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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 12866/2014

In the matter between:

L[...] M[...] W[...]

Appellant

and

C[...] R[...] W[...]

Defendant

Neutral citation: W[...] v W[...] (Case no 12866/2014) [2025] ZAWCHC 392 (01-09-2025)

Coram: NUKU J

Heard: 5 August 2025

Delivered: 01-09-2025

Summary: Civil Procedure – Vexatious litigant – persistent unmeritorious litigation directed at undermining a final court order which had been unsuccessfully appealed up to the Constitutional Court - Abuse of process – declared a vexatious litigant - Vexatious Proceedings Act 3 of 1956, s 2(1)(b).

Practice – Security for costs – Rule 47 of the Uniform Rules of Court - *incola* respondent – application brought before the expiry of a ten-day period afforded to the respondent to provide security.

ORDER

1. Sub-paragraph 2.1 of the rule nisi dated 2 July 2025 is confirmed, and the respondent is declared to be a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956.
2. Sub-paragraph 2.2 of the rule nisi dated 2 July 2025 is confirmed without sub-paragraphs 2.2.1 and 2.2.2, and the respondent is precluded from instituting any legal proceedings against the applicant in any Local or Provincial Division of the High Court of South Africa or any inferior Court, without first obtaining the leave of this Court.
3. Sub-paragraphs 2.2.1 to 2.6 of the rule nisi dated 2 July 2025 are discharged.
4. The respondent is ordered to pay the costs of this application on a party-and-party basis, including the costs of counsel on scale B.

JUDGMENT

NUKU J

[1] This is the return day of a *rule nisi* issued by this Court on 2 July 2025, which required the respondent to show cause why he should not be:

- 1.1 declared a vexatious litigant;
- 1.2 precluded from instituting any legal proceedings against the applicant without the leave of this Court, which leave may only be granted once he has fulfilled certain conditions;
- 1.3 ordered to provide security for costs of R100 000 each, in respect of applications he filed under case numbers 2025-083923 and 12866/2014 within 10 days of the order being granted; and failure to do so may result in the applicant applying for the dismissal of the proceedings under the aforementioned case numbers; and
- 1.4 4 ordered to pay the costs of the application on an attorney and client basis, including the fees of senior counsel.

[2] The applicant resorted to the relief she seeks in these proceedings due to ongoing legal proceedings instituted by the respondent following the granting of a divorce order by this Court on 26 August 2020 (Divorce Order). The respondent has also threatened additional litigation. All these legal proceedings and threats share a common element: the respondent's attempt to avoid fulfilling the obligations imposed on him by the Divorce Order.

[3] Since the granting of the Divorce Order, the applicant has had to contend with no fewer than ten unsuccessful applications brought by the respondent against her. These include:

- 3.1 an unsuccessful application to this Court for leave to appeal the Divorce Order;

- 3.2 an unsuccessful petition to the Supreme Court of Appeal for leave to appeal the Divorce Order;
- 3.3 an unsuccessful application to the President of the Supreme Court of Appeal for reconsideration of the decision refusing him leave to appeal the Divorce Order;
- 3.4 an unsuccessful application to the Constitutional Court for leave to appeal against the Divorce Order;
- 3.5 an unsuccessful urgent application to this Court for the suspension of obligations imposed by the Divorce Order;
- 3.6 three unsuccessful applications from the Maintenance Courts of Atlantis and Cape Town for either the stay or variation of the Divorce Order;
- 3.7 an unsuccessful appeal to this Court against the latest decision of the Maintenance Court dismissing his application for a stay or variation of the Divorce Order;
- 3.8 an unsuccessful application to the Domestic Violence Court to prevent the applicant from taking steps to execute the Divorce Order;
- 3.9 an unsuccessful application to this Court for leave to appeal an order authorising the attachment of the respondent's property to satisfy some of his obligations arising from the Divorce Order (Rule 46A Order);
- 3.10 an unsuccessful petition to the Supreme Court of Appeal for leave to appeal the Rule 46A Order; and

3.11 an application to this Court for the rescission and setting aside of the Divorce Order. This application is scheduled for a hearing on 18 September 2025.

[4] In addition to the above, the respondent has to date not paid any of the costs he was ordered to pay in some of the legal proceedings mentioned above. Additionally, the legal proceedings referred to above exclude those in which the applicant successfully instituted claims against the respondent, in respect of which the respondent has still not paid the costs awarded against him.

[5] The respondent has not spared the professionals involved in the ongoing litigation between himself and the applicant. He has lodged complaints against the applicant's legal representatives, his own legal representatives, and his forensic expert. The members of this Court have not been spared either, as the presiding judge who granted the Divorce Order was subjected to a complaint to the Judicial Services Commission.

[6] As if all the above were not enough, the respondent began issuing threats from around May 2025. Some of these threats targeted the applicant's legal representatives. The attorneys were threatened with a R210 million lawsuit, and counsel was threatened with a R190 million lawsuit. The respondent's former legal representatives also did not escape the respondent's threats.

[7] The respondent has even resorted to blackmail. In early June 2025, he threatened to report the applicant's legal representatives to the Legal Practice Council if they did not agree to the postponement of the sale in execution authorised by the court under the Rule 46A Order. The respondent has also escalated all of the complaints he had lodged with the Legal Practice Council against the applicant's current and former legal representatives to the Legal Services Ombud.

[8] On 9 June 2025, the respondent wrote to the applicant's legal representatives demanding that they recuse themselves from representing the applicant in any current or future litigation against him. This was followed, on 10 June 2025, by supplementary complaints to the Legal Practice Council against the applicant's attorneys and counsel.

[9] In the weeks preceding the initiation of this application, the respondent, on 12 June 2025, demanded the postponement of the sale in execution authorised under the Rule 46A Order; failing which, he would pursue further 'Legal, regulatory, and public avenues' against the applicant's legal representatives.

[10] On 13 June 2025, the day after, the respondent sought to obtain a resolution from the trustees of the Collin Trust (Trust) to enable the Trust to commence proceedings against the applicant for an alleged breach of her fiduciary duties. The significance of this is that the property authorised for attachment under the Rule 46A Order is registered in the name of the Trust, and the corporate veil of the Trust was pierced because it was found to be the respondent's alter ego.

[11] This application was filed as a counter-application in response to an urgent application brought by the respondent to stay the sale in execution authorised under the Rule 46A Order (stay application). The matter came before Le Grange J on 26 June 2025, and he delivered his judgment on 2 July 2025, dismissing the respondent's stay application, and he also made an order in the following terms:

- '2. A rule nisi is issued calling upon the respondent to show cause on 5 August 2025 why an order in the following terms should not be made final:
 - 2.1 Declaring the respondent to be a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1996 ("the Act");
 - 2.2 Precluded the respondent from instituting any legal proceedings against the applicant in any Local or Provincial Division of the High Court of South

Africa or any inferior Court, without first obtaining the leave of this Court, which leave shall not be granted until such time as:

2.2.1 the respondent has complied fully with the provisions of the Final Order of Divorce granted under case number 12866/2014 on 26 August 2020; and

2.2.2 the respondent has paid the costs orders, as finally taxed and determined by the relevant Taxing Masters, under case numbers: 12866/2014; A228/2023; CCT198/21; SCA Case No. 932/2020; SCA Case No. 276/2021 and SCA Case No. 1339/2024.

2.3 Ordering the respondent to provide security in the amount of R100 000 (One Hundred Thousand Rand) each, in respect of the applications he instituted in this Court on 4 June 2025, under case number 2025-083923 and on 12 June 2025, under case number 12866/2014 in accordance with the notices filed by the applicant in terms of Rule 47, within 10 days of this order being granted.

2.4 In the event of the aforesaid security not being furnished, the applicant is given leave to apply on the same papers, amplified as may be necessary, for the dismissal of the aforesaid proceedings.

2.5 Ordering the respondent is to pay the costs of this application on the scale as between attorney and own client, such costs to include the costs of senior counsel.'

[12] This judgment, therefore, considers whether the order mentioned above should be confirmed as it is, or as amended, or be discharged.

[13] On 8 July 2025, the respondent submitted an affidavit presenting facts for this Court to consider when deciding the application. In the concluding paragraph, his request is that this Court should ‘Set aside or suspend the punitive security costs order’ and ‘Reserve judgment on any declaration of vexatiousness until all interlocutory matters are ventilated.’

[14] The introduction of the affidavit filed by the respondent begins by criticising the *rule nisi*, asserting it wrongly characterised his applications as vexatious when ‘they, in fact, arose from clear, substantiated and constitutionally protected efforts to rectify proven misconduct and systemic procedural abuse’.

[15] Under a section discussing grounds of opposition, the respondent states that:

15.1 the applicant’s reliance on the doctrine of res judicata and the decision of the Constitutional Court in ***Beinash***¹ is misplaced. And this is because ‘Unlike those cases, my litigation history reflects a targeted and narrowly confined effort to undo an unlawful divorce outcome that resulted in the fraudulent loss of trust assets, personal property, and dignity’; and

15.2 the applicant’s legal representatives made false claims in the plaintiff’s particulars of claim, asserting that the Trust was the respondent’s alter ego. This is not only unfounded but also constitutes *prima facie* perjury, as demonstrated by the 2014 Annual Financial Statements of the Trust.

[16] The respondent then laments the sale of the immovable property, which was sold in execution under the Rule 46A Order, as an irrevocable loss of R5 million. He alleges this loss to be due to an unjust judgment and premature execution. He views the sale of the property as a strategy to financially weaken him and strip him of the leverage from ongoing legal efforts.

¹ Beinash and Another v Ernst & Young and Others 1999 (2) SA 116 (CC)

[17] Turning his attention to the applicant's legal representatives, he criticises them for previously introducing private WhatsApp messages between him and a former girlfriend without foundation, consent, or authentication, in a manner he deems abusive and unlawful. He claims that these communications were used to shape the legal issues between him and the applicant in a way that created a misleading character narrative, which the judge presiding over the divorce proceedings relied upon.

[18] The respondent also addresses the violation of his constitutional rights, particularly those in sections 9 and 34 of the Constitution of the Republic of South Africa, 1996 (Constitution), namely the right to equality and access to courts. He claims, without any supporting evidence, that the legal process in these proceedings has been noticeably unfair compared to other litigants in similar circumstances. He also argues that the requirement for him to provide security to proceed with the pending applications effectively prevents him from accessing the courts for remedies.

[19] Additionally, the respondent again, without providing evidence, claims that fraud, collusion, and perjury in the divorce proceedings undermine the fundamental principle of justice and the rule of law, as set out in section 1(c) of the Constitution. Lastly, he complains about the influence of personal and professional alliances within the Cape legal network, which creates a perception of bias—an antithesis to judicial independence as envisioned by section 165(2) of the Constitution.

[20] On 14 July 2025, the respondent filed a supplementary affidavit without the leave of this Court to do so. The affidavit merely reiterates his contempt for the Divorce Order, Rule 46A Order, and the rule nisi, as well as continuing to cast negative aspersions on the applicant's legal representatives.

[21] The applicant filed her replying affidavit, which addressed the respondent's affidavit titled 'Replying Affidavit' as well as the respondent's supplementary affidavit. In the replying affidavit, the applicant, in addition to stating that the respondent failed to engage with the allegations underpinning the application, pointed out that the

respondent was required to obtain leave from this Court before filing a supplementary affidavit.

[22] The respondent remained undeterred and submitted a further supplementary affidavit. This additional supplementary affidavit, which was also submitted without the leave of this Court, did little to address the merits of the application, and it is not even necessary to set out the averments made therein.

[23] Against this background, I consider whether the rule nisi should be confirmed. Essentially, two issues require determination: (a) whether the applicant has established the requirements for declaring the respondent a vexatious litigant, and (b) whether the respondent should be ordered to provide security for costs. If the issue in (a) is decided in favour of the applicant, the secondary issue is whether conditions should be attached to an order preventing the respondent from initiating proceedings against the applicant without obtaining leave of this Court. Finally, I consider the issue of costs.

Has the applicant established the requirements for the respondent to be declared a vexatious litigant?

[24] The authority of the court to impose restrictions on the institution of vexatious legal proceedings derives from Vexatious Proceedings Act, 3 of 1956 (the Act). Section 2(1)(b) thereof states that:

‘if, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any

court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.'

[25] Discussing the requirements of section 2(1)(b) of the Act, this Court in **Cohen v Cohen And Another**², stated that '... the applicant has to meet two requirements in order to obtain relief in terms of s 2(1)(b) of the Act: she must show, firstly, that the respondent has 'persistently' instituted legal proceedings and, secondly, that such proceedings have been 'without reasonable ground'.

[26] Counsel for the respondent referred to the legal proceedings that have been instituted by the respondent post the Divorce Order in support of her submission that the first threshold requirement has been met.

[27] The respondent cannot be faulted for pursuing applications for leave to appeal up to the Constitutional Court. However, once the Constitutional Court had pronounced on the matter, any application that the respondent lodged thereafter could not have been made with an honest belief that it would achieve anything. The summary of proceedings that have been instituted by the respondent, as set out in paragraph [3] above, speaks for itself. And as the respondent himself says, all these applications concern 'a targeted and narrowly confined effort to undo an unlawful divorce outcome that resulted in the fraudulent loss of trust assets, personal property, and dignity.'

[28] Despite the unsuccessful application for leave to appeal to the Constitutional Court, the respondent is clear that he will not stop until he gets what he thinks he deserves. That he has persistently instituted legal proceedings is self-evident.

² 2003 (1) SA 103 (C) at para [17]

[29] Regarding the second requirement, which concerns the absence of reasonable grounds for initiating legal proceedings, I believe that this requirement has also been satisfied. The Constitutional Court holds the final authority on any litigation, and once it has spoken, that should be the end of the matter. However, not so for the respondent, who has gone as far as approaching the Maintenance Courts and the Domestic Violence Court in her attempt to overturn the Divorce Order. The respondent could never have genuinely believed that these courts could overturn a decision by the Constitutional Court.

[30] The respondent has not provided any evidence to support his claim that his rights under section 9 of the Constitution have been violated. An order declaring him a vexatious litigant limits his right protected by section 34 of the Constitution, but it was correctly argued that the provisions of the Act have withstood constitutional scrutiny, as confirmed by the Constitutional Court in *Bienash*. The applicant, in my view, has met the requirements of section 2(1)(b) of the Act and is entitled to an order declaring the respondent a vexatious litigant, with the consequential order that he may not institute legal proceedings without obtaining the leave of this Court. This leads to the secondary issue of whether the granting of such leave should be subject to conditions.

Is there any justification for imposing conditions precedent before the respondent obtains leave?

[31] The applicant does not appear to have paid sufficient attention to the requirement of attaching conditions precedent before the respondent could obtain leave to initiate legal proceedings against her. The papers filed on her behalf, including the heads of argument, did not address the issue at all. The respondent, being unrepresented, understandably did not deal with the issue as well.

[32] When I initially raised the issue with the applicant's counsel, she indicated that the applicant could proceed without the conditions. However, in reply, she persisted with the conditions to be attached to the order.

[33] The issue I have with attaching the conditions is that they impose an additional limitation on the respondent's right of access to courts. And that limitation is not sourced from the Act or any other law of general application as provided for in section 36(1) of the Constitution.

[34] The other difficulty I have with the conditions is that they may function as an absolute barrier, potentially preventing the respondent from initiating proceedings that are not otherwise vexatious. Such an absolute limitation of the respondent's right of access to courts cannot even be justified as the limitation derived from s 2(1)(b) of the Act as found by the Constitutional Court in ***Bienash***.

[35] The imposition of the conditions seems to serve a purpose beyond merely preventing the respondent from bringing vexatious proceedings. I say this because the language of the conditions indicates that they are meant to ensure that the respondent complies with the Divorce Order as well as the costs orders made against him. Such a purpose is not what the Act was designed for, and imposing these conditions would amount to using the instrument of the law for a purpose it was not intended to serve, thereby constituting a subversion of the law. For these reasons, I am not satisfied that the imposition of the conditions is justified and that part of the *rule nisi* cannot be confirmed. The next issue to address is the application for the respondent to provide security for costs.

The application for the provision of security

[36] The applicant served a notice demanding that the respondent provide security for costs on 20 June 2025 (Rule 47 Notice), and the respondent was given 10 days to comply. The Rule 47 Notice warned the respondent that 'if the request is not complied with within 10 (Ten) days of service of this notice, the Court may, on application, stay the proceedings until such request is complied with, or dismiss the application.'

[37] The application that led to the issuing of the rule nisi was heard on 26 June 2025, three court days after the delivery of the Rule 47 Notice, and the rule nisi was issued on 2 July 2025, eight days after the Rule 47 Notice was served and before the ten days referred to in the Rule 47 Notice expired.

[38] The above raises the question whether the rule nisi, in so far as it concerns the order directing the respondent to furnish security, was made prematurely. This is because the period that the respondent had been given had not passed both when the application was heard and when the rule nisi was issued. And if the rule nisi was made prematurely, the secondary question is whether it may, nevertheless, be confirmed.

[39] The issue of whether the rule nisi concerning security for costs was issued prematurely had not been addressed in the written submissions submitted on behalf of the applicant. When I raised this concern with the applicant's counsel, she indicated that the applicant was not pursuing that relief in these proceedings. However, she later revised her position in her reply, stating that it would be highly prejudicial to the applicant if she were required to make a separate application concerning the issue of providing security for costs. This is because the applicant would be relying on the same facts that are already before this Court.

[40] It was the applicant who chose to bring the present application before the expiry of the period she had given the respondent to provide security. Having made this decision, she was required to explain why she could no longer wait for the ten-day period to expire, but she failed to do so. She, therefore, cannot be heard to complain of prejudice which was occasioned entirely by her own conduct.

[41] The relief related to providing security appears to have been merely an afterthought, considered only during the preparation of the application to declare the respondent a vexatious litigant. This is clear from what the applicant states in the founding affidavit, namely that she is 'aware that any order granted pursuant to this

application prohibiting the respondent from instituting further legal proceedings may not be applicable to the three pending applications...’

[42] An application for security from an incola litigant requires careful consideration and should not be made lightly. This is because such relief affects the right of access to courts guaranteed by section 34 of the Constitution. This is further complicated in the present case by the fact that the rule nisi was granted in circumstances that infringed upon the respondent’s procedural rights. That being the case, the part of the rule nisi relating to the provision of security for costs cannot be confirmed. That leaves only the issue of costs.

Costs

[43] The applicant has been substantially successful, and the costs should follow the result. The applicant sought costs on an attorney-client scale. However, given that the respondent has achieved some success, the costs on an attorney and client basis would not be justified. I am of the view that an order granting costs on a party-and-party scale is reasonable under the circumstances. Such costs shall include the costs of counsel on scale B.

Order

[44] As a result, the following order shall issue:

44.1 Sub-paragraph 2.1 of the rule nisi dated 2 July 2025 is confirmed, and the respondent is declared to be a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956.

44.2 Sub-paragraph 2.2 of the rule nisi dated 2 July 2025 is confirmed without sub-paragraphs 2.2.1 and 2.2.2, and the respondent is precluded from instituting any legal proceedings against the applicant in any Local or Provincial Division of

the High Court of South Africa or any inferior Court, without first obtaining the leave of this Court.

44.3 Sub-paragraphs 2.2.1 to 2.6 of the rule nisi dated 2 July 2025 are discharged.

44.4 The respondent is ordered to pay the costs of this application on a party-and-party basis, including the costs of counsel on scale B.

L G NUKU
JUDGE OF THE HIGH COURT

Appearances

For Appellant:	L Buikman SC
Instructed by:	Catto Neethling Wiid Inc
For Respondent:	In Person