REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, PRETORIA

Case No: 044096/2024

Reportable: No
Of interest to other Judges: No
Revised: No

[redacted]

SIGNATURE

Date: 17 February ~~2025~~ 2026

In the matter between:

THE SOUTH AFRICAN RESERVE BANK	Applicant
and	
TRIO JEWELLS LLC	1st Respondent
RAPPA RESOURCES (PTY) LTD	2nd Respondent
ACCESS BANK SOUTH AFRICA LTD	3rd Respondent

In re:

Trio Jewells LLC	Applicant

and

THE SOUTH AFRICAN RESERVE BANK	1st Respondent
RAPPA RESOURCES (PTY) LTD	2nd Respondent
ACCESS BANK SOUTH AFRICA LTD	3rd Respondent

JUDGEMENT

MOOKI J

1 There are two applications before court. The first application, by Trio Jewells LLC (Trio Jewells), is to compel the first respondent (the Reserve Bank) to produce a record in terms of Rule 53. The record is in connection with review proceedings instituted by Trio Jewells. The second application is by the Reserve Bank, in which the bank seeks an order that Trio Jewells be ordered to furnish security for costs in the review proceedings.

2 Trio Jewells did not appear in court when the matter was called. Its attorneys of record withdrew. Attorneys for the Reserve Bank wrote to Trio Jewells, essentially saying that the matter was on the roll and that the Reserve Bank would resist the matter being postponed.

3 Counsel for the Reserve Bank sought to impress on the court to hear and dismiss Trio Jewells' application to compel. The court pointed out that Trio Jewells were *dominus* in the application to compel, and that the court could

not consider that application in the absence of Trio Jewells. The court struck the application to compel from the roll. The court then considered the application to compel the furnishing of security for costs.

4 The Reserve Bank seeks an order that Trio Jewells be ordered to furnish security in the amount of R1 200 000.00, and that review proceedings be stayed pending the furnishing of security. The Reserve Bank seeks further relief that the bank be granted leave, should security not be paid, to approach the court, seeking dismissal of the review application.

5 The Reserve Bank says the furnishing of security is said to protect the bank against being forced to litigate on an at "at-risk" basis, against a litigant who is a foreign peregrinus and owns no substantial assets in the Republic. Trio Jewells is domiciled in the United Arab Emirates.

6 The Reserve Bank says that Trio Jewells is a foreign peregrinus with no known assets within the Republic, "save for the funds which are presently subject to the blocking order ...". The "blocking order" is reference to the Reserve Bank having alleged that the second respondent (Rappa) contravened exchange control regulations, which resulted in the Reserve Bank placing "a block" on Rappa's bank account.

7 The following occurred before a block was placed on Rappa's bank account. Trio Jewells and Rappa concluded an agreement that appears to require Rappa to supply Trio Jewells with gold. Trio Jewells, as part of this agreement, transferred funds to Rappa's bank account in South Africa. The funds were transferred to Rappa from outside the Republic.

8 Trio Jewells says Rappa breached its obligations by not delivering the agreed quantity of gold. This led to Trio Jewells cancelling its agreement with Rappa, with Trio Jewells demanding repayment of USD 4 166 174.69, being the balance due to Trio Jewells. The Reserve Bank placed a block on Rappa's bank account. This appears to be the bank account that received funds transferred at the instance of Trio Jewells.

9 The Reserve Bank contends that the review application is a fishing expedition, being an attempt by a foreign peregrinus to obtain the benefits of advance notice of details of the Reserve Bank's ongoing investigation into what the bank says is Rappa's contraventions of exchange control regulations. The Reserve Bank also contends that Trio Jewells seeks an order for the export of funds from the Republic before the Reserve Bank had completed its investigation into Rappa.

10 The Reserve Bank, in further justification for the grant of an order for security for costs, says the costs are warranted before Trio Jewells' review application is "stillborn". The Reserve Bank raised several considerations in this regard, including that the review application was brought late and that Trio Jewells lacked standing. Trio Jewells denies the assertions by the Reserve Bank.

11 Trio Jewells refused the request to furnish security, giving the following justification. It contends that the amount sought is excessive in the extreme, and that the Reserve Bank can have recourse to funds that have been subjected to the blocking order. Trio Jewells stated that it pledged to the Reserve Bank the maximum amount required for security. Trio Jewells

replied to the Reserve Bank's statement that Trio Jewells has no interest in the funds by stating that Rappa had ceded its interests in the bank account to Trio Jewells.

12 The Reserve Bank denies that Trio Jewells has a legal entitlement to offer funds that are subject to a blocking order. That was because Rappa would, "in law", be legally entitled to the funds absent a blocking order. On the other hand, the State would become entitled to the funds should the forfeiture order be found to be justified.

13 The Reserve Bank reversed course in its replying affidavit, contending that Rappa had no right to the funds because funds deposited into Rappa's bank account became the property of the bank that keeps the account, because of the principle of *commixio.*

14 The Reserve Bank disputes the existence of a cession, and that such cession would, in any event, be incompetent in law. The Reserve Bank denied that the amount of the security prayed for was a "total thumb suck." It contended that the amount of R1.2 million is appropriate "Given the nature of the present application and the procedure to be followed under Rule 53 of the Rules, [...]". The Reserve Bank says that it has been forced to incur additional and unnecessary legal costs due to Trio Jewells' own "deplorable conduct" by opposing Trio Jewells' "fishing expedition in the Rule 30A application" and having to bring an application for security for costs.

Analysis:

15 The onus is on the party seeking security to persuade a court that security should be ordered.[1] A court considering an application for security for costs embarks on a two-stage enquiry. The first stage is to establish whether a plaintiff would be unable to meet an adverse cost order. "If the applicant fails to meet this threshold requirement, that is the end of the matter. The application is bound to be refused."[2] The second stage is embarked upon where the court is satisfied that there is reason to believe that a plaintiff would be unable to meet an adverse cost order. This stage entails a court exercising the discretion whether to compel the giving of security.[3]

16 The law as stated above was in relation to section 13 of the old companies act.[4] This section is no longer part of the new companies act.[5] There is nothing to suggest that the absence in the new companies act of an equivalent provision to the old section 13, renders the above scheme no longer applicable in considering whether a case has been made that a litigant be ordered to furnish security for costs. It is a sound approach that an application be refused where it is not shown that a plaintiff would be unable to meet an adverse cost order. A contrary position would run the real risk of preventing a party from prosecuting a claim in a court of law, thus infringing the right of access to the courts.

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[1] Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd 2015 (5) SA 38 (SCA), at para 14

[2] *MTN Service Provider v Afro Call* [2007] SCA 97 (RSA), para 7

[3] *MTN Service Provider, para 7*

[4] Companies Act 61 of 1973

[5] Companies Act 71 of 2008

17 The Reserve Bank does not allege that Trio Jewells will be unable to satisfy an adverse costs order in the review proceedings. On the contrary, the banks says that Trio Jewells is not impecunious. The Reserve Bank does not say that Trio Jewells has no assets in the Republic – it contends that Trio Jewells "owns no substantial assets" in the Republic. This was a general statement by the Reserve Bank, with no indication of what assets are available and why such assets are said to be insubstantial. This lack of particularity is to be contrasted with the Reserve Bank's other statement that Trio Jewells is not impecunious.

18 The application for security for costs fails at the first stage of the enquiry. The Reserve Bank has not established that Trio Jewells will be unable to satisfy an adverse cost order. The substance to the Bank's justification for the grant of an order for security for costs is that Trio Jewells' review application is "still born", with the Bank pointing to several considerations which, according to the Bank, show the review application being "still born." Those considerations include Trio Jewells being said to lack standing to bring the review proceedings, and that those proceedings were brought hopelessly late. The merits of the review application are not before this court.

19 There is no proper justification for the grant of security for costs in the amount of R1.2 million, should the court be wrong in holding that the Reserve Bank did not satisfy the first stage of the enquiry. Counsel for the Reserve Bank had no satisfactory answer when the court enquired why the Reserve Bank required security in the claimed amount.

20 The court cannot determine the appropriate security absent the Reserve Bank having laid a proper basis for the grant of security in a specified amount. Trio Jewells says it seeks to review the decision by the Reserve Bank to block Rappa's account. The Reserve Bank has not shown that the litigation warrants security for costs in the amount of R1.2 million.

21 The Reserve Bank refers variously in its application to Trio Jewells' review proceedings being vexatious, and that this is said to be a further basis for Trio Jewells being ordered to furnish security for costs. The Supreme Court of Appeal approved the following meaning of 'vexatious' in legal proceedings: [6]

> [F]rivolous, improper: instituted without sufficient ground, to serve solely as an annoyance to the defendant" (Shorter Oxford English Dictionary). Vexatious proceedings would also no doubt include proceedings which, although properly instituted, are continued with the sole purpose of causing annoyance to the defendant; "abuse" connotes a mis-use, an improper use, a use *mala fide*, a use for an ulterior motive.

22 I am not persuaded that the review application was instituted to annoy the Reserve Bank. Trio Jewells claims an entitlement to funds that have been blocked at the direction of the Reserve Bank. The Reserve Bank does not dispute that the funds are sourced from offshore, and that the funds were deposited into Rappa's bank account at the instance of Trio Jewells. Trio

[6] Boost Sports Africa (Pty) Ltd, para 17 (internal citations omitted)

Jewells further claims that the funds were deposited into Rappa's bank account in consequence of an agreement between Trio Jewells and Rappa and that Trio Jewells has since cancelled the agreement.

23 I make the following order:

(1) The application to compel the Reserve Bank to produce the Rule 53 record is struck from the roll, with Trio Jewells paying the wasted costs.

(2) The application to compel Trio Jewells to furnish security is dismissed, with the Reserve Bank ordered to pay costs.

[redacted]

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JUDGE OF THE HIGH COURT

Counsel for the applicant:	M D Stubbs
Instructed by:	Gildenhuys Malatji Inc.

No appearance for Trio Jewells LLC

Date heard:	10 November 2025
Date of judgment:	17 February 2026