

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 19942/2021

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Date: 12 April 2024

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD APPLICANT

and

RAKOKWANE MALOKA RESPONDENT

In re:

RAKOKWANE MALOKA APPLICANT

and

LIBERTY HOLDINGS 1ST RESPONDENT

THE STANDARD BANK OF SOUTH AFRICA 2ND RESPONDENT

JUDGMENT

DU PLESSIS AJ

Introduction

- [1] This matter was enrolled on the unopposed motion roll as an application for security for costs. The draft order handed up by the Applicant, Standard Bank, was made an order of the court. The Respondent, Mr Maloka, requested reasons for the order. This judgment thus sets out the reasons for granting the order. CaseLines records the history of the matter in detail. For purposes of this application, it is necessary to give an overview of the litigation to provide context to the application for security for costs.
- [2] Mr Maloka was dismissed from Liberty's employ for gross misconduct pursuant to a disciplinary hearing held in December 2019. Standard Bank sets out the following in its Founding Affidavit to the application for security of costs. On 30 October 2019, Liberty became aware that an amount of R2 856 815,14 which Alexander Forbes intended to pay Liberty in respect of a policy, had been paid into Mr Maloka's personal bank account held at Standard Bank. This is because Mr Maloka entered his personal bank account details on the 'Recognition of Transfer' form sent to Alexander Forbes instead of entering Liberty's bank account details. Mr Maloka does not dispute that the funds were paid into his account. After the funds were paid into his account, he transferred R1 343 551,18 of the funds to various of his other personal accounts and made purchases. When Liberty became aware of this on 30 October 2019, they requested Standard Bank to block the account because the funds were fraudulently paid into Mr Maloka's account. On 22 November 2019, Standard Bank transferred the balance to its suspense account out of caution, and on 7 January 2020, it paid the money to Liberty. Standard Bank avers that it did all this in terms of the banking agreement concluded between them and Mr Maloka. In any event, in an affidavit attested to by Mr Maloka on 30 October 2019, he expressed his shock that the monies landed in his account and that he intends to re-imburse Standard Bank the money.
- [3] Since then, Mr Maloka has instituted various claims against various defendants, none of which were successful. Liberty made an application for security for costs,

and on 24 June 2022, Maier-Frawley J ordered that Mr Maloka furnish security for costs of Liberty Holdings.

[4] On 19 June 2023, Mr Maloka brought an application to join Standard Bank to the main application, giving it five days to deliver a notice of intention to oppose. In his “supporting affidavit to motion about citing and lodging civil lawsuit against Standard Bank”, dated 19 June 2023, claimed, amongst other things, that Standard Bank froze his bank account without the authority to do so and that they must pay back the funds transferred.

[5] Other applications and/or claims mentioned in this affidavit include that:

- i. He approached the Equality Court on 16 October 2020 where he filed a complaint;
- ii. He has the intention of instituting a civil lawsuit against Maier-Frawley J for the order for security of costs that she granted;
- iii. He has the intention of instituting a civil lawsuit against Molahlehi J;
- iv. He made an application to cite the Minister of Justice and Correctional Services for vicarious liability for contravening s20(a) The Prevention and Combating of Corrupt Activities Act,¹ amongst other things;
- v. He lodged a notice to join the instructing attorney of Liberty Holdings and to launch a civil lawsuit for dereliction of professional duty in aiding and abetting unlawful activities in contravention of s20(a) of PRECCA.

[6] While none of these applications are before me, they are listed here as they provide context for the request for security for costs that was before me in the unopposed motion court.

¹ 12 of 2004.

- [7] Standard Bank filed a notice of intention to oppose on 26 June 2023.
- [8] On 3 July 2023, (before Standard Bank was joined) Mr Maloka launched an “interim declaratory remedy with simultaneous equitable remedy” for freezing his bank accounts, requesting the return of the funds.
- [9] On 17 July 2023, Standard Bank filed a notice of intention to oppose this application and requested an extension to file their Answering Affidavit, which Mr Maloka agreed to, and then withdrew on 21 July 2023, stating that he does not have the required authority to grant the extension.

The notice and application for security for costs

- [10] On the same day, 21 July 2023, Standard Bank filed a notice to compel security for costs of R500 000 and that the proceedings be stayed until such security is furnished. The reasons set out in their notice include that Mr Maloka is unemployed and has been for several years; that his bank account does not reflect a substantial balance capable of paying the costs to be incurred by Standard Bank; that Liberty Holdings has obtained costs orders against Mr Maloka in the Equality court which have not been paid; that Mr Maloka instituted various proceedings against numerous other parties in the High Court and other courts, and has indicated his intention of instituting more proceedings. More importantly, they claim that Mr Maloka’s claims brought and unilaterally amended, are frivolous, vexatious and unsustainable because he is not entitled to the relief, as there is no factual basis for granting the relief; that Standard Bank has not acted in contravention of the legislation referred to, and that the legislation does not apply to Standard Bank or the facts; the declaratory orders are not necessary to determine any rights or obligations that Mr Maloka might have; that the issues raised are abstract and academic and that Mr Maloka is not entitled to general, special or punitive damages.² Mr Maloka did not provide security for costs within ten days as per the notice.

² CaseLines 001A-16.

[11] On 24 July 2023, Mr Maloka delivered a “Notice of objection to notice of demand for security of legal costs served by Standard Bank” in which he wrote the following:

“I demand that Standard Bank must withdraw its notice of Rule 47 that I must provide security of legal costs and that I must do so within 10 days of receipt of this notice and failing to do so I shall file a notice to strike out in terms of Rule 30A the cause of complaint on the following grounds: [...]”³

[12] It is then followed by various subparagraphs, such as

“[7.1] That I sought substitution order under oath to be granted an exemption from furnishing security of legal costs in the proceeding which I lodged in the High Court as provided in terms of s21(2)(g) of the Equality Act that has not opposed by the primary respondent to which I shall seek substitution order in terms of the rubric of further and alternative relief in respect of the discriminatory and harassment injury that I sustained directly or indirectly by action, omission or concealments in the review proceedings which are underway in the High Court.”

[13] It seems that Mr Maloka suggests that he took an oath that he did not want to pay legal fees for the cases he brought in the High Court, and that he did so under s 21(2)(g) of the Promotion of Equality and Prevention of Unfair Discrimination Act.⁴ This section states that the Equality Court may make an appropriate order after holding an inquiry, including “an order to make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question”. As the main respondent did not object, he will ask for a substituted order under “further and alternative relief”, as he regards the request as discriminatory and as harassment.

[14] Reference is also made to an application “in terms Rule 40(2) to be absolved from furnishing security of costs”, and that this has likewise not been opposed. He states that he has likewise “sought [a] judicial order of the Deputy Judge President under oath to absolve me from furnishing security of legal costs” in terms of the rules of the court, common law and statute.⁵

³ Paragraph 7 of the “notice of demand”.

⁴ 4 of 2000.

⁵ Paragraph 7.3.

[15] He has further sought an order to rescind the Rule 47 order made by Justice Maier-Frawley, where she has given an order for the Registrar to decide the amount of security.⁶

[16] Lastly, he states that if Standard Bank wants security of legal costs, it must file its answering affidavit before the next day. The reason for this, he states:

“as the reality is that additional application of Rule 47 that the court had already considered is in contrary to the doctrine of issue of estoppel and resultantly it would be deemed vexatious application by the court as it goes against the principle of finality”.

[17] This answering affidavit is required in response to the

“interdict application in which I sought return of liquidated funds arising from liquidated document in the form of release of the withheld funds and return of dispossessed funds with relevant interest pending the outcome of civil proceedings against the SBSA and criminal complaint that has been reported by Liberty as the reality is that I will lose right to claim security of legal costs as such claim will be vested with the applicant as provided in terms of Rule 32(3) which provides that [quoting Rule 32(2)]”⁷.

[18] He further references an application against Standard Bank for breaching the financial sector laws.

[19] He ends the notice by stating that should he not receive an answering affidavit to his application, he will enrol the matter for adjudication.

[20] On the same day, Mr Maloka delivered a “Declaration to sustain interim remedy against Standard Bank”, asking for the release of funds.

[21] On 28 July 2023, Mr Maloka filed a notice to remind Standard Bank to file their Answering Affidavit, to which he granted an extension.

[22] On 10 August 2023, Mr Maloka filed a “declaration to sustain and quantify legal remedy that I seek to be awarded against Standard Bank in several and joint liability”,

⁶ Paragraph 7.4.

⁷ Paragraph 8.

setting out how he calculated the “legal remedy” that he asks for against various parties, including Standard Bank.

- [23] On 17 August 2023, Mr Maloka filed a “Notice of withdrawal by default to Standard Bank’s Rule 47(1) notice of demand for security”, deeming the Rule 47(1) notice to be withdrawn.
- [24] On 23 August 2023, Mr Maloka filed a “Final notice of bar against Standard Bank in respect of merits of interim interdict with incidental application for summary judgment”.
- [25] On 25 August 2023, Mr Maloka filed a “Final notice of bar against Standard Bank pertaining to statutory interim remedy in terms of s21(2)(a) of Equality Act with concurrent application for summary judgment by substitution order in the review application proceeding”.
- [26] On 01 September 2024, Mr Maloka applied for default judgment against Standard Bank “in respect of interim remedy”, requesting that the funds that were taken from his account be repaid. On 11 September 2023, he filed a “Notice of intention to bring application for default judgment in respect of the civil lawsuit against Standard Bank”.
- [27] On 26 September 2023 Mr Maloka filed a “Notice of intention to enrol joinder application against Standard Bank on unopposed basis”.
- [28] He also filed a “Notice of motion in terms of Rule 30A to strike out Standard Bank’s rule 47(1) notice”. To this, he attached a founding affidavit citing his reliance on Rule 47(3) (read with Rule 23(1)). Mr Maloka interprets Standard Bank’s failure to file an application in terms of Rule 47(3) as providing him with the remedy of striking out. This is even more so, he avers, since Standard Bank has not filed an answering affidavit to the main application, nor has Standard Bank opposed his Rule 40 application or the application that he made to the Deputy Judge President in terms of the common law to be exempted from furnishing legal costs. He also states that Standard Bank has not opposed the rescission application against the judgment of Maier-Frawley J in the R47(3) order in favour of Liberty. In short, the argument is

that “if Standard Bank had intention to demand security of costs against the applicant in terms of Rule 47(1), it would have filed notice of opposition with answering affidavit as opposed to filing a parallel notice of demand for security for costs in the same material issue that had already been decided by the court and which is now subject of rescission and variation application and it renders the relevant Rule 47(1) notice misguided as its execution will offend doctrine of issue estoppel”.

- [29] On 20 October 2023 Mr Maloka filed a “Further declaration to sustain and quantify legal remedy that I seek to be awarded against Standard Bank in several and joint liability”.
- [30] On 31 October 2023, Standard Bank served an application for security for costs, to compel him to furnish security of costs in terms of Rule 47, which is the case before me. The founding affidavit avers that Mr Maloka is a vexatious litigant with a history of instituting various legal proceedings against multiple parties stemming from the same factual matrix in different courts. He has been unsuccessful in all of the litigation against Liberty.
- [31] After not being successful with Liberty, he started litigating against other parties, including Standard Bank. Standard Bank avers these claims are without merit and also fatally defective in procedural respects. Standard Bank avers that Mr Maloka does not have regard to the rules of court and litigates in a frantic manner. It is often difficult to understand and make sense of the interlocutory applications and the rules and procedures he invents. All this while he represents himself and does not incur legal costs for his services. On the other hand, Standard Bank is incurring substantial legal costs in opposing the proceedings brought against them.
- [32] The concern of Standard Bank is that Mr Maloka does not have the means to satisfy a court order which might be granted against him, as he is unemployed and does not have much in his bank account. On top of that, Liberty has obtained costs orders against him in proceedings before the Equality Court and the High Court.
- [33] They repeat, as per their notice, that there is no factual basis for granting the relief, that Standard Bank has not acted in contravention of any of the legislation

mentioned, that the legislation is not applicable, that the declaratory orders are not necessary to determine the rights and obligations of Mr Maloka, that the issues are abstract and academic and that Mr Maloka is not entitled to general, special or punitive damages as he seeks.

- [34] As this is a request for security for costs and not an adjudication of the substantive matters, I will not traverse the issues in detail other than to say that Standard Bank questions the legal basis for all the notices and avers that since there is a dispute of fact, motion proceedings are not suitable. Ultimately, they also dispute that Mr Maloka must hold the funds pending the outcome of the proceedings he launched, as Standard Bank would be able to satisfy a money judgment should Mr Maloka succeed. In any case, the funds were transferred to Liberty after Mr Maloka admitted that the money had been paid over erroneously to his account.
- [35] On the same day, Mr Maloka again filed a “notice of objection in terms of Rule 30A to Standard Bank’s Rule 47(3) application for security of costs”. Since what was before me was an application for security for costs, I will provide reasons for granting Standard Bank’s application and deal with the objections raised by Mr Maloka only.
- [36] Again, in this notice, he states in the notice that he objects because Standard Bank did not ask for condonation of the late filing of their answering affidavit in the main application; that he filed an objection for Standard Bank to withdraw the Rule 47(1) notice or file its Rule 47(3) application and it failed to do so within ten days, which requires them to ask for condonation first. He further argued that a request for security for costs infringes his rights of access to court as set out in s 34 of the Constitution, as well as his right to equality (presumably for being unable to litigate). Furthermore, since he is also litigating in the public interest, the *Biowatch* principle applies, and Standard Bank does not have a right to demand security for costs. He also repeats that Standard Bank did not oppose or intervene in the other application against other litigants.
- [37] The application was enrolled before Senyatsi J on 15 November 2023. Senyatsi J gave an order removing the application from the roll, giving Mr Maloka 15 days to file an answering affidavit and Standard Bank 10 days to file a replying affidavit.

Heads of argument, practice notes, chronology and a list of authorities were to be delivered per the practice manual. Notably, the order stated that the main application, the application for interim relief, and any other proceedings brought by Mr Maloka against Standard Bank be stayed pending the outcome of the application to compel security for costs.

- [38] Disregarding this order, Mr Maloka, on the same date, filed a “notice of partial withdrawal for relief against the Standard Bank of South Africa Ltd”, where he withdrew the spoliation relief and the various claims for the restoration of the funds.
- [39] In the meantime, Wepener J, the case management judge, made an order on 20 November 2023 that joined Standard Bank as second respondent and directed all proceedings against Standard Bank to be stayed pending the finalisation of the security for costs application brought by Standard Bank. Mr Maloka did not comply with this order. At the date of the hearing, he also did not furnish security for costs.
- [40] Instead of complying with the court orders, Mr Maloka brought another application to strike out Standard Bank’s application to compel security for costs dated 23 November 2023. A notice of intention to oppose was filed on 7 December 2023, which prompted Mr Maloka to again file a “notice of reminder to Standard Bank in terms of Rule 30A”, stating that Standard Bank must file an answering affidavit in the main application. Mr Maloka, on 18 December 2023, filed a “notice of set down for hearing in the unopposed interlocutory motions court”, mainly asking that the Rule 47 notices be struck, but also asking for a spoliation order and an order in terms of Rule 30, followed by all the notices served on Standard Bank so far.
- [41] Standard Bank served a notice of set down for 29 January 2024 on Mr Maloka, who replied with a “notice of objection to Standard Bank’s notice of set down” on 12 January 2024 as he already secured a date in the unopposed court (in contravention of the court orders) where he sought an “interim equitable remedy” to absolve him from furnishing security for costs, to strike out the Rule 47(1) notice and declare the Rule 47(3) application moot, as well as several other orders relating to the main application.

[42] Working through the labyrinth of what seems to be more than 6000 pages, the crux of the matter before me was an application for security for costs from Standard Bank, that Standard Bank set down on the unopposed motion roll because Mr Maloka failed to adhere to Senyati J's order to file an answering affidavit, which rendered the matter unopposed.

[43] Mr Maloka was not competent to put his application to absolve him from paying security for costs on the unopposed roll, not only because it was done improperly, but primarily because of Senyati J and Wepener J's orders that stayed all proceedings against Standard Bank until the security of costs application was finalised. I thus only considered the issue of security for costs.

Section 34 of the Constitution

[44] S 34 of the Constitution is affected by any decision regarding the security for costs. It provides that everyone has the right to have a dispute that can be resolved by the application of law, decided by a court. It is an important right and not one that the court interferes with lightly.

[45] For courts to function, however, they must have rules to regulate the proceedings. These include that parties take specific steps or risk being prevented from proceeding with a claim or a defence. For instance, a notice of bar calls on a defendant to file a plea within a specific time or lose the right to raise a defence. Likewise, time limits are placed on litigants for the filing of affidavits or pleadings and by failing to comply with such time limits, they may be prevented from pursuing a claim or defence. All these rules must be understood and interpreted in light of s 34 of the Constitution. As set out above, a limitation on the right of access to courts must be justifiable.⁸ One way of justifying such a right is to have stringent legal requirements for when such a right may be limited, as is the case with the law on

⁸ *Giddey NO v JC Barnard and Partners* [2006] ZACC 13 par 16.

security for costs and Rule 47. In other words, a court can only restrict the right to litigate if it is based on sound legal principles.

The law on security of costs

- [46] Rule 47 does not set out the grounds upon which a party may demand security for costs and instead deals with the procedural aspects thereof. The common law and specific statutory provisions deal with the grounds upon which a party may demand security for costs.⁹ In this case, only the common law is applicable.
- [47] While historically security for costs could only be granted against a *perigrinus*, caselaw clarifies that this is no longer the case. The power to grant security for costs is based on the residual discretion of courts arising from their inherent jurisdiction to regulate their proceedings. One way of doing so is to require a party to pay security for costs. While the court has that discretion, it must be exercised sparingly, only in exceptional circumstances¹⁰ and with due regard to section 34 of the Constitution.
- [48] *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd*¹¹ clarified that the mere inability of a resident (*incola*) to satisfy a potential costs order is not sufficient (in terms of the common law), to justify a security for costs order. What is also required is that the court must be satisfied that the contemplated main application is vexatious or reckless and amounts to an abuse of its process. Since it does not lead to the end of the litigation but merely places a limit on it, the requirements are not as stringent as those applicable for declaring someone a vexatious litigant.
- [49] But when is an application vexatious in the context of security for costs? The court in *African Farms and Townships Ltd v Cape Town Municipality*¹² stated it is when the application is obviously unsustainable. This does not require the court to go into

⁹ *Boost Sports Africa (Pty) Limited v South Africa Breweries (Pty) Limited* [2015] ZASCA 93; 2015 (5) SA 38 (SCA) para 5.

¹⁰ *Ecker v Dean* 1938 AD 102 at 111.

¹¹ 2015 (5) SA 38 (SCA).

¹² 1963 (2) SA 555 (A) at 565 D-E.

the merits of the pending matter in detail, but merely that on a preponderance of probability, it must appear unsustainable.¹³

[50] Thus, in considering the prospects of Mr Maloka's case, I do not need to conduct an in-depth analysis and make a final determination on the merits. This would frustrate the purpose of the request for security for costs.¹⁴

[51] Numerous examples in the main application of Mr Maloka indicate that the application is unsustainable on a preponderance of probabilities. For one, the claim for defamation and damages was brought by motion, which in itself is problematic.¹⁵ Even more so, it is clear from the papers that there is a dispute of fact, which makes the motion proceedings all the more unsuitable. Moreover, in South African law as things stand presently, there is no such thing as punitive damages.¹⁶

[52] Mr Maloka also does not follow the rules of court, follows them haphazardly and incomprehensibly, and does not adhere to the requirements of the law of evidence. For instance, Mr Maloka sets out his version in what purports to be a founding affidavit but attaches no supporting documents to substantiate his claim. While it is possible for the court to exercise its discretion when it comes to procedural irregularities based on the facts before it, the court cannot simply ignore evidentiary rules or the substantive law because it might have sympathy for a self-represented litigant's lack of knowledge of legal processes or the alienated feeling, they might presumably harbour because of the courtroom setup. In other words, the court considered that Mr Maloka is self-represented and it has a measure of sympathy for the fact that this can be overwhelming and intimidating and that Mr Maloka might not always have knowledge of processes. Still, given that he made a similar argument

¹³ *Liberty Holdings v Maloka* [2022] ZAGPJHC 423 para 18; *Zietsman v Electronic Media Network Ltd* 2008 (4) SA 1 (SCA) para 21.

¹⁴ *Zietsman v Electronic Media Network Ltd and Others* [2008] ZASCA 4.

¹⁵ *Liberty Holdings v Maloka* [2022] ZAGPJHC 423 para 20, citing *Malema v Rawula* [2021] ZASCA 88 paras 27 and 29.

¹⁶ *Dikoko v Mokhatla* 2006 6 SA 235 (CC) 263.

in other fora, which was dismissed and explained to him in various judgments, Mr Maloka also persists down the same road in this case.

- [53] Even more so, Mr Maloka persists in filing notice upon notice (disregarding two court orders – which might well be construed as being contemptuous), which forces Standard Bank to respond. Each response incurs legal costs, which it may not be able to recoup once an order is made in its favour.¹⁷ The sheer volume of sometimes difficult-to-comprehend notices filed indicates carelessness and disregard for the legal processes and the rights of the opposing litigants, which indicates a degree of vexatiousness.
- [54] Abuse of process has been described in our law as “the process employed for some purpose other than the attainment of the claim in the action”.¹⁸ It is often employed where the litigant has a clear ulterior motive in litigating.¹⁹ The courts are entitled to protect themselves and others against abuse of their processes.²⁰ However, what “abuse of process” is, is not precisely defined. So, how must a court be guided in determining whether there was “an abuse of process”?
- [55] The starting point is that the legal system is properly employed when it is employed to defend rights or uphold just claims, and it is misused when it diverts away from its intended function and is used for extortion, oppression, or applying pressure on another party to accomplish an improper end. Still, using a particular judicial procedure for a different purpose than the one for which it was designed is not a conclusive sign of *mala fides*. Something more is required, such as that an improper outcome was intended. Such a purpose or motivation — however malicious — in

¹⁷ *Johannesburg City Council v Television & Electrical Distributors (Pty) Ltd* 1997 (1) SA 157 (A) at 177 D – E.

¹⁸ *Phillips v Botha* 1999 (2) SA 555 (SCA) at 565-E-F.

¹⁹ See for instance *Mineral Sands Resources (Pty) Ltd v Reddell* [2022] ZACC 37; 2023 (2) SA 68 (CC) and the authorities discussed there.

²⁰ *Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271; *Corderoy v Union Government (Minister of Finance)* 1918 AD 512 at 517; *Hudson v Hudson* 1927 AD 259 at 268; *Beinash v Wixley* [1997] ZASCA 32; 1997 (3) SA 721 (A) at 734D; *Brummer v Gorfil Brothers Investments (Pty) Ltd* 1999 (3) SA 389 (SCA) at 412C-D.

turn, on its own, does not indicate that something is unlawful or invalid. It is just another factor to consider in assessing whether the facts demonstrate an abuse of its process.

- [56] For instance, it is an abuse of process if a litigant has no valid claim but uses litigation to injure the other party financially or in some other way. When considering whether a litigant's actions amounts to an abuse of process, courts must be mindful that everyone can access courts of law, and only in exceptional circumstances can a court restrict such a right to secure a right of access to litigants with bona fide disputes.²¹
- [57] While it is not clear what motivates the filing of various notices on various parties, based on the same factual matrix, a degree of *mala fides* can be inferred from the fact that despite Maier-Frawley J explaining to Mr Maloka in her judgement, including the leave to appeal judgment, why his claim is not sustainable, he instituted various other applications against a new respondent on virtually the same grounds. That, despite two court orders that prohibit him from initiating any more proceedings pending the outcome of this application. He wilfully disregarded the orders and instituted the same applications as before, *and* set them down on the unopposed motion roll for adjudication. Thus, I am satisfied that in terms of the legal principles, Standard Bank's application should succeed. The next question then is whether Standard Bank followed the correct procedures.
- [58] As mentioned above, Rule 47 deals with the procedural aspects of security for costs. Firstly, it requires a party to file a notice "as soon as practicable". There is no specific time period for such an application to be made other than it must be "after the commencement of the proceedings" – in other words, with proceedings pending before the final judgment.²² The filing of this notice is not "a further step in the proceedings" falling under Rule 30(1) – it is a peripheral matter falling outside of that

²¹ *Price Waterhouse Coopers Inc v National Potato Co-operative Ltd* [2004] ZASCA 64 para 50.

²² *H R Holfeld (Africa) Ltd v Karl Walter & Co GmbH* (2) 1987 (4) SA 861 (W).

rule.²³ This was explained to Mr Maloka in the judgment of Maier-Frawley J, in which she explained in detail the workings of Rule 30 and its interaction with Rule 47. She explained that “[i]t is trite that a notice to furnish security does not constitute an irregular or improper step or proceeding for purposes of rule 30(1)”.²⁴ I agree.

[59] Rule 47(3) states:

If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within ten days of the demand or the registrar’s decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

[60] In other words, if Mr Maloka contests his liability to give security or fails or refuses to do so within ten days of the demand, Standard Bank may apply to the court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with. In other words, the rule does not prescribe ten days within which Standard Bank must demand security or approach the court. Standard Bank is entitled to deliver a notice and set out the grounds and the amount demanded as soon as practicable after the commencement of proceedings. Then, at least ten days must pass before Standard Bank can, under Rule 47(3), approach the court to ask for an order to furnish security and to stay proceedings until security is paid. This was also explained to Mr Maloka in *Liberty Holdings v Maloka*.²⁵

[61] Standard Bank followed the procedure as set out in Rule 47. After the Senyatsi J order, Mr Maloka did not file an answering affidavit to the application. Instead, he filed his own notices in a haphazard, often in an incomprehensible manner. I gave a generous interpretation to these notices and considered them as contesting his liability to pay security for costs. Furthermore, when Mr Maloka entered appearance on the day, I gave him an opportunity to address the court as to why the order should

²³ *Market Dynamics (Pty) Ltd t/a Brian Ferris v Grögor* 1984 (1) SA 152 (W).

²⁴ In para 14.

²⁵ [2022] ZAGPJHC 423 in para 32.

not be granted. Instead, he persisted with his own applications, including requesting a spoliation order.

[62] After listening to both parties, I was not convinced that that the order should not be granted. Since the amount was not placed in dispute, I also need not have referred the matter to the registrar.²⁶ Considering that the proceeding of this matter rests on the finalisation of this application, I exercised my my discretion to give finality to this issue.

[63] Lastly, Mr Maloka's reliance on the Biowatch principle as set out in *Biowatch Trust v Registrar Genetic Resources*²⁷ is misplaced. Biowatch established the broad premise that in litigation between the State and private parties attempting to assert a basic right, the private party should not pay the costs if such party is unsuccessful. It is not applicable in litigation against non-state parties. But, in any event, it is a principle which ordinarily comes into play when a court considers a costs order not in circumstances currently under consideration, although these are conceivably factors which could and should play a roll.

[64] Thus, on the facts of this matter as set out in this judgment, I was persuaded that Standard Bank established its entitlement to security for costs on the basis that the main application is unsustainable and that the proceedings are vexatious and an abuse of process, applying the less stringent test for such a finding applicable for purposes of security for costs.

[65] These then the reasons for the order I made on 29 January 2024.

Order

[66] I, therefore, made the following order:

²⁶ *Ramsamy NO v Maarman NO* 2002 (6) SA 159 (C) 169 170 and *Paradigm Capital Holdings Ltd v Pap Computer Services CC* 2000 (4) SA 1070 (W) at 1075H.

²⁷ 2009 (6) SA 232 (CC).

1. Mr Rakokwane Maloka ("Maloka") shall furnish Standard Bank with security for costs in the amount of R500 000 (Five Hundred Thousand Rand), in respect of all the applications brought by Maloka against Standard Bank under the aforesaid case number;
2. The security to be furnished shall be by way of guarantee provided by a reputable South African banking institution;
3. All of the proceedings brought by Maloka against Standard Bank under the aforesaid case number are forthwith stayed until such time as Maloka furnishes the security as directed herein;
4. Maloka is hereby ordered to pay the costs of this application.



WJ DU PLESSIS

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines and sent to the parties/their legal representatives by email.

Counsel for the applicant:	Thabo Thobela
Instructed by:	Jason Michael Smith Inc
Counsel the for respondent:	Rokowane Eislen Maloka
Date of the hearing and granting the order:	29 January 2024
Date of giving reasons:	12 April 2024