

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2013/28719

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED. Yes

In the matter between:

CHANGING TIDES 17 (PROPRIETARY) LIMITED N.O.

APPLICANT

AND

STEENKAMP, LEON

RESPONDENT

In Re

CHANGING TIDES 17 (PROPRIETARY) LIMITED N.O.

PLAINTIFF

AND

STEENKAMP, LEON

DEFENDANT

JUDGMENT

Matthys AJ

A. Introduction

[1] The right of access to the courts is a fundamental cornerstone of our constitutional democracy, however it is not a licence to engage in a war of attrition. The judicial process is designed for the resolution of *bona fide* disputes, not as a tool for the harassment or oppression of an opponent.

[2] This opposed application requires this court to determine whether the respondent has crossed the threshold from assertive litigation, to a persistent abuse of the court machinery. Ultimately, the question is whether the respondent's conduct has reached the level of vexatiousness contemplated by the Vexatious Proceedings Act 3 of 1956, necessitating an order to shield the applicant and the administration of justice from meritless litigation.

[3] The applicant seeks an order in terms of section 2 (1) (b) of the Vexatious Proceedings Act 3 of 1956, declaring the respondent a vexatious litigant, together with related ancillary interdictory and declaratory relief as set out in the notice of motion as follows: -

1. The respondent is declared a vexatious litigant, in terms of the Vexatious Proceedings Act 3 of 1956;
2. The respondent is interdicted, and restrained from instituting any further proceedings in any Court, including but not limited to the High Court, or the

Germiston Magistrate's Court, in relation to Portion 32 (A Portion OF Portion 1) of ERF 7[...] Klippoortje Agricultural Lots Township Registration Division I.R., Province of Gauteng, Held by Deed of Transfer T[...]. situated at 1[...] P[...] Street, K[...], E[...], G[...] (the property);

3. The relief in paragraph 2 above, interdicts and restrains proceedings, including but not limited to:

3.1. proceedings to stay, cancel, or set aside any execution steps against the property; and

3.2. proceedings to stay, cancel or set aside any sale in execution in respect of the property; and

3.3. proceedings to amend/ alter/ vary the conditions of sale in execution, in respect of the property; and

3.4. proceedings to vary, correct, or rescind the summary judgment, granted against the respondent, on 20 March 2014, by Mashile J, under case number 28719/2013 (the judgment), including the order declaring the property executable.

4. The relief in prayer 2 - 3.4, is subject thereto, that this Court may grant the respondent leave to institute proceedings, provided that such an application for leave, be served on the applicant, and at least 10 days prior notice of the set down thereof be provided to the applicant's attorneys, at the email address t[...].

5. The respondent is interdicted and restrained from interfering with, threatening, or impeding the Sheriff of the High Court Germiston South, or any other duly appointed sheriff, in carrying out his/her functions, in taking any steps in execution of the judgment, including but not limited to scheduling, and conducting a sale in execution of the property, in satisfaction of the judgment;
6. The respondent is interdicted and restrained from interfering with the conducting of the sale in execution of the property, including but not limited to attending to the sale in execution when same is conducted, handing out documents, affixing documents, publicising any documents, statements or claims, aimed at dissuading prospective bidders from partaking in, or bidding on the property, at the sale in execution;
7. The respondent is interdicted and restrained from interfering with, threatening, or harassing the Sheriff Germiston South or any member of his staff, any bidder at the sale in execution, or any successful purchaser of the property, subsequent to the sale in execution of the property;
8. The respondent is interdicted and restrained from appointing, requesting, or securing the assistance of any person, whether natural or otherwise, whether directly or indirectly, to institute any proceedings, or take any step prohibited/restrained in paragraphs 2 - 3.4 and 4 - 7 above;
9. It is declared that the pending notice of appeal, in relation to Germiston Magistrate' Court case number 3098/2023, and the application for leave to appeal, in this Court,

under case number 2023/02209, or any subsequent appeal process, in relation to the foregoing, does not:

9.1. curtail, impede, or affect the applicant and sheriff's entitlement/ authority to conduct a sale in execution of the property; and

9.2. affect the efficacy, or validity the sale of the property, or title that may be passed to a bidder, upon the latter complying with the conditions of sale, to secure transfer;

10. The respondent is to pay the costs of this application, on the scale as between attorney and client.

The parties

[4] The applicant is Changing Tides 17 (Proprietary) Limited N.O.¹ a company duly incorporated with limited liability in accordance with the Laws of the Republic of South Africa, herein its capacity as the duly appointed sole trustee of the South African Home Loans Guarantee Trust² a trust duly registered as such by the Master of the High Court and registered as a credit provider in terms of sections 40 and 45 of the National Credit Act No. 34 of 2005³.

¹ registration number 2001/009766/07

² Master's Reference No. IT/10713/00

³ under No. NCRCP1732

[5] The respondent is Mr Leon Steenkamp currently a businessman, who is legally qualified and whom formerly practiced as an attorney until September 2000, when his name was struck off the roll of legal practitioners.

B. Historical Background

[6] The following facts from the applicant's case, as established in the record, frame the protracted legal saga between the parties. On 26 February 2008, the respondent concluded a loan agreement for R625 000 with the credit provider Blue Banner Securitisation Vehicle Rc1 Proprietary Limited as lender. The South African Home Loans Guarantee Trust on 26 February 2008, issued a written guarantee in favour of the lender.

[7] The guarantee obliges the trust, (should the lender so require, as they did in this case), to settle such guarantee obligation, by effecting recovery from the respondent, in terms of a written indemnity executed by the respondent in favour of the trust. The material terms of the indemnity are that the respondent unconditionally and irrevocably indemnified the trust as a separate and independent primary obligation from and against any loss, cost, claim, expense or liability of any kind incurred or to be incurred by the trust, as a result of the respondent failing to duly and punctually perform any of his obligations under the loan.

[8] The respondent undertook to pay the amount due to the trust, on written demand by the trust and the trust is able to enforce its rights under the indemnity in its own name and on its own behalf. As security for the respondent's obligations to the trust, in terms of the indemnity, he authorized the registration of an indemnity bond, over the property

described as Portion 32 (a Portion of Portion 1) of Erf 7[...] Klippoortje Agricultural Lots Township, Registration Division I.R. in the Province of Gauteng and held by Deed of Transfer No T[...], in favour of the trustees for the time being of the trust.

[9] The initial monthly repayment was set at R7600 and a mortgage bond was duly registered as security on 4 April 2008. The respondent subsequently defaulted on his obligations. By 19 September 2012, the account had accrued arrears totaling R63 070.61.

Summons

[10] On 6 August 2013, the applicant issued summons against the respondent, seeking a money judgment and an order declaring the immovable property executable. The summons was duly served and the respondent served a notice to defend the action, however he failed to deliver a plea.

Summary judgment: Mashile J order

[11] The applicant's application for summary judgment was enrolled for hearing on 12 November 2013. On the eve of the hearing, the respondent then represented by his first attorneys of record⁴, requested a postponement to finalize an affidavit resisting summary judgment. By agreement between the parties, this postponement was granted.

[12] The respondent failed to deliver an affidavit resisting summary judgment by the 6 January 2014 deadline. Subsequent settlement overtures by the applicant's attorneys went unanswered, leading to the application for summary judgment being re-enrolled.

⁴ Marius Verster Attorneys

Although the notice of set down for 20 March 2014 was duly served, the respondent failed to appear or file opposing papers. As a result, Mashile J granted summary judgment by default and declared the subject property executable.

[13] Following the Mashile J order, the property was attached by the Sheriff on 6 June 2014. Notices of attachment were served on 14 June 2014, *inter alia*, at the property in question. Subsequently, on 18 November 2014, a notice of sale in execution (first sale in execution) was served on the respondent.

Rescission application: Mphahlele J order

[14] Three days prior to the scheduled sale in execution, the respondent launched an application to rescind the Mashile J order, resulting in the stay of the sale set for 24 November 2014. The applicant opposed the rescission and delivered its answering affidavit on 22 December 2014. When the respondent failed to file a replying affidavit by January 2015, the applicant's attorneys proceeded to index, paginate, and set the matter down for hearing on 3 August 2015.

[15] It transpired on 30 July 2015, that the respondent appointed his second attorneys of record⁵, who requested a postponement of his rescission application, to allow the respondent to file his replying affidavit. Consequently, the hearing of 3 August 2015 was postponed by consent at the respondent's instance.

[16] The respondent eventually delivered his replying affidavit on 25 August 2015, but he failed to enroll the application for nearly six months. In an effort to progress the matter,

⁵Brian Blignaut Attorneys

the applicant's attorneys requested heads of argument, however, the respondent's second attorneys withdrew on 16 February 2016, where after the respondent remained dilatory in prosecuting his rescission application between February and May 2016. As a result, the applicant's attorneys again indexed, paginated, and enrolled the matter themselves, securing a hearing date for 25 July 2016.

[17] On 25 July 2016, Counsel⁶ appeared for the respondent and sought a postponement, citing alleged short notice received only the previous day. Further, reliance was placed on a typographical error, where the year in the hearing date was recorded as 2015 instead of 2016, despite the fact that the notice of set down was dated and served in 2016. Notwithstanding, the respondent was once more granted a postponement of his rescission application.

[18] Between 25 July and 26 September 2016, the respondent once again failed to enroll his rescission application or deliver heads of argument. Consequently, the applicant's attorneys took the initiative to set the application down for 17 October 2016. Service was exhaustive, as this notice was served by the Sheriff, emailed to multiple known addresses for the respondent, and served on the tenants at the immovable property in mid-September 2016.

[19] Despite the timeous notice given, three days before the rescission application was to be heard, the respondent launched a substantive application for the matter to be postponed for a month. He again relied on short notice, claiming to have learned of the

⁶ Advocate Booysen

hearing only on 13 October 2016. He also cited a need to appoint yet another legal representative.

[20] The rescission application eventually came before Mphahlele J, who on 17 October 2016, directed for the respondent's application for a postponement and the rescission application, to be heard on 21 October 2016. On the latter mentioned date, both applications were dismissed by Mphahlele J (Mphahlele J order).

Application for leave to appeal the Mphahlele J order.

[21] Aggrieved by the Mphahlele J order, the respondent applied for leave to appeal on 10 November 2016. He, however failed to obtain the transcribed record of the proceedings before Mphahlele J, for over seventeen months. In April 2018, the applicant was obliged to have the record transcribed at its own expense, to facilitate progress with the respondent's application for leave to appeal. In spite of the applicant's efforts, the respondent still failed to enrol his application for leave to appeal, the applicant was once more constrained to do so itself.

[22] On 7 March 2019, one day before the scheduled hearing of the application for leave to appeal, the respondent sought a postponement. He again alleged late knowledge of the date and a need for legal representation, claiming he had received no documents since 2017. The applicant's attorney provided the entire record of proceedings to the respondent and on 8 March 2019, a postponement of the application for leave to appeal was granted until 22 March 2019.

[23] On 22 March 2019, the respondent sought a further postponement. Despite recently appointing his third firm of attorneys, he terminated their mandate before this hearing. His attorney⁷ confirmed that his overarching objective prior to termination of their mandate, was to secure a postponement.

[24] In court on 22 March 2019, the respondent moved his application for a postponement in person. The application was prepared and dated 21 March 2019 and the respondent claimed that his Counsel was on holiday and that he lacked documents. The matter was postponed to 8 April 2019. When the application for leave to appeal was to proceed, on 8 April 2019, the respondent sought another postponement, to amend his application for leave to appeal and to tender further evidence. This postponement was refused, and the application for leave to appeal was dismissed with costs.

Petitions to the Supreme Court of Appeal (SCA)

[25] On 6 May 2019, the respondent petitioned the SCA for leave to appeal, which was subsequently dismissed on 19 September 2019. On 16 October 2019, the respondent served the applicant's attorneys with an application for reconsideration in terms of section 17(2)(f) of the Superior Courts Act. However, following enquiries by the applicant's attorneys, it was discovered on 10 February 2021 that this application had never been lodged with the SCA and was not in fact, pending.

Respondent's demands to Sheriff: Second sale in execution

⁷ Attorney Swanepoel

[26] Pursuant to the previous proceedings, the applicant's attorneys requested the Sheriff on 10 February 2023 to arrange a second sale in execution. A notice of sale was served at the immovable property in question on 24 April 2023.

[27] On 2 May 2023, the respondent served a notice demanding that the Sheriff cancel the sale scheduled for 22 May 2023 (the first demand). The respondent did not serve this demand to the Sheriff on the applicants. In the demand, the respondent cited Uniform Rule 46A, asserting that the property was his primary residence, a stance contrary to his averments in past proceedings.

[28] In past proceedings, when the respondent made application for the postponement of his rescission application in 2016, he deposed to an affidavit, in which he stated that he resided at Unit 11, La Topaz, Silver Lane, Mayfield Park⁸ and that he has not resided at the property in question since 2013. The evidence is further, that the property was occupied by the respondent's tenants, from whom he generates rental income.

[29] In the first demand to the Sheriff, the respondent warned the Sheriff that a failure to respond within 24 hours, would be deemed as consent by the Sheriff for the sale to be cancelled. The respondent also threatened the Sheriff with a damages claim, estimated between R1.3 million and R1.9 million.

Germiston Magistrates' Court

[30] On 18 May 2023, a mere four days before the scheduled sale to be held on 22 May 2023, the respondent launched an application in the Germiston Magistrates' Court.

⁸ Another immovable property owned by the respondent.

In this application he sought to stay the execution, based on the purported agreement with the Sheriff, to cancel the sale. This agreement he claimed, arose solely from the Sheriff's failure to respond to his unilateral demands. Furthermore, the respondent sought a declarator that the property constituted his primary residence and that the attachment was irregular, unlawful, and invalid for want of judicial oversight under Uniform Rule 46(1)(a)(ii).

[31] In the alternative to the aforesaid relief, the respondent sought the amendment of the terms of the conditions of sale, which included a recordal that the bidders be aware that the second sale is legally prohibited, because the property is his primary residence and that the property is sold subject to the provisions of Rule 46A (which rule did not exist at the time of the Mashile J order). The respondent prayed for the reserve price to be set at

R 980 000 and a recordal of the occupancy of the property by various tenants, including the rights of the occupiers. Further, the respondent sought to afford him the power to approve the sale if he found the guarantee acceptable. He also sought to prohibit possession of the property by the purchaser, until registration and transfer.

[32] It however transpired on 19 May 2023, that this application was dismissed with costs by the Germiston Magistrates' Court.

Urgent High Court Application: Wright J order

[33] Following the dismissal of the application by the Germiston Magistrates' Court on 19 May 2023, the respondent immediately approached the High Court with an urgent *ex parte* application. The relief sought in this instance was for the cancellation of the

second sale and for the order to serve as an interim order, pending a return date.

[34] Before Wright J, the court refused to hear the matter without notice to the Sheriff and the applicant. After a failed attempt to move this application again on the morning of 20 May 2023, the respondent served the papers at 21:00 that evening, providing only two minutes' notice before the hearing. The application was subsequently heard and dismissed by Wright J, who marked the Court's displeasure of the respondent's conduct by awarding punitive costs against him (Wright J order).

Notice of Appeal: Germiston Magistrates' Court order and Application for leave to appeal the Wright J order

[35] On 22 May 2023 (the date of the second sale scheduled), the respondent managed to stall the second sale in execution, by serving a notice of appeal against the Germiston Magistrates' Court order and an application for leave to appeal the Wright J order. Neither matter has since been prosecuted by the respondent.

[36] Furthermore, it is the evidence that on 23 May 2023, the respondent sent an email to the Sheriff, requesting confirmation whether the property in question, listed as item number 8 on the auction roll was sold in execution. According to the evidence, the respondent did not personally attend the auction on 22 May 2023. The auction roll was handed out to bidders, who had registered prior to the auction.

[37] The applicant has reason to believe that the respondent placed an agent (referred to as Mr. Adonis) at the auction, to influence prospective purchasers, not to bid on the property at the sale in execution.

[38] Hereafter, the applicant considered its position and it was decided in August 2023 to launched this application for an order declaring the respondent a vexatious litigant.

The Application in term of the Vexatious Proceedings Act 3 of 1956

[39] Before the hearing scheduled for 25 August 2025, my secretary on 15 August 2025, received an email from the respondent in which he requested for the matter to be removed from the roll. He sought indulgence, to allow him more time to secure and instruct legal representation. Notwithstanding this request, the matter proceeded in court on the day as scheduled.

[40] The respondent appeared with Counsel⁹, who moved for a postponement, on the basis that he was not ready to argue the matter, as he was only briefed that morning. The applicant strongly opposed the application for a postponement. I refused the postponement, given the extensive history of the matter and more so the obvious prejudice to the applicant. Hereafter, the respondent's Counsel withdrew from the matter and the respondent then conducted his own defence and argued his case in person.

[41] The application in terms of the Vexatious Proceedings Act, was served on the respondent in August 2023, where after he opposed the application and filed his answering affidavit on 8 September 2023.

⁹ Advocate Booysen

[42] The respondent does not in his answering affidavit, engage the merits of the application. Instead, he plainly denies the contents of the entire founding affidavit. He labeled his affidavit as preliminary and reserved a right to answer to the merits of the application at a later stage, pending a decision on his interlocutory applications and notices filed.

[43] Simultaneously with his answering affidavit, the respondent served two applications namely, a counter-application to raise special plea in terms of Rule 33(4) read with Rule 6(7) and 6(11) and an application to strike out in terms of Rule 23. He also served three notices in terms of Rule 7(1) in which he, firstly disputes the legal authority of the applicant to act as trustee on behalf of the applicant; secondly disputes the legal authority of the applicant trust to act on behalf of the applicant and thirdly disputes the legal authority of the attorneys acting for the applicant.

[44] In response on 3 October 2023, the applicant, served a notice in terms of Rules 30(2)(b) and 30A, identifying all of the respondent's filings, as irregular steps and affording the respondent ten days to withdraw same. The respondent failed to do so by the deadline of 17 October 2023. Consequently, on 31 October 2023, the applicant launched an application to set aside the irregular steps.

[45] In turn, the respondent countered the applicant's Rules 30(2)(b) and 30A, application and served his own Rule 30 and 30A notices, which he failed to prosecute with a corresponding application to support his objection.

[46] In his Rule 33(4) application, the Rule 23 application and his first Rule 7 notice, the respondent raises the same challenge, disputing the applicant's *locus standi* to seek relief under the Vexatious Proceedings Act.

[47] In adjudication of the interlocutory applications, I generally found the respondent's applications and notices irregular. I considered that the standing of the applicant is *res judicata*, having been decided by the previous orders granted in favour of the applicant¹⁰. Also, that in motion proceedings, "striking out" scandalous, vexatious, or irrelevant matter is dealt with under Rule 6(15) and not Rule 23. Rule 23 dealing with exceptions and striking out is specifically designed for pleadings in action proceedings. Furthermore, the respondent's application to strike out lacked particularity.

[48] I further found the respondent's Rule 7 (1) notices which dispute the authority of both the applicant trustee and the trust irregular. As established in *Eskom v Soweto City Council*¹¹ the purpose of Rule 7(1) is strictly to ensure that the legal representative is authorized to act. Rule 7 (1) is not a vehicle to challenge substantive *locus standi* or a trust's internal capacity. Having regard to the evidence on record, the respondent's challenge to the authority of the applicant's attorneys was found equally meritless.

[49] Accordingly, I made the order that the respondent's notice in terms of Uniform Rules 30 and 30A, dated 7 November 2023, be set aside as an irregular step. Conversely, the relief sought in the applicant's Rule 30 and 30A application, dated 31 October 2023,

¹⁰ The Mashile J order; the Mphahlele J order and the dismissal of the respondent's petition to the SCA.

¹¹ 1992 (2) SA 703 (W)

was granted with costs on the attorney and client scale. The respondent's various notices and applications brought under Rules 33(4), 23, and 7 (1) (relating to the applicant trustees, the trust and the applicant's attorneys) were set aside as irregular steps and the relief sought therein refused.

[50] Following oral arguments on the merits of the application to declare the respondent a vexatious litigant and noting the respondent's failure to file heads of argument as expected, I deemed it prudent to reserve judgment and afford him a final opportunity to submit written submissions. The respondent was accordingly ordered to file his heads of argument on or before 8 September 2025¹². To date, he has failed to do so. I note that the respondent sent an email to my secretary on 30 September 2025 (well after the deadline), requesting a further extension to 3 December 2025. No such extension was granted and no further written submissions have been forthcoming.

[51] It is established principle that heads of argument, unlike affidavits, do not constitute evidence. In this case, it is my considered view, that the respondent's persistent failure to file heads, having been afforded an opportunity to do so, should not be allowed to hold the Court to ransom or indefinitely stall the judicial process. In view of the undue delay and to mitigate further prejudice to the applicant, I find it in the interest of the effective administration of justice, to proceed to judgment without the respondent's written submissions.

[52] Against the above stated background, I am task to decide the merits of the current application.

¹² See my order dated 25 August 2025

C. The Law

[53] The Vexatious Proceedings Act 3 of 1956, serves as the legislative foundation for judicial intervention in cases of vexatious litigation¹³. Section 2 (1)(b) of the Act provides: -

2(1)(b) If, on an application made by any person against whom legal proceedings have been instituted by any other person or who had 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 grounds 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 leave of the court, or any judge thereof, or that inferior court, as the case may be, and such relief shall not be granted unless the court or judge or the inferior court, as the case may be,

¹³ The Act complements the common law, by which our courts enjoy an inherent power to strike out claims that are vexatious.

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. [my emphasis]

[54] By virtue of this provision, the courts are authorised to curtail the activities of persons who, habitually initiate legal actions without merit. This mandate requires a nuanced equilibrium, shielding litigants from the burden of meritless harassment by the abuse of court processes, while simultaneously upholding the entrenched right to access to the courts guaranteed by section 34 of the Constitution¹⁴.

[55] In evaluating the legislative intent and the constitutional validity of the statute, the Constitutional Court, in the seminal decision in *Beinash and another v Ernst & Young and others*¹⁵, held that: -

[15] “In order to evaluate the constitutionality of the impugned section, it is necessary to have regard to the purpose of the Act. This purpose is “to put a stop to persistent and ungrounded institution of legal proceedings. The Act does so by allowing a court to screen (as opposed to absolutely bar) a “person [who] has persistently and without any reasonable ground instituted legal proceedings in any Court or inferior court”. This screening mechanism is necessary to protect at least two important interests. These are the interests of the victims of the vexatious litigant who have repeatedly been subjected to the costs, harassment and embarrassment of

¹⁴ Section 34 of the Constitution of the Republic of South Africa, 1996 reads -
Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, when appropriate, another independent and Impartial tribunal or forum.

¹⁵ (CCT12/98) [1998] ZACC 19; 1999 (2) SA 116 (CC); 1999 (2) BCLR 125 (CC) (2 December 1998)

unmeritorious litigation; and the public interest that the functioning of the courts and the administration of justice proceed unimpeded by the clog of groundless proceedings”

[my emphasis]

[56] The judicial interpretation of the requirements in section 2 (1)(b) of the Act, was solidified in the case of *Cohen v Cohen and Another*¹⁶. The test for an application to succeed is that it must meet two mandatory criteria. First, there must be evidence of persistent legal action by the respondent, second, it must be shown that the proceedings were initiated without reasonable ground.

[57] In its legal sense, the word “vexatious” has been ascribed to mean, frivolous, improper, instituted without reasonable ground, serving solely as an annoyance. Vexatious proceedings, also no doubt include proceedings which, although properly instituted, are continued with the sole purpose of causing annoyance to the opponent by an abuse of the court processes. In this context, ‘abuse’ connotes a mis-use, an improper use, a use mala fide, a use for an ulterior motive¹⁷.

[58] Considered the above general principles and guided by the authorities quoted, I turn to the facts of the case.

D. Analysis

[59] The historical trajectory and the protracted timeline of litigation, central to the application under the Vexatious Proceedings Act, remain unchallenged. Despite the trite

¹⁶ 2003 (1) SA 103 (C)

¹⁷ *Fisheries Development Corporation of SA Ltd v Jorgensen and another* 1979 (3) SA 1331 (W) at 1339F.

requirement that a respondent must address the substantive merits of an application simultaneously with any preliminary objections, the respondent elected to remain silent on the merits. He opted instead to rely on a bald denial and his failed interlocutory challenges.

[60] The respondent's oral argument made, that there is a dispute of fact on the papers, which necessitate a referral of the case to trial, holds no merit. In this regard, I considered that a genuine dispute can only arise when a party address the material allegations of an application, seriously and unambiguously. The respondent has not done so, instead he offered a bare denial. A bare denial is insufficient where the relevant facts, lie within a party's specific knowledge¹⁸. Given the respondent's intimate involvement in the decade-long litigation at issue, his failure to provide a substantive version or countervailing evidence to the applicant's evidence is fatal to his case. I find no dispute of fact.

The applicant's evidence stands uncontested and is accepted by this court.

[61] The approach to be adopted to determine whether the respondent's conduct meets the statutory threshold of vexatiousness, is for the court to consider the litigation history holistically. This holistic approach is essential to identify whether the respondent's conduct constitutes a broader pattern of abuse designed to frustrate the administration of justice and the finality of the court order.

¹⁸ Consider *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* (66/2007) [2008] ZASCA 6 para 13

[62] *In Beinash v Wixley*¹⁹ the SCA held that while there is no all-encompassing definition of an "abuse of process", it generally occurs when a litigant utilizes the court procedure for an ulterior motive i.e. to achieve something other than the resolution of a *bona fide* dispute. The court must therefore look at the intent behind the proceedings and if it is found that the litigation is not intended to resolve a genuine grievance, but is meant to harass the other party, it is vexatious.

[63] It is of significance that, while the respondent has failed to proffer any substantive defence to the underlying action, he has effectively insulated himself from the finality of the Mashile J order granted on 20 March 2014, for over a decade. This delay has been achieved through a series of persistent failed procedural manoeuvres.

[64] Furthermore, a clear pattern of dilatory conduct is evident from the inception of the action, as the respondent initially filed a notice of intention to defend, but failed to deliver a plea. Later, he was granted a postponement to file an affidavit resisting summary judgment, which he failed to file. This early refrain to engage with the merits of the applicant's action, established a decade-long pattern of meritless litigation and the employment of court processes solely for the purpose of delay.

[65] It is a hallmark of the respondent's conduct to move for a postponement at the start of every hearing. This, coupled with a consistent failure to timeously enroll his own applications (e.g. the recession application and application for leave to appeal), reflects a calculated strategy of litigation by attrition. In this paradigm, the court processes are

¹⁹ 1997 (3) SA 721 (SCA)

invoked not to achieve a final and certain determination of the dispute, but rather to ensure that such a determination remains indefinitely out of reach.

[66] The evidence reveals a transparent motive for the respondent's protracted obstruction of the execution process. In the decade following the order by Mashile J in 2014, the respondent has continued to derive rental income from the property, judicially declared executable.

[67] Having unsuccessfully exhausted the machinery of this Court and the Supreme Court of Appeal and having irregularly attempted to co-opt the Germiston Magistrate's Court into his strategy, it is manifest that the respondent will stop at nothing to frustrate the finality of the judgment. His persistent obstruction of the execution process, is evidently fueled by his self-serving motive, to continue harvesting the fruits of the property, while avoiding the legal consequences of his debt.

[68] The respondent's intent to stall both the court proceedings and the sale in execution is starkly illustrated by the evidence on record. He launched a rescission application a mere three days prior to the first sale in execution. He also failed to enroll the rescission application for nearly six months, when the applicant had to facilitate its enrolment. When Mphahlele J, dismissed his rescission application, he launched an application for leave to appeal, but abandoned the application in a state of suspension, by failing to transcribe the court record, for a period of seventeen months. This omission persisted until the applicant was once more compelled to step in, facilitate the enrolment, and bear the costs of the transcribed record itself. This was obviously a tactic designed to keep the threat of litigation alive, while avoiding actual judicial scrutiny.

[69] Most egregious, was the respondent's conduct following the dismissal of his petition for leave to appeal by the SCA. The SCA dismissed the petition on the explicit grounds that there were no reasonable prospects of success and no compelling reason why an appeal should be heard.

[70] The SCA order should have marked the absolute finality of the litigation, however instead, the respondent served upon the applicant's attorneys a purported application for reconsideration in terms of Section 17(2)(f) of the Superior Courts Act 10 of 2013. The record now confirms, this application was never lodged with the registrar of the SCA.

[71] I find that the service of this non-existent application, was a calculated ruse by the respondent, designed to mislead the applicant, its legal representatives, and the Sheriff into the mistaken belief, that the matter remained *sub judice*, thereby inducing an unlawful stay of execution. This conduct by the respondent, illustrates the highpoint of his vexatiousness as he has fraudulently exploited the rules of court, not as a shield for a legitimate right, but as a sword to wound the administration of justice and systematically oppress the applicant's right to the finality of the judgment.

[72] The respondent intensified his strategy of obstruction in May 2023, preceding the second sale in execution, when he sought to by extra-judicial means, invoke the protection of Uniform Rule 46A, asserting in his demand to the Sheriff, that the property was his primary residence. This stance was legally unfounded as Rule 46A is not

retrospectively applicable to an execution process, authorized by a court order granted prior to its inception in December 2017.

[73] Furthermore, the respondent's averment that the property was his primary residence, was untrue, as it contradicts the contents of his affidavit deposed to in 2016, in support of a postponement of his rescission application.

[74] The status of the property, having been declared executable, were finally determined by Mashile J as far back as 20 March 2014. By attempting to resuscitate this issue a decade later, the respondent did not seek legal protection, but clearly intended to derail the finality of the court order without reasonable grounds.

[75] The respondent's attempts to bypass judicial oversight, by intimidating the Sheriff, with threats of exorbitant personal damages claims, constitute a form of litigious bullying. His attempts to fabricate a 'deemed agreement' to cancel the sale, based on the Sheriff's silence, was legally untenable and was clearly intended to prevent the execution process through extra-judicial coercion.

[76] The respondent's subsequent applications launched in the Magistrate's Court and this Court, serves as conclusive evidence of his endless abuse of the court processes.

[77] After his unsuccessful extra-judicial demands to the Sheriff, the respondent filed a meritless application in the Germiston Magistrate's Court to stay the sale in execution. This attempt to use a lower court to frustrate a High Court order is a legal nullity. Given the respondent's history as a former attorney, I view this

incompetent application, not as a mistake, but as a deliberate abuse of the judicial machinery.

[78] His *mala fides* are further evidenced by the nature of the relief sought in the Magistrate's Court. He prayed for an order granting him the personal power to approve the sale and the purchaser's guarantees.

[79] By attempting to dictate the sale's success and demanding that the purchaser be denied possession until registration, the respondent sought to impose conditions so onerous and legally precarious, that no reasonable bidder would participate. This was obviously not a *bona fide* attempt to protect his interests, but a failed attempt to derail the scheduled sale in execution.

[80] Following the predictable dismissal of the application in the Magistrate's Court, the respondent immediately sought urgent *ex parte* relief from this Court, to stay the sale in execution. In striking the matter from the roll with punitive costs, Wright J observed that the respondent, a former attorney, had improperly attempted to move the application, without notice to the applicant (judgment creditor) or the Sheriff.

[81] The learned Judge accepted the evidence that the respondent had deliberately frustrated the judgment for years and found the allegations of irregularity against the Sheriff and the applicant, baseless. Ultimately, the Court characterized the application as a calculated, attempt to obstruct the sale in execution.

[82] Finally, the respondent utilized the filing of a Notice of Appeal against the Magistrate's Court order, alongside an application for leave to appeal the order by Wright J, to once again trigger a stay of execution. His subsequent failure to prosecute either matter, confirms that these were not *bona fide* attempts to seek appellate relief, but a further ploy, intended to once more annoy the applicant, by the delay of the execution process. These dilatory proceedings I find of no legal consequence, as it cannot legitimately continue to stifle a sale in execution that has been pending for over a decade.

[83] True to form, the respondent persisted in the present application, with the same stalling tactics used in previous proceedings. Despite months of prior notice, he requested a postponement of the application, citing the late briefing of Counsel. This last-minute brief of his legal representatives, is a stratagem the respondent has employed repeatedly over the years.

[84] Furthermore, the respondent's attempt to litigate in a piecemeal fashion, by characterizing his answering affidavit as preliminary, while reserving a supposed right to address the merits later, is another illustration of his resolve not to bring the litigation to finality. It is a trite principle of our law, that a respondent in motion proceedings must set out his facts and legal defences comprehensively in a single answering affidavit. The Court cannot allow a litigant to dole out his defence piece meal, to suit a timeline of delay.

[85] The respondent's reliance on technicality over substance, coupled with the presumption that interlocutory manoeuvres would secure a postponement of the

main application, confirms his *mala fide* intent to at all cost., frustrate and delay the finality of the judgment in favour of the applicant.

E. Conclusion

[86] The respondent's conduct over the last decade has moved beyond the protection of his legitimate interest into a calculated campaign of harassment and obstruction.

[87] By his persistent abuse of court processes, for his ulterior motives, he has utilized the judicial machinery, not to resolve a *bona fide* dispute, but to induce tactical paralysis.

[88] The resulting prejudice to the applicant is both manifest and compounding. The judgment debt, including interest, now exceeds R1000 000, while the applicant has been forced to incur about R540 000, in legal costs in an endeavour to execute on the judgment and to oppose the meritless applications by the respondent.

[89] The staggering financial burden highlights the severity of the respondent's interference with the applicant's right to execute on the judgment. The relentless litigation by the respondent, in the face of a valid court order, no doubt necessitate judicial intervention.

[90] I am satisfied that the body of evidence compellingly demonstrates the respondent to be a vexatious litigant as contemplated in Section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956. His undisputed conduct constitutes a

persistent and gross abuse of the court processes. Consequently, to protect the integrity of the administration of justice and prevent further harassment of the applicant, the respondent is prohibited from instituting any legal proceedings in any court without prior leave of such court. The applicant has successfully established the requisite grounds for the declaratory and interdictory relief sought.

[91] Regarding costs, the applicant seeks a punitive order on the attorney-and-client scale. An award of costs is a matter of judicial discretion, in this matter, I find that the respondent's *mala fides*, vexatiousness and gross abuse of the court processes, warrant a departure from the ordinary scale of costs. In these circumstances, a punitive costs order is not only appropriate but essential.

[92] In the result, the following order shall issue:

ORDER

1. The respondent is declared a vexatious litigant, pursuant to the provisions of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956;
2. The respondent is interdicted, and restrained from instituting any further proceedings in any Court, including but not limited to the High Court, or the Germiston Magistrate's Court, in relation to Portion 32 (A Portion of Portion 1) of ERF 7[...] Klippoortje Agricultural Lots Township Registration Division I.R., Province of Gauteng, Held by Deed of Transfer T[...] situated at 1[...] P[...] Street, K[...], E[...], G[...] (the property);

3. The relief in paragraph 2 above, interdicts and restrains proceedings, including but not limited to:
 - 3.1. proceedings to stay, cancel, or set aside any execution steps against the property; and
 - 3.2. proceedings to stay, cancel or set aside any sale in execution in respect of the property; and
 - 3.3. proceedings to amend/ alter/ vary the conditions of sale in execution, in respect of the property; and
 - 3.4. proceedings to vary, correct, or rescind the summary judgment, granted against the respondent, on 20 March 2014, by Mashile J, under case number 28719/2013 (the judgment), including the order declaring the property executable.
4. The relief in paragraphs 2 - 3.4, is subject thereto, that this Court may grant the respondent leave to institute proceedings, provided that such an application for leave, be served on the applicant, and at least 10 days prior notice of the set down thereof be provided to the applicant's attorneys, at the email address tim@moodierobertson.co.za.
5. The respondent is interdicted and restrained from interfering with, threatening, or impeding the Sheriff of the High Court Germiston South, or any other duly appointed Sheriff, in carrying out his/her functions, in taking any steps in execution of the judgment, including but not limited to scheduling, and conducting a sale in execution of the property, in satisfaction of the judgment;
6. The respondent is interdicted and restrained from interfering with the conducting of the sale in execution of the property, including but not limited to attending to the sale in execution when same is conducted, handing out documents, affixing documents, publicising any documents, statements or claims, aimed at dissuading prospective bidders from partaking in, or bidding on the property, at the sale in execution;

7. The respondent is interdicted and restrained from interfering with, threatening, or harassing the Sheriff Germiston South or any member of his staff, any bidder at the sale in execution, or any successful purchaser of the property, subsequent to the sale in execution of the property;
8. The respondent is interdicted and restrained from appointing, requesting, or securing the assistance of any person, whether natural or otherwise, whether directly or indirectly, to institute any proceedings, or take any step prohibited/restrained in paragraphs 2 - 3.4 and 4 - 7 above;
9. It is declared that the pending notice of appeal, in relation to Germiston Magistrate's Court case number 3098/2023, and the application for leave to appeal, in this Court, under case number 2023/02209, or any subsequent appeal process (launched without prior leave of the Court) in relation to the foregoing, does not:
 - 9.1. curtail, impede, or affect the applicant and sheriff's entitlement/ authority to conduct a sale in execution of the property; and
 - 9.2. affect the efficacy, or validity the sale of the property, or title that may be passed to a bidder, upon the latter complying with the conditions of sale, to secure transfer;
10. The respondent shall pay the costs of this application, on the scale as between attorney and client.
11. The Registrar of the Court, shall cause a copy of this order to be published as soon as possible in the Government Gazette as contemplated in section 2(3) of the Vexatious Proceedings Act 3 of 1956.

Matthys R
Acting Judge

**Of the High Court of South Africa
Gauteng Local Division (Johannesburg)**

Appearances

Counsel for the Applicant: Advocate C Van der Merwe instructed by Moodie & Robertson Attorneys

The Respondent: In Person

Judgment handed down electronically via email by circulation to the Registrar of the Court, the parties Legal Representatives and uploading in the case file on Case Lines. The date of the judgment handed down shall be deemed to be 27 January 2026.