsible for the treatment of the patient to discuss prognosis, treatment and the rehabilitation plan of the patient. Clause 8.7 of the cooperation agreement provided that the RAF '...shall be entitled to carry out inspections as it may deem necessary from time to time to ensure that the services are being rendered in accordance with the terms set out in this agreement'. As the RAF duly enforced this right, this illustrates undoubtedly that the RAF was actively involved in the process of the lodgement of the combined claims from Sunshine and service providers in the particular manner that it was done. Over the course of the next 15 years from the inception of the cooperation agreement, the RAF made payments in settlement of the combined claims well knowing that both the doctors' and service providers' claims were all included with those of Sunshine when the claims were lodged.

[13] On 11 July 2018, the RAF wrote a letter to Sunshine terminating the cooperation agreement. Significantly, the letter noted that the agreement came into effect on 1 November 2007 and that it was for an indefinite period subject to the condition that either party could cancel it by giving the other party three months prior

written notice. The letter further stated the following, in relevant parts, that:

'After reviewing the Agreement it became clear that there is a need for both the RAF and Sunshine Hospital to restructure the extent and scope of the cooperation henceforth and to further engage with the aim of entering into another formal Cooperation Agreement. It is against this background that you accept this letter as a formal notice of termination/cancellation of the current and existing Cooperation Agreement signed on 28 November 2007.

...

We take this opportunity to thank you for the cooperation we had all these years and look forward to future engagements, which will be finalised in due course.'

[14] I pause to note that the letter does not make mention of any unhappiness or complaint about the combined claims, the manner of their lodgement or that they are, in any material respect, in violation of the requirements of the RAF. Importantly, there is not even the slightest suggestion in the letter that the combined claims are in breach of the provisions of the RAF Act, in particular s 17(5) thereof.

[15] With effect from 4 April 2020, the RAF stopped making payments to Sunshine due to 'concerns' it had in respect of the validity of the claims submitted by Sunshine. During a meeting convened between the parties' respective representatives to discuss the problem, the RAF complained that Sunshine was overcharging the RAF in terms of the claims it had been submitting. In addition, there was some suggestion that Sunshine was suspected of touting patients from other hospitals, and of over-servicing patients to the detriment of the RAF.

[16] Consequently, the RAF tasked its Forensic Investigation Department: Corporate Investigations (the FID), to investigate why many patients were being transferred to Sunshine from other hospitals outside of the Gauteng Province, and whether the RAF employees had irregularly facilitated their transfer for financial gain. The FID also had to investigate how the cooperation agreement had come into existence and if the RAF had received any value for money in respect thereof. Lastly, the FID had to identify if any items on invoices submitted by Sunshine were duplicated

and if there was any over-servicing of patients taking place. On 13 September 2021, the FID furnished a report on its findings. This report was annexed to the RAF's founding affidavit.

[17] In its application for interim relief, the RAF asserted that the combined or global accounts submitted by Sunshine are not permissible in terms of the RAF Act and the applicable legislation and rules regulating health care practitioners, principally for two reasons, namely:

(a) The RAF Act does not permit the submission of global accounts and each supplier is required to submit a claim together with supporting documents for the services rendered and claim in accordance with the provisions of the RAF Act, and

(b) Health care practitioners are not permitted to issue invoices through other parties who did not participate in the provisions of the health care service. Furthermore, the issuing of a global account constitutes, among other contraventions, the sharing of fees with persons who are not registered in terms of the Health Professions Act 56 of 1974 as amended (the HPA). These healthcare practitioners were as such, operating their practices in a manner that is both undesirable and prohibited by the HPA.

[18] The RAF alleged further that an invoice embodying a combined claim typically contained fees for the patients' ward fees (for Sunshine), consumables and other pharmaceutical items and the fees charged by each treating health care practitioner. Attached to the founding affidavit by way of example, is a statement submitted by Sunshine in respect of the patient, Ms Rambau, containing fees charged over and above those of Sunshine of seven other doctors of differing medical fields or specialities. The RAF then averred that any fees due to all these doctors should have been billed separately and paid directly to them individually. Furthermore, Sunshine was as a matter of law, not permitted to sue the RAF on behalf of the health care practitioners as it is not permitted in terms of the Guidelines on Overservicing, the Ethical Rules and applicable policy to issue invoices on behalf of the doctors, to share in the fees of the doctors, and to pay the doctors directly for the services rendered.

[19] The RAF complained that although the cooperation agreement had been terminated, there was an unexplained continuation of referrals of patients from various State hospitals like Dr George Mukhari Hospital and Steve Biko Hospital to Sunshine. Thus, this malpractice gave rise to a suspicion of the existence of a perverse referral arrangement of patients to Sunshine in return for a fee. Considering that the cooperation agreement had since been terminated, so it was submitted further by the RAF, no further patients ought to have been referred to Sunshine.

[20] The RAF alleged that Sunshine and healthcare practitioners at its hospital were overservicing patients in order to inflate medical fees and costs. In this regard specific reference was made to the patient, Mr Johannes Maubane, that based on his medical advice form, invoice statements and bill review, these demonstrated that an inappropriate and unnecessary level of care was given to the patient by admitting him to the ICU, that there was excessive use of consumables, and that he was treated for conditions which were not accident related. The RAF thus complained of overbilling by Sunshine and health care professionals which the RAF described as a form of revenue manipulation that involves misclassification of patients into a diagnosis-related group that yields higher reimbursement.

[21] In further attempting to justify their application to suspend the sale in execution of the 181 writs, the RAF stated that it had engaged a multi-disciplinary team charged with investigating all the issues plaguing the Sunshine claims. Such investigations were to be conducted by independent and skilled professionals from the bodies concerned with the hope that all issues of concern about the claims were finally resolved. In the circumstances, the RAF alleged that in the interim it would be inappropriate to permit Sunshine to continue to execute against the RAF. In this regard, the RAF alleged:

(a) The Special Investigation Unit (the SIU) was, by proclamation by the State President dated 10 December 2021, tasked to investigate, *inter alia*, unlawful conduct of employees of the RAF, and the unlawful appropriation or expenditure of public

money or property. Apparently, on 22 April 2022 the SIU advised Sunshine that it was investigating Sunshine's involvement with the RAF and was seeking relevant information from Sunshine. Mr Mbuso Maseko, the principal forensic investigator from SIU, deposed to an affidavit dated 30 August 2022 confirming that the SIU was investigating Sunshine.

(b) On 22 August 2022, Universal, a registered health care organisation was instructed by the RAF's attorneys to assess an initial 100 claims to establish, *inter alia*, the billing and other possible clinically inappropriate treatment protocols of Sunshine and associated health care providers. Universal was also tasked with establishing the 'extent of overservicing and overbilling' at Sunshine.

(c) On 24 May 2023 the RAF appointed an accounting and auditing firm, Sizwe Ntsaluba Global Grant Thornton (SNG), to conduct investigations into and obtain evidence to determine, *inter alia*, whether any patients were irregularly referred or transferred to Sunshine and to identify the key role players. SNG was also tasked to determine whether the RAF was being overbilled by Sunshine or by the treating clinicians.

(d) The RAF has lodged a formal complaint with the Health Professions Council of South Africa (HPCSA) against healthcare practitioners who submitted global claims with Sunshine for allegedly committing contraventions of the HPCSA read together with its policies and guidelines. The RAF further averred that the HPCSA would, upon the completion and furnishing of a report by Universal, appoint inspectors in terms of s 41 of the HPA, to conduct inspections into the practices of the health practitioners concerned.

[22] Sunshine opposed the RAF's application on various bases. First, it asserted that RAF's application was not bona fide but was yet another attempt by the RAF to delay complying with court orders underpinning the relevant 181 writs of execution. Furthermore, the RAF had to date unsuccessfully attempted to rescind previous judgments against it and therefore the high court had to likewise dismiss this application. Second, the high court did not have the jurisdiction to stay the orders emanating from the regional and district magistrates and therefore the relief sought

was not competent. Third, the principle of peremption found application as the RAF had not appealed or sought to rescind any of the orders. Instead, the RAF had in compliance with the relevant writs been paying Sunshine's global accounts as recently as July 2023. In any event and most importantly, the practice of submitting global claims, so it was contended by Sunshine, was a practice that was initiated and implemented by the RAF itself and later codified in the cooperation agreement.

The judgment of the high court

[23] The high court found that there had been a long standing relationship between the parties and that in November 2007, the parties concluded a written cooperation agreement in terms of which Sunshine undertook to render services to third parties against payment by the RAF of the former's charges at the applicable tariff. As agreed between the parties, Sunshine provided office space and facilities where employees of the RAF could assist Sunshine in collating the necessary documents in support of claims and in lodging such claims with the RAF directly.

[24] The high court also found that a practice evolved in terms of which medical practitioners working at Sunshine rendered their invoices to Sunshine for their services. Sunshine paid the relevant medical practitioners and then included those practitioners' charges in the global claim which Sunshine later submitted to the RAF. The high court found that this practice resulted in the RAF only receiving one claim instead of multiple claims from multiple service providers in respect of the same patient. The high court stated specifically that this practice improved the efficiency of the claims process. It was the view of the high court that the aforesaid arrangement and practice between the parties did not militate against s 17(5) of the RAF Act. In this regard, the high court said that while s 17(5) obliged the RAF to pay suppliers for their services, the section does not however, prescribe the manner in which claims had to be lodged with the RAF. It was clear, the high court held further, that the RAF's interpretation of s 17(5) was not correct.

[25] After evaluating the ethical rules relied upon by the RAF to impugn the propriety

of the agreed upon arrangement, the high court found that the medical practitioners did not act contrary to the rules related to medical practitioners by reason of their participation in the aforementioned practice. Furthermore, by submitting their invoices to Sunshine for inclusion and later lodgement of combined claim to the RAF, the medical practitioners did not act improperly.

[26] With reference to any alleged impropriety relating to the transfer of patients from other hospitals to Sunshine, the high court referred to the FID investigation and concluded that there was no evidence suggestive of any wrongdoing. The high court also noted that according to the FID report, there was no duplication of charges or double-invoicing of the RAF. The high court found that there was not the slightest indication that any of the 181 claims in respect of the writs at the centre of the RAF's application, were irregular. More importantly, the high court stated that each of the claims for which the writs were issued had been adjudicated by competent courts and that the resultant court orders were granted, in some instances, with the RAF's consent. Furthermore, the RAF had known about the judgments for months but had not investigated these specific claims individually. Had the RAF done so and found irregularities in any particular case, the high court continued, then in that event it would have been entitled to seek rescission of the affected judgments. However, the RAF had not done so.

[27] Ultimately, the high court found that the application to suspend the writs was an abuse of the court process, and having dismissed the application, it granted a punitive costs order against the RAF.

The s 17(2)(f) application

[28] Before us, Sunshine raised a point *in limine* namely, that the application for the reconsideration has since become moot and that any decision made in relation thereto would not have any practical effect or result. On the other hand, the RAF brought an application to tender new evidence. The RAF's application was strenuously opposed by Sunshine.

[29] I now consider the moot point raised. As indicated earlier, the urgent application in the high court was brought in terms of rule 45A of the Uniform Rules. The RAF sought interim relief to stay an already scheduled sale in execution pending the outcome of an application (still to be instituted), for a declarator that the RAF was not liable for any combined claims submitted by Sunshine. The relevant sale in execution was in relation to the 181 writs of execution issued by Sunshine against the RAF following the latter's failure to comply with various 181 court orders granted in favour of Sunshine by the high court, regional courts and magistrates courts. The sale in execution was initially scheduled to take place on 19 September 2023 but was subsequently postponed to 24 October 2023.

[30] Following the high court's dismissal of the application on 23 November 2023, an auction was arranged and the sale in execution was held on 5 December 2023. I need also mention that to date, the threatened or intended application for a declarator by the RAF that it was not liable for any combined claim submitted by Sunshine, has not been made.

[31] Countering the point *in limine* advanced for mootness, counsel for the RAF said that it was possible that the sale conducted and concluded did not realise the full amounts of indebtedness to Sunshine, and that sales in execution in the future might still be required. No definite details were, however, furnished in this regard. It is therefore clear that counsel was merely speculating about what the current state of affairs was in relation to the extent of the RAF's indebtedness to Sunshine.

[32] Section 16(2)(a)(i) and (ii) of the Superior Courts Act provides that:

'(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.'

[33] In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Other*,² the Constitutional Court said:

‘A case is moot and therefore not justiciable, if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.’

[34] As the sale in execution which was the focus of the urgent application has since taken place, it cannot be gainsaid that the RAF is embarking on a futile exercise as the proverbial ‘horse has bolted from the stable’. Consequently, it is beyond any doubt that any appeal herein has become moot.

[35] I now turn to consider RAF’s application delivered on 12 August 2025 for leave to adduce new or further evidence. As foreshadowed in paragraph 1 above, in this part of the judgment, I will refer to the first respondent as Newnet, in order to avoid confusion. In the founding affidavit, the deponent states that after the dismissal of the RAF’s application in terms of rule 45A by Swanepoel J on 23 November 2023, Newnet launched an urgent application against the RAF. The deponent states further that in this new application, launched on 15 May 2024, Newnet sought ‘declaratory relief relating to the same court orders which were the subject matter of the application where the RAF is now seeking leave to appeal the Swanepoel J judgment’.

[36] According to the RAF, the assertion by Newnet, in the latter’s new application, the following is stated:

‘Amounts owed and due by the RAF to NEWNET, stem from medical doctors, specialises (*sic*) and services rendered by NEWNET to patients who suffered injuries in motor vehicle collisions.’

[37] The RAF then averred that Newnet had previously avoided presenting this evidence and thus refused to disclose the true factual position to the high court. In

² *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* [1999] ZACC 17, 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 21 at fn 18. See also *Minister of Tourism and Others v Afriforum NPC and Another* [2023] ZACC 7; 2023 (6) BCLR 752 (CC) para 23.

effect, so asserted the RAF, the averment quoted in the preceding paragraph confirmed Newnet's irregular relationship with medical practitioners and the irregular supplier claims from Newnet. Furthermore, it was contended that such evidence was not in RAF's possession at the relevant time so the RAF could not have tendered same. The RAF then averred that this new evidence supported the RAF's assertion that there was an irregular relationship between Newnet and the medical practitioners whose accounts form part of the impugned global accounts.

[38] I pause to note that the RAF's application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act, launched on 10 June 2024, is based wholly on exactly the aforementioned alleged new facts or evidence. I quote from the relevant parts of the founding affidavit:

'5. New evidence has come to light. On 15 May 2024, the First Respondent has launched an urgent application against the RAF. In this new application, the First Respondent seeks declaratory relief relating to the same court orders which were the subject matter of the application where the RAF is now seeking leave to appeal. The founding affidavit deposed to in the new application by the same deponent in these present (*sic*) states the following-

"Amounts owed and due by the RAF to NEWNET, stem from medical doctors, specialises (*sic*) and services rendered by NEWNET to patients who suffered injuries in motor vehicle collisions".

6. The First Respondent had previously avoided presenting this evidence. This evidence now confirms the First Respondent's irregular relationship with medical practitioners and the irregular supplier claims from the RAF.'

[39] The obvious question that arises is this: if the so called new evidence was already provided in the s 17(2)(f) application on 10 June 2024, why was there any necessity to launch the application to adduce the same new evidence in terms of s 19(b) of the Superior Courts Act some 14 months later on 12 August 2025? To extricate itself from this conundrum, the RAF provides what I find to be quite a startling answer, saying that in the application to adduce further evidence:

'The new evidence was presented to the Court in the reconsideration application that served before Court. *The reconsideration application however does not form part of this court file and*

the appeal bundle.' (Emphasis added.)

[40] It must be noted that in terms of paragraph 5 of the order of referral by the President of 15 July 2024, six copies of the initial application for leave to appeal and six copies of the application in terms of s 17(2)(f) were explicitly required to be filed as part of the record before this Court. The obvious question that arises is why the President's aforesaid order was not complied with by the RAF. I may mention that while Newnet did raise this patent non-compliance by the RAF in the heads of argument, it was not however pursued in argument before us. However, I shall not delve into this aspect and make any further pronouncement on it, save to remark that what I have already said undermined the RAF's application.

[41] In my view the application to adduce new or further evidence was unnecessary and an abuse of the process. Furthermore, the allegations and submissions by the RAF about the so called new facts and evidence are clearly wrong and without factual basis. As appears from what has already been stated earlier in this judgment, the issue relating to global or combined claims submitted to the RAF by Newnet indeed formed the central and main issue before the high court. The RAF specifically referred to this issue in the papers as 'global accounts' filed by Sunshine.

[42] In its founding affidavit in the urgent (rule 45A) application, the RAF dealt with the cooperation agreement between it and Newnet and explained its purpose. This agreement was in fact annexed to the founding affidavit. On the other hand, Newnet dealt extensively, in its answering affidavit, with the agreement and the process followed with references to the combined or global accounts. Importantly, Newnet explained that from 2007 until shortly before the launch of the urgent application, the RAF made substantial payments in settlement of these combined claims submitted by Sunshine. In reply, the RAF did not dispute making these payments save for stating, that they were made 'under duress, on writs of execution executed by the sheriff', and that 'the RAF had no choice but to make these payments under duress to maintain operational functionality'. However this is unsubstantiated and its veracity is, at best

for the RAF, seriously questionable.

[43] Newnet provided details relating to the combined claims namely that:

(a) The practice was introduced at the instance and request of the RAF and that the motivation was to avoid duplication of documentation lodged with the RAF.

(b) Newnet made office space available for the RAF's employees to collate the necessary information and documentation relating to the lodgement of these global or combined claims to the RAF. In addition, the RAF had the right to carry out inspections as it may deem necessary from time to time to ensure that the services rendered were in accordance with the terms of the established practice.

(c) The RAF consented to judgment in numerous cases against it for payment to Newnet based on claims that consisted of these combined claims even after the RAF issued the application that served before the high court.

(d) The FID report that was annexed to the founding affidavit dealt in detail with the established practice. The report specifically stated that doctors doing work for Newnet do not submit claims to the RAF but that Newnet submits a consolidated bill to the RAF. Furthermore, the RAF paid Newnet's invoices and did not pay the separate doctors invoices as well; thus there was no duplication in costs. The invoices by doctors were sent with Newnet's invoices so the cost of the doctors were compared with the amounts claimed by Newnet.

[44] As I have already mentioned, in its judgment the high court dealt with the long established practice referred to above and that the practice '...resulted in the RAF only receiving one claim instead of multiple claims from multiple service providers for the same patient'. Importantly, the high court found that the service improved the efficiency of the claims process.

[45] In my view, the high court dealt squarely and adequately with the complaint by the RAF that forms the basis of the application to adduce new or further evidence namely, that the medical practitioners involved in this combined claim arrangement acted unethically and were in an irregular relationship with Newnet. After evaluating

the rules referred to by the RAF, the high court found that the medical practitioners involved did not act contrary to these rules in their participation in the practice. The high court also found that the relevant arrangement between the RAF and Newnet did not militate against s 17(5) of the RAF Act.

[46] In light of what I have stated above, there is no merit whatsoever in the allegation or suggestion that there is any alleged new fact or evidence that came to the attention of the RAF after the application in the high court and after the applications for leave to appeal both in the high court and before the two judges of this Court, had been finalised. It was, in my view, likewise opportunistic to rely on this issue in the application for reconsideration filed with the President of this Honourable Court.

[47] As the RAF's application for reconsideration was lodged on 10 June 2024, this meant that the amended version of s 17(2)(f) of the Superior Courts Act, which came into effect on 3 April 2024, applies in this matter. Section 17(2)(f) now reads as follows: 'The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.'

As can be seen, the current prescribed threshold that must be met is that it must be shown that a grave failure of justice would otherwise result or that the administration of justice may be brought into disrepute if an order for reconsideration was refused.

[48] The purpose and effect of s 17(2)(f) has been explained in various decisions by our courts. In *Liesching and Others v S and Another*,³ the Constitutional Court stated as follows:

'The proviso in s 17(2)(f) is very broad. It keeps the door of justice ajar in order to cure errors or mistakes, and for the consideration of a circumstance, which, if it were known at the time of

³ *Liesching and Others v S and Another* [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC) (*Liesching I*).

the consideration of the petition, might have yielded a different outcome. It is therefore a means of preventing an injustice. This would include new or further evidence that has come to light or that became known after the petition had been considered and determined.⁴

[49] In order to establish whether a grave failure of justice would result or the administration of justice would be brought into disrepute, the RAF had to demonstrate that the matter involved specific criteria, including ‘substantive points of law, an issue of great public importance, or a strongly arguable prospect of a denial of justice , or grave injustice should reconsideration be refused’.⁵ In *Avnit v First Rand Bank*,⁶ this Court understood the power of referral as one ‘likely to be exercised only when the President believes that some matter of importance has possibly been overlooked or grave injustice will otherwise result’.⁷ Importantly, s 17(2)(f) was not intended, the Court held further, to afford disappointed litigants a further attempt to procure relief that has already been refused. Hence an application which merely sought to rehearse arguments that have already been made, considered and rejected will not succeed.

[50] In *Avnit*, Mpati P made it clear that it is within the province of the President of the Court alone, who is the repository of the power to decide whether exceptional circumstances exist. It is axiomatic that post amendment i.e. from 3 April 2024, it is the President alone who determines whether the threshold of a grave failure of justice would result or that the administration of justice may be brought into disrepute if the order for reconsideration is not granted, has been met. In this regard Mpati P, having noted that the application had been addressed to him, said the following:

‘As s 17(2)(f) is a new section vesting the President of this court with a power that the incumbent has not hitherto possessed, I think it desirable to set out the approach to be taken to such applications.’⁸

The learned President continued thus:

‘The origin of the section no doubt lies in the situation that arose in *Van der Walt v Metcash*

⁴ Ibid para 54.

⁵ *Rock Foundation Properties and Another v Chaitowitz* (1038/2023) [2025] ZASCA 82 (9 June 2025) para 17.

⁶ *Avnit v First Rand Bank* [2014] ZASCA 132 (*Avnit*).

⁷ Ibid para 7.

⁸ Ibid para 1.

Trading Co Ltd ...where one panel of judges of this court dismissed Mr van der Walt's application for leave to appeal and a differently composed panel granted an identical application raising the same point of law. It is not, however, confined to that kind of situation but is a power available *to be exercised by the President of this court in exceptional circumstances*.⁹ (Emphasis added.)

[51] The Constitutional Court has affirmed *Avnit*, by making it clear that '*the President is given a discretion to be exercised judiciously, to decide whether there are exceptional circumstances that warrant referral of the matter to the Court for reconsideration or, if necessary, variation*'.¹⁰ (Emphasis added.) The Court emphasised that the 'President must therefore decide whether there are exceptional circumstances.'¹¹

[52] Quite recently, in *4 Seasons Logistics CC v Kgotse*,¹² Petse AJA writing for a unanimous Court had occasion to consider and interpret, *inter alia* the proper import of s 17(2)(f). He made clear rightly that the language of the provision left no room for any ambiguity and that it '*...explicitly confers a discretion on the President – and no one else – which must be exercised judiciously, like any other discretionary power – to decide whether there are exceptional circumstances that justify a referral of the decision of the two judges to the Court for reconsideration and, if necessary, variation*'.¹³ To further illustrate the President's power in terms of the provision, Petse AJA correctly makes the point that once the application for reconsideration is 'refused by the President because, in her view, no exceptional circumstances exist, the unsuccessful litigant for reconsideration will consequently have exhausted his or her legal remedies in this Court and no referral to the court would ensure'¹⁴

[53] The Constitutional Court has also affirmed the finality of the decision by the President where, in the exercise of her discretion, she or he refused to grant an order

⁹ Ibid para 3.

¹⁰ *Liesching I* fn 3 above para 55.

¹¹ *Liesching I* para 55.

¹² *4 Seasons Logistics CC v Kgotse* (1215/2023) [2026] ZASCA 9 (4 February 2026) (*4 Seasons*).

¹³ Ibid para 48.

¹⁴ Ibid para 48.

for reconsideration. In *Cloete and Another v S; Sekgala v Nedbank Limited*,¹⁵ where the President had refused to grant the order, the key question to be addressed was whether a decision under s 17(2)(f) was appealable to the Constitutional Court. The Constitutional Court held that ordinarily it would not have jurisdiction to hear such an appeal because an appeal of this nature would clearly be against factual findings of the President on whether or not exceptional circumstances existed.¹⁶ Appeals against purely factual findings, the Constitutional Court held further, did not raise a constitutional issue. It must be noted, however, that the litigant concerned could still seek leave from the Constitutional Court to appeal against the merits of the judgment of the high court.

[54] In this case, in light of the clear direction that has now been provided in *4 Seasons*, there is no basis whatsoever for any need to even attempt to wander into the realm of determining whether any ‘threshold’ in terms of s 17(2)(f) in so far as any exceptional circumstances or any required equivalent is concerned, has been met. This aspect has already and squarely been determined by the President. What remains for this Court to do, is to ‘step into the shoes’ of the two judges who dismissed the applicant’s petition for leave to appeal and determine whether variation of the decision refusing leave is warranted.

[55] I have earlier on rejected the RAF’s contention that there were new facts or evidence which later came to light in the form of an alleged irregular relationship between the medical practitioners and Sunshine arising from alleged unlawful and impermissible combined claims. The RAF avers that the decision to refuse leave to appeal ought to have been granted in so far as the high court erred in various respects in dismissing the application. For example, information that was before the high court was not properly considered and the high court made findings that prevent the RAF from pursuing a declaratory order that combined claims are unlawful. The RAF

¹⁵ *Cloete and Another v S; Sekgala v Nedbank Limited* [2019] ZACC 6; 2019 (5) BCLR 544 (CC); 2019 (4) SA 268 (CC); 2019 (2) SACR 130 (CC).

¹⁶ *Ibid* paras 20 and paras 35-37. See also *Godloza and Another v S* [2025] ZACC 24; 2025 (12) BCLR 1349 (CC) paras 55 and 57.

submitted further that this matter raises arguable points of law of general public importance which ought to be considered by this Court.

[56] Before us the RAF persisted in challenging the validity of the combined claims submitted by Newnet. In sum, the RAF's argument is that:

(a) Newnet is not permitted to submit claims on behalf of the health care practitioners registered in terms of the HPA and that each supplier must submit its own claims.

(b) Newnet and the medical practitioners are benefitting from a referral scheme that ensures that Newnet receives patients from as far as Limpopo that could have been treated by a public hospital situated closer to the patient or where the accident occurred. Furthermore, in comparison to larger private hospitals also submitting motor accident related claims, Newnet was receiving the majority of such claims.

(c) Global accounts were not permitted in terms of the prevailing legislation and rules regulating health care practitioners. Their purpose, so it was argued further, was to ensure that such health care practitioners did not receive perverse incentives by receiving money or benefits from persons or any institution like Newnet, who are not registered health care practitioners.

[57] The RAF also repeated the contentions that the global claims that Newnet had submitted, were excessive and not for services that were actually rendered. In support of this allegation that Newnet's claims are not valid, the RAF averred that it enlisted the services of Universal and SNG to conduct a comprehensive audit of the global claims submitted by Sunshine. In addition, the SIU was, in terms of Proclamation No 44 of 2021 issued by the President, investigating Sunshine as part of a broader investigation into allegations of corruption plaguing the RAF.

[58] All the above contentions by the RAF, which are pursued in this s 17(2)(f) application, were raised and thoroughly dealt with before the high court and during the applications for leave to appeal. The biggest blow to the RAF's case in my view is that there are 181 court orders all still valid which Newnet obtained against the RAF in

various courts, in some instances more than two years prior to the application by the RAF to suspend the writs. These writs of execution were issued after the RAF failed to comply with the relevant court orders. It is not in dispute that some of these orders were obtained by agreement between the parties, some were obtained following default by the RAF and others following trial. All of these orders obtained by Newnet against the RAF related to claims for compensation in terms of s 17(5) of the RAF Act, for medical services rendered to persons who were injured in motor vehicle collisions. What is significant is that the RAF did not appeal against any of these orders nor did it apply for the rescission thereof prior to its application for suspension in terms of rule 45A of the Uniform Rules brought before the high court.

[59] As I have already pointed earlier in this judgment, the high court found that there is not the slightest indication that any of the claims were irregular. The high court further found that there is only the RAF's vague and unsubstantiated belief, which is contradicted by the RAF's own FID investigation, that Newnet has acted unlawfully. On a conspectus of the facts, the high court's finding in this respect, cannot be faulted.

[60] Significantly, in paragraph 4 of the judgment relating to the application for leave to appeal, Swanepoel J stated that counsel for the RAF conceded, during argument, that there was basically no evidence relating to any specific claim showing that there was any irregularity in any of Newnet's claims that formed the basis of the court orders and subsequent writs of execution. I also note that in paragraph 27 of the heads of argument, the RAF's counsel merely submitted that claims lodged by Newnet are 'possibly inflated'. Other than the fact that the FID report totally discounted this possibility, such statement is patently uncertain and speculative.

[61] The RAF's reliance on and invocation of investigation reports of multi-disciplinary bodies do not in any way advance its case. First, there has to date been no report to hand by SNG. Second, the HPCSA has not given any indication that the medical practitioners concerned have breached any ethical rules referred to by the RAF. Third, Universal Healthcare has filed a report to the effect that it investigated

some 100 selected files and apparently found savings of some 29.28 percent of the billed amount in 29 of those files. What is significant is that there is nothing that shows that the 100 files investigated form part of any of the claims in respect of the 181 court orders Newnet obtained against the RAF. In the circumstances, I am constrained to disagree with the findings of the high court that there is little evidentiary value in the extracts from the Universal report. The RAF's complaint that the high court erred by stating that the Universal report was not attached to the papers is in my view no more than a red herring that does not take the matter any further. Lastly, despite the fact that the SIU has investigated Sunshine (Newnet) since December 2021, it has to date evidently not found any wrongdoing.

[62] I have carefully analysed and considered all the relevant facts in this matter and the reasoning of the high court for its conclusions. I am unable to find fault with the reasoning of the high court in any of its findings. Similarly, I am in complete agreement that there are no reasonable prospects of success on appeal and that there is no other compelling reason why an appeal should be heard. The decision by the two judges of this Court made on 2 May 2024 dismissing the application for leave to appeal, brought on petition, cannot be disturbed. In the circumstances this application falls to be dismissed.

[63] In the result, an order is granted as follows:

- 1 The application to adduce new evidence on appeal is dismissed.
- 2 The application for the reconsideration of the decision refusing leave to appeal in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 is dismissed.
- 3 In both instances, the applicant shall pay the first respondent's costs, including the costs of two counsel.

B H MBHA
ACTING JUDGE OF APPEAL

Appearances

For the applicant:

G Naude SC with A Ngidi

Instructed by:

Malatji and Co Attorneys, Sandton

Honey Attorneys, Bloemfontein

For the first respondent:

J G Cilliers SC with M Van Rooyen

Instructed by:

Podbielski Mhlambi Attorneys Inc, Pretoria

Claude Reid Attorneys, Bloemfontein.