

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: A042446/2025

DATE: 11.02.2026

DELETE WHICHEVER IS NOT APPLICABLE  
(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED



SIGNATURE

DATE: 11 February 2026

In the matter between

G GENLLOUD  
AND OTHERS

Applicants/Respondents on appeal

and

H VAN DER MERWE  
AND OTHERS

Respondents/Appellants

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**J U D G M E N T E X T E M P O R E**

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**WILSON, J:** This is an application for security for costs under Rule 49(13) of the Uniform Rules of Court. That Rule requires an appellant, unless released from the obligation to do so, to enter into good and sufficient security for the respondents' costs in defending the appeal.

An application to compel the appellants to enter into such security came before me in my trial interlocutory court on 20 January 2026. I raised with the parties my *prima face* view that Rule 49 (13) is *ultra vires* section 6 of Rules Board for Courts of Law Act 107 of 1985.

I offered the parties the opportunity to argue that point before me if they chose to do so. If they chose not to argue that point, I explained to the parties that my view was that, notwithstanding the terms of the Rule, it was open to a Court to release the appellant from having to provide the security and that because the strength or weakness of the appeal itself is material to such a decision, the court best placed to decide the application to compel security for costs is the Full Court before which the appeal is ultimately set down.

I accordingly explained to the parties that if they did not wish to argue the Rule 49 (13) point, my view was that the application to compel security ought to be postponed to be dealt with by the Full Court.

I had initially understood that the parties were content for me to consider the point of whether Rule 49(13) is *ultra vires*. I postponed the matter to allow the parties to file submissions on that point. The parties did so, but when the matter was called for argument today, I was informed that, on reflection, neither party was interested in a ruling on the legality of Rule 49 (13). The parties having taken that view, it would be inappropriate to rule on the point.

Counsel for the respondents on appeal argued that the legality of rule 49 (13) no longer being in issue, the appellants' prospects of success are irrelevant to the

application to compel, since the Rule itself says that security for costs must be provided in all cases unless the respondent on appeal waives such security.

I do not agree. It is within the inherent power of any court to depart from the rules where the interests of justice require such a departure. The power to condone noncompliance with the rules is one regularly exercised in this court. That power may be exercised *mero motu* in an appropriate case.

It seems to me that where an appellant has been told, in this case by the Supreme Court of Appeal, that its appeal bears prospects of success, it is not *prima facie* in the interests of justice to require it to provide security for costs in order to have its appeal pursued. In my view, it must be within the power of Full Court to relieve it from the obligation to provide security. Material to the exercise of that power must be the nature of the appeal, and the issues to be determined in the appeal.

For all those reasons, in the circumstances of this case it seems to me that the application for security ought to be decided by a court which has acquainted itself with the merits of the appeal.

It was further argued that postponing the application for security to be dealt with by the Full Court would render the respondents' right to security nugatory. I do not agree.

If it is satisfied that security should be provided, the Full Court may postpone the appeal until the appellant puts the security up. It may also direct that the appeal be stayed or dismissed if the security is not provided.

But such powers ought not to be exercised by a court that has not acquainted itself with the merits of the appeal. The record in this case has not been placed before me, but I am informed that it runs to thousands of pages. The application for security was enrolled as one of two hundred matters placed before me in my trial interlocutory court for the week of 19 January 2026. In those circumstances it was never realistic to expect the matter to be entertained in that court on opposed basis. Even though the applicable practice directions envisage that applications interlocutory to Full Court appeals may be dealt with in trial interlocutory court, the respondent in this appeal ought to have appreciated that this application could not appropriately be dealt with in that way.

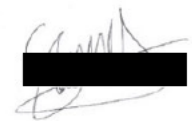
I was told during argument that the registrar has refused to allocate a date for the appeal precisely because security has not been given and the application for security for costs has not been decided. That seems to me to be a shortsighted view to take. It is certainly not a view that has appropriate regard to the particularities of this case.

In any event I will direct the registrar to allocate a

date for the hearing of this appeal notwithstanding that the application for security for costs has not been determined.

For all these reasons –

1. The application to compel the provision of security for costs is postponed to be dealt with by the Full Court.
- 2 The registrar is directed to allocate a date for the hearing of the appeal.
- 3 The respondents are directed to file their heads of argument within fifteen days of the date of this order.
- 4 The costs of the application to date will be costs in the appeal.



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**WILSON, J**  
**JUDGE OF THE HIGH COURT**