



# Dispute Resolution

31 March 2026

SOUTH AFRICA

- Another bite at the cherry:  
Revisiting *res judicata*



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## Another bite at the cherry: Revisiting *res judicata*

The idea of getting a 'second bite at the cherry' is a useful way to conceptualise the legal doctrine of *res judicata*: the rule that once a dispute has been finally decided by our courts, you generally don't get another chance to run it again.

The doctrine of *res judicata* is a Latin phrase which means "a matter already judged" and is a South African common law principle rooted in considerations of finality, legal certainty and the efficient administration of justice. *Res judicata* is a fundamental legal principle which provides that once a court has given its final judgment on a dispute between the same parties under the same cause of action wherein the same relief is sought, then the matter cannot be litigated on again. The principle of *res judicata* protects litigants from being vexed twice by the same cause to avoid injustice and unfairness incorporating the maxim of *nemo bis vexari pro eadem causa*, meaning no person should be vexed or harassed twice for the same cause.

*Res judicata* is a legal defence raised by a defendant where it is facing a re-trial of the same cause of action. Importantly, *res judicata* applies to judgments that are final in effect and given by a competent court. Accordingly, judicial decisions which are interlocutory, provisional or procedural in nature will not generally support a complete defence of *res judicata*.

The Supreme Court of Appeal (SCA) in the matter of *Newnet Property v The Road Accident Fund and Another* [2026] ZASCA 35 recently revisited the application of *res judicata* in enforcement proceedings and provided clarity on the question of whether proceedings to enforce compliance with a court order, as a result of non-compliance, are barred by *res judicata* or constitute a separate cause of action.



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At the outset, it is important to note that once a court order is granted in the High Court for a judgment debt, the successful party can issue a writ of execution to attach the defendant's movable assets to be sold in execution to extinguish the judgment debt. However, in this matter, the defendant (being the Road Accident Fund (RAF)) acted to frustrate this process interfering with the functioning, dignity or effectiveness of the courts, which left Newnet Property (Pty) Ltd t/a Sunshine Hospital (Newnet) with no other option than to seek the court's further intervention.

## Facts

Newnet operated a private hospital that treated patients injured in motor vehicle accidents, many of whom were referred by the RAF or state hospitals. Newnet invoiced the RAF for services rendered, including on "Requested Not Yet Paid" (RNYP) claims, which were for invoices that had been audited and approved by the RAF and due for payment. From around 2020, the RAF increasingly failed to pay Newnet, leading to a series of urgent applications and court orders compelling payment. Despite multiple final judgments being granted in Newnet's favour (many by consent or default), the RAF repeatedly failed to comply, leaving substantial judgment debts unpaid.

As a result of the RAF's persistent non payment, Newnet experienced severe financial distress and was forced to close the hospital in April 2023, retrench staff and transfer critically ill patients, before reopening later that year following limited payments by the RAF. By mid 2024, the RAF still owed Newnet over R92 million under existing judgments and had stopped providing updated RNYP lists or adjudicating new accounts.

Newnet made several attempts to execute against the RAF's movable assets and to attach funds through third parties. Newnet's attempts to execute were actively frustrated by the RAF, including instances where the RAF enlisted the assistance of the South African Police Service to prevent the removal of attached assets by the Sheriff. The RAF also publicly announced its intention to frustrate judicial attachment processes by buying back its attached goods, instead of effecting payment of the judgment debts.

In June 2024, Newnet launched a further urgent application seeking enforcement of the outstanding judgment debts, updated RNYP lists, time bound adjudication and payment of accounts, as well as a *mandamus* directing the RAF's CEO to ensure compliance with the court order. The High Court dismissed this application on the basis that the relief sought was *res judicata* and that Newnet had failed to show that it had executed on the judgments awarded against the RAF. Newnet accordingly appealed the High Court's judgment in the SCA.



## Chambers Global 2026 Results

### Dispute Resolution

**2022–2026** ranked our practice in Band 2: Dispute Resolution.

**2018–2026** ranked our practice in: Band 2: Restructuring/Insolvency.

**2026** ranked our Kenya practice in Band 5: Dispute Resolution.

### Individual Rankings

**Tim Fletcher:** 2025–2026 as an "Eminent Practitioner", a category in which lawyers are ranked as highly influential lawyers and exceptional individuals.

**Lucinde Rhodie:** 2023–2026 in Band 4: Dispute Resolution and in Band 4: Restructuring/Insolvency.

**Natascha Harduth:** 2023–2026 in Band 4: Restructuring/Insolvency.

**Desmond Odhiambo:** 2026 in Band 4: Dispute Resolution.

**Clive Rumsey:** 2025–2026 in Band 5: Dispute Resolution.

**Anja Hofmeyr:** 2025–2026 in Band 5: Dispute Resolution.

**Jackwell Feris:** 2026 in Band 5: Dispute Resolution.

**Corné Lewis:** 2026 as an "Up & Coming" dispute resolution lawyer.

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## Finding

The SCA was tasked with evaluating whether seeking the enforcement of a court order was barred by *res judicata* and whether it constituted a separate cause of action. The SCA found that the High Court had erred in its ruling and that the relief sought by Newnet, to enforce the court orders for payment, was not *res judicata*. The SCA reasoned that Newnet was not seeking a new judgment on the same judgment debt. Instead, the true intention of Newnet's urgent application was to enforce the existing court order in circumstances where the RAF had failed to comply therewith and frustrated Newnet's attempts to enforce the court order, which the SCA held constituted a separate cause of action. Further, the SCA held that the High Court's findings that Newnet had failed to show that it had executed on its judgments against the RAF failed to take into account the various steps that the RAF had taken to frustrate and obstruct the execution of the court order granted against it, which conduct undermined the rule of law in South Africa.

This judgment by the SCA prevents parties from using the principle of *res judicata* as a malevolent shield to justify non-compliance with court orders and portrays the strength of the South African judiciary to prevent the erosion of the rule of law in our country.

**Eugene Bester, Paige Winfield and Mapule Shai**

Cliffe Dekker Hofmeyr

**Legal500**

**2025**

**TIER 1**  
Dispute  
Resolution



## OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa, Kenya and Namibia, please contact:



### Rishaban Moodley

Practice Head & Director:  
Dispute Resolution  
Sector Head:  
Gambling & Regulatory Compliance  
T +27 (0)11 562 1666  
E rishaban.moodley@cdhlegal.com



### Tim Fletcher

Chairperson  
Director: Dispute Resolution  
T +27 (0)11 562 1061  
E tim.fletcher@cdhlegal.com



### Patrick Kauta

Managing Partner | Namibia  
T +264 833 730 100  
M +264 811 447 777  
E patrick.kauta@cdhlegal.com

### Imraan Abdullah

Director:  
Dispute Resolution  
T +27 (0)11 562 1177  
E imraan.abdullah@cdhlegal.com

### Timothy Baker

Director:  
Dispute Resolution  
T +27 (0)21 481 6308  
E timothy.baker@cdhlegal.com

### Eugene Bester

Director:  
Dispute Resolution  
T +27 (0)11 562 1173  
E eugene.bester@cdhlegal.com

### Neha Dhana

Director:  
Dispute Resolution  
T +27 (0)11 562 1267  
E neha.dhana@cdhlegal.com

### Denise Durand

Director:  
Dispute Resolution  
T +27 (0)11 562 1835  
E denise.durand@cdhlegal.com

### Claudette Dutilleux

Director:  
Dispute Resolution  
T +27 (0)11 562 1073  
E claudette.dutilleux@cdhlegal.com

### Jackwell Feris

Sector Head:  
Industrials, Manufacturing & Trade  
Director: Dispute Resolution  
T +27 (0)11 562 1825  
E jackwell.feris@cdhlegal.com

### Nastascha Harduth

Sector Head: Corporate Debt,  
Turnaround & Restructuring  
Director: Dispute Resolution  
T +27 (0)11 562 1453  
E n.harduth@cdhlegal.com

### Anja Hofmeyr

Director:  
Dispute Resolution  
T +27 (0)11 562 1129  
E anja.hofmeyr@cdhlegal.com

### Annemari Krugel

Director:  
Dispute Resolution  
T +27 (0)11 562 1709  
E annemari.krugel@cdhlegal.com

### Mercy Kuzeeko

Director:  
Dispute Resolution  
T +26 (4)83 373 0100  
E mercy.kuzeeko@cdhlegal.com

### Corné Lewis

Director:  
Dispute Resolution  
T +27 (0)11 562 1042  
E corne.lewis@cdhlegal.com

### Nomlayo Mabhena-Mlilo

Director:  
Dispute Resolution  
T +27 (0)11 562 1743  
E nomlayo.mabhena@cdhlegal.com

### Sentebale Makara

Director:  
Dispute Resolution  
T +27 (0)11 562 1181  
E sentebale.makara@cdhlegal.com

### Vincent Manko

Director:  
Dispute Resolution  
T +27 (0)11 562 1660  
E vincent.manko@cdhlegal.com

### Khaya Mantengu

Director:  
Dispute Resolution  
T +27 (0)11 562 1312  
E khaya.mantengu@cdhlegal.com

### Richard Marcus

Director:  
Dispute Resolution  
T +27 (0)21 481 6396  
E richard.marcus@cdhlegal.com

### Lebogang Makwela

Director:  
Dispute Resolution  
T +27 (0)11 562 1057  
E lebogang.makwela@cdhlegal.com

### Burton Meyer

Director:  
Dispute Resolution  
T +27 (0)11 562 1056  
E burton.meyer@cdhlegal.com

### Desmond Odhiambo

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E desmond.odhiambo@cdhlegal.com

### Lucinde Rhodie

Director:  
Dispute Resolution  
T +27 (0)21 405 6080  
E lucinde.rhodie@cdhlegal.com

### Clive Rumsey

Sector Head: Construction & Engineering  
Director: Dispute Resolution  
T +27 (0)11 562 1924  
E clive.rumsey@cdhlegal.com

### Belinda Scriba

Director:  
Dispute Resolution  
T +27 (0)21 405 6139  
E belinda.scriba@cdhlegal.com

### Tim Smit

Sector Head:  
Consumer Goods, Services & Retail  
Director: Dispute Resolution  
T +27 (0)11 562 1085  
E tim.smit@cdhlegal.com

### Joe Whittle

Director:  
Dispute Resolution  
T +27 (0)11 562 1138  
E joe.whittle@cdhlegal.com

### Roy Barendse

Executive Consultant:  
Dispute Resolution  
T +27 (0)21 405 6177  
E roy.barendse@cdhlegal.com

### Rimo Benjamin

Counsel:  
Dispute Resolution  
T +27 (0)11 562 1716  
E rimo.benjamin@cdhlegal.com

**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.  
Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.  
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114  
E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**ONGWEDIVA**

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.  
T +264 (0) 81 287 8330 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdhstellenbosch@cdhlegal.com](mailto:cdhstellenbosch@cdhlegal.com)

**WINDHOEK**

1<sup>st</sup> Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia.  
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020  
T +264 833 730 100 E [cdhnamibia@cdhlegal.com](mailto:cdhnamibia@cdhlegal.com)

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