



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

JUDGMENT

REPORTABLE

CASE NO: 11920/2020

In the matter between:

ROSALIND DALRYMPLE

APPLICANT

and

CELIA ERICA RIACH

1ST RESPONDENT

TREVOR SCHOUW N.O.

2nd RESPONDENT

THE MASTER OF THE HIGH COURT

3rd RESPONDENT

Neutral citation: *Dalrymple v Riach* (Case no: 11920/20) [2026]

ZAWCHC (2 March 2026)

Coram: MAYOSI, AJ

Heard: 25 February 2026

Delivered: 2 March 2026

Summary: Rule 45A – stay of execution of an order of this Court pending the final determination of an application to rescind that order – underlying *causa* is disputed - *prima facie* right to relief in the rescission application is present – as is a well-grounded apprehension that execution is imminent at the instance of the first respondent – irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right.

ORDER

Having read the papers and having heard the applicant and the first respondent, it is ordered that:

[1] The execution, in any manner whatsoever, of the order granted by this Court, *per* Andrews AJ, on 29 July 2024 under case number 11920/20 (**the Consent Order**) is hereby stayed pending the final determination of the applicant's application for the rescission of the Consent Order (**the rescission application**).

[2] Pending the final determination of the rescission application, and for the duration of the stay of execution of the Consent Order, the first respondent is interdicted and restrained from taking any further steps whatsoever to enforce, give effect to or execute upon the Consent Order in any manner whatsoever, whether directly or indirectly, in any court, country, division or district having jurisdiction, locally or internationally.

[3] Without limiting the generality of paragraph [2] above, pending the final determination of the rescission application, and for the duration of the

stay in execution of the Consent Order, the first respondent is specifically interdicted and restrained from giving effect to and/or executing upon the Consent Order in any manner whatsoever, whether directly or indirectly, in any court, country, division or district having jurisdiction, locally or internationally, including by:

- [a] issuing or causing the issue of writs of execution, and/or causing effect to be given thereto;
- [b] applying for or procuring and/or causing the application for or procuring of any warrants of attachment and/or instruments of execution, attachment and/or enforcement of any nature whatsoever, and causing effect to be given thereto;
- [c] instituting, persisting with, or pursuing in respect of the Consent Order, domestication proceedings in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County in Florida, in the United States of America (**the Circuit Court**), and Recording in the Circuit Court and in the official records of Volusia County, Florida, USA, and/ or giving effect thereto, and/or executing any order granted and/or writs and/or warrants issued pursuant thereto;
- [d] initiating and/or persisting with proceedings, locally or internationally, in order to procure and/or give effect to any court or Administrative Order or Recording in respect of the Consent Order, and/or the recording of the Consent Order as an out-of-country foreign judgment and to obtain instruments of execution and/or initiate and pursue execution upon such court or Administrative Order or Recording in respect of the Consent Order or Recording, as the case may be.

[4] The first respondent is directed to, forthwith, take all steps necessary to instruct her attorneys, counsel and legal representatives, locally and abroad in the USA, to cease and desist from taking any steps and/or enforcement actions under the Consent Order and/or domestication thereof by the recording thereof as a foreign judgment and/or any court or Administrative Order or Recording in order to give effect to, or in order to achieve the restrained conduct as referred to in paragraphs [2] and [3] above despite the stay of execution of the Consent Order including, if necessary, to terminate her instructions to such attorneys, counsel and legal representatives if her instructions to cease and desist as aforesaid are not heeded forthwith and to provide confirmation thereof in writing to the applicant's attorneys, within 24 hours of the granting of this Order.

[5] The costs of this application shall stand over for determination in the rescission application.

JUDGMENT

Mayosi AJ:

Introduction

[1] This is an application brought in terms of Rule 45A of the Uniform Rules, for a stay in the execution of an order granted by this Court, per Andrews AJ, on 29 July 2024 in an action under the same case number. The first respondent was the plaintiff in that action; the second respondent was the first defendant; the applicant was the second defendant and the third respondent was the third defendant in those proceedings.

[2] The order which the applicant seeks to stay the execution of was granted with the consent of the first respondent (as plaintiff in the action) and the second respondent (as the first defendant) hence my reference to it in this judgment as the Consent Order.

[3] According to the applicant, the Consent Order was granted without her knowledge and consent. She first became aware of it on or about 27 May 2025 when she received it via a certified mail from the first respondent's counsel, which was forwarded to her in New York where she lived at the time. [4] Though born in South Africa, the applicant has resided and worked in the United States of America (USA) for more than 44

years, and she remains there. The first respondent lives in Bryanston, Johannesburg in South Africa.

[5] Paragraph 3 of the Consent Order contains the following order concerning the applicant:

In the event that the first defendant¹ is unable to transfer 50% of the shares to the plaintiff² or to pay the plaintiff the amount of R9 754 670.20 (being the current value of 50% of the shares), then and in that event the second defendant³ is ordered and directed to pay or restore to the plaintiff, within 10 days of the date of this order, an amount equal to the difference between the amount of R9 754 670.20 and such sum as may have been paid to the plaintiff by the first defendant in terms of paragraph 5.5 below, with interest a *tempore mora* at the legally prescribed rate from date of judgment.⁴

[6] The applicant's issue with the Consent Order is not limited to the order made in paragraph 3, but extends to its entirety. She alleges that the Consent Order was obtained by fraud on the part of the first respondent, which fraud induced the second respondent to reach agreement with the first respondent and accept the terms of the order that ultimately became the Consent Order. According to the applicant, her consent was not obtained before the Consent Order was granted, and for reasons not directly relevant to the issues for determination in this application, she would not have given it had she been asked for it.

¹ The second respondent in this application.

² The first respondent in this application.

³ Being the applicant in this application.

⁴ The emphasis is mine.

[7] In November 2025, the applicant brought an application in this Court to rescind the Consent Order. The application is opposed by the first respondent.

[8] On 2 February 2026, Jonker AJ made an order postponing the rescission application for hearing on the opposed motion roll on 25 January 2027.

[9] It is in the context of the pending rescission application that the applicant brings this stay in execution application in which she furthermore seeks various interim interdictory orders aimed at preventing and restraining the first respondent from taking any steps whatsoever to execute the Consent Order, including instructing her lawyers in America to pursue any execution steps for the duration of the stay in execution. The interim interdictory relief is sought in order to buttress the stay relief and render it more effective, given that the first respondent seeks to execute the Consent Order against the applicant in the USA where the latter resides.

[10] The application is brought on an urgent basis because an application is pending in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County in Florida, USA, which seeks to convert the Consent Order to a judgement of that jurisdiction. It is that pending application, brought at the instance of the first respondent and in which the applicant and the second respondent are cited as parties, that is referred to in the papers as the domestication proceedings which, as I understand it, is the legal process of recognising a court order from one jurisdiction in another jurisdiction, giving it the same legal effect as if it were originally issued in the latter jurisdiction for the purposes of executing it in that jurisdiction.

[11] The first respondent has confirmed that the domestication proceedings scheduled for hearing in Florida on 31 March 2026 will proceed on that date.

The first respondent does not agree to postpone or stay the domestication proceedings until the final outcome of the rescission application. However, the first respondent is prepared to give an undertaking that she will not cause any warrants of attachment to be issued in execution of the domesticated Consent Order in the USA until the rescission application has been determined. I deal with this undertaking later in this judgement.

[12] This stay application is opposed by the first respondent. There was no opposition to the first respondent's application for condonation for the late filing of its answering affidavit, and the Court grants the condonation sought.

[13] No relief is sought against the second and third respondents. The second respondent abides the decision of this Court.

Rule 45A

[14] The Rule empowers this Court to suspend the execution of any order for such period as it may deem fit. The Rule affords the court a discretion of the widest kind and imposes no procedural or other limitations or fetters on the power it confers.⁵

[15] The general principles for the granting of a stay in execution were summarised as follows in **Gois t/a Shakespeare's Pub v Van Zyl**:⁶

[a] A court will grant a stay of execution where real and substantial justice requires it or injustice would otherwise result.

⁵ Road Accident Fund v Strydom 2001 (1) SA 292 (C) at 301B

⁶ 2011 (1) SA 148 (LC) at 155H-156B, cited with approval by this Court in Firm Mortgage Solutions (Pty) Ltd v Absa Bank Ltd 2014 (1) SA 168 (WCC), at 170F-G.

[b] The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.

[c] The court must be satisfied that:

[i] the applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent; and

[ii] irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right.

[d] Irreparable harm will invariably result if there is a possibility that the underlying *causa* may ultimately be removed, i.e., where the underlying *causa* is the subject-matter of an ongoing dispute between the parties.

[e] The court is not concerned with the merits of the underlying dispute – the sole enquiry is simply whether the *causa* is in dispute.

[16] The general principle summarised in paragraph [e] takes on a particular significance in this case when regard is had to the basis upon which the first respondent opposes this stay application.

Analysis

[17] In resisting this application the first respondent relies on an incorrect test for a stay in execution in the heads of argument filed on her behalf, wherein it is submitted that this Court will only suspend the execution of an order if there is a possibility that the underlying *causa*, being the Consent Order, *will* be removed. That is not the correct threshold to be applied to an assessment of the possibilities relating to the underlying *causa*.

[18] The correct threshold is a possibility that the underlying *causa* *may* ultimately be removed, in which event irreparable harm will invariably result if the stay of execution is not granted.

[19] The higher threshold for which the first respondent contends places the assessment of the possibilities at the level of certainty for the purposes of granting a stay of execution, for the word ‘*will*’ refers to something that is definitely going to happen, whereas ‘*may*’ means something might or could happen and there is no certainty. The application of the (incorrect) test for which the first respondent contends would necessitate this Court inquiring into the merits of the rescission application which is against the general principle that for the purposes of this application this Court is not concerned with the merits of the underlying dispute – the sole inquiry being simply whether or not the *causa* is in dispute. In this regard, and to the extent that the bulk of the first respondent’s oral and written argument was dedicated to the merits of the rescission application, this approach was incorrect. It is legally unsustainable and therefore unhelpful to the first respondent’s defence.

[20] The law is clear that this Court will grant a stay of execution where the underlying *causa* of the judgment debt is being disputed.⁷ Where the *causa* for the impugned execution is a judgment or an order, and the order is placed in dispute because an application for rescission has been brought, grounds may well exist for a court to exercise its discretion in favour of granting a stay in execution.⁸

[21] In this case, the underlying *causa* is clearly in dispute as is evinced by the rescission application, in which the applicant alleges fraud as a basis for

⁷ Road Accident Fund v Strydom 2001 (1) SA 292 (C) at 300B

⁸ Firm Mortgage Solutions (Pty) Ltd and Another v ABSA Bank Ltd and Another 2014 (1) SA 168 (WCC), para [6]

setting aside the Consent Order. Since fraud is a valid ground for rescinding an order or judgment at common law it is possible that the applicant could succeed in establishing the alleged fraud in the rescission application, resulting in the removal of the underlying *causa*, i.e., the Consent Order. I do not have to go into the merits of the rescission application in order for me to conclude thus. In the circumstances, the applicant has demonstrated a *prima facie* right to the relief sought in the rescission application, for the purposes of the present application.

[22] If fraud is indeed proved in the rescission application, then an injustice will have occurred in the granting of the Consent Order. Furthermore, injustice in the form of irreparable harm to the applicant will result if the execution of an order possibly obtained in this manner is not stayed, and the applicant ultimately succeeds in the rescission application.

[23] The first respondent denies that she is taking steps to execute the Consent Order. According to her, all that she is doing is to apply for it to be domesticated in the USA and, so the argument goes, the domestication application merely constitutes legal proceedings that do not amount to execution proceedings, as only once domestication has occurred will the first respondent be in a position to take step to execute the Consent Order.

[24] In my view, the first respondent is splitting hairs with this argument. It is overly technical, and is the antithesis of the purposive interpretation that should appropriately be attached to said domestication proceedings.

[25] In order to execute the Consent Order against the applicant in the USA, the first respondent must successfully domesticate it in the relevant jurisdiction of that country, thereby converting it to an executable judgment of that jurisdiction. The domestication legal proceedings are therefore a first and necessary step in the execution of the Consent Order by the first

respondent in the USA. The sole reason for domesticating the Consent Order in the USA is to execute it against the applicant in that country, otherwise those proceedings serve no purpose. On the flip side, the Consent Order is meaningless to the first respondent as against the applicant in the USA unless the first respondent succeeds in domesticating it in the relevant jurisdiction of that country. It being a *sine qua non* for executing the Consent Order in the USA, domestication and execution are not severable from each other. In my view, they form part of the same action of executing the Consent Order.

[26] Given the first respondent's insistence that the domestication proceedings scheduled to occur in Florida on 31 March 2026 will proceed, I am satisfied that there are good grounds for the applicant to be apprehensive that the execution of the Consent Order is taking place at the instance of the first respondent.

[27] The first respondent's undertaking that she will not take any further steps to execute the Consent Order after it is domesticated is cold comfort for the applicant, given that as a party cited in those proceedings she must incur the cost of participating in them in circumstances where she disputes the validity of the very Consent Order that forms the subject matter of those proceedings. This is manifestly against the interests of justice.

[28] In the heads of argument filed on behalf of the first respondent it is submitted that she will be prejudiced if the domestication proceedings are halted at this point because she might be forced to re-initiate them at a later stage with the associated waste of costs and time. This belies the reality that if the domestication proceedings are to be halted now, that will mean that they will be postponed until the final outcome of the rescission application is known, and can be re-enrolled and proceed at that later stage.

Given that a domestication of the Consent Order will permit its immediate execution, in the circumstances the prejudice to the applicant if that occurs will be greater than the prejudice to the first respondent if those proceedings are halted.

[29] An undertaking that gives true meaning to a stay in the execution of the Consent Order is one whose effect includes that the first respondent will not proceed with the domestication proceedings on 31 March 2026, which is the undertaking that she is not willing to give.

[30] In addition to the order staying the execution of the Consent Order, the applicant seeks interdictory relief pending the final determination of the rescission application and for the duration of the stay of execution. The purpose of this relief is to prevent and restrain the first respondent from taking any further steps whatsoever to enforce, give effect to or execute upon the Consent Order in any manner whatsoever, whether directly or indirectly in any court or country that has jurisdiction, locally or internationally. This relief is justified, in order to regulate the first respondent's conduct and ensure that she gives effect to the stay in execution sought. These remedies are aimed at compelling the first respondent to desist from pursuing any steps or engaging in any conduct whatsoever whose end goal is to execute the Consent Order, including instructing her legal representatives in the USA to do so. The interdictory orders sought are necessary on the facts of this case.

Conclusion

[31] I am satisfied that the applicant has established that: (a) she has a *prima facie* right to the relief that she seeks in the rescission application; (b)

there is a well-grounded apprehension of irreparable harm to her if the stay in execution coupled with the interim interdictory orders that she seeks are not granted and she ultimately succeeds in the rescission application; (c) the balance of convenience favours the granting of the relief sought in this application; and (d) she has no other remedy. Real and substantial justice requires that the execution of the Consent Order be stayed until the final determination of the rescission application.

[32] In the circumstances, the following order is made:

[1] The execution, in any manner whatsoever, of the order granted by this Court, *per* Andrews AJ, on 29 July 2024 under case number 11920/20 (**the Consent Order**) is hereby stayed pending the final determination of the applicant's application for the rescission of the Consent Order (**the rescission application**).

[2] Pending the final determination of the rescission application, and for the duration of the stay of execution of the Consent Order, the first respondent is interdicted and restrained from taking any further steps whatsoever to enforce, give effect to or execute upon the Consent Order in any manner whatsoever, whether directly or indirectly, in any court, country, division or district having jurisdiction, locally or internationally.

[3] Without limiting the generality of paragraph [2] above, pending the final determination of the rescission application, and for the duration of the stay in execution of the Consent Order, the first respondent is specifically interdicted and restrained from giving effect to and/or executing upon the Consent Order in any manner whatsoever, whether directly or indirectly, in any court, country,

division or district having jurisdiction, locally or internationally, including by:

- [a] issuing or causing the issue of writs of execution, and/or causing effect to be given thereto;
 - [b] applying for or procuring and/or causing the application for or procuring of any warrants of attachment and/or instruments of execution, attachment and/or enforcement of any nature whatsoever, and causing effect to be given thereto;
 - [c] instituting, persisting with, or pursuing in respect of the Consent Order, domestication proceedings in the Circuit Court of the Seventh Judicial Circuit in and for Volusia County in Florida, in the United States of America (**the Circuit Court**), and Recording in the Circuit Court and in the official records of Volusia County, Florida, USA, and/ or giving effect thereto, and/or executing any order granted and/or writs and/or warrants issued pursuant thereto;
 - [d] initiating and/or persisting with proceedings, locally or internationally, in order to procure and/or give effect to any court or Administrative Order or Recording in respect of the Consent Order, and/or the recording of the Consent Order as an out-of-country foreign judgment and to obtain instruments of execution and/or initiate and pursue execution upon such court or Administrative Order or Recording in respect of the Consent Order or Recording, as the case may be.
- [4] The first respondent is directed to, forthwith, take all steps necessary to instruct her attorneys, counsel and legal representatives, locally and abroad in the USA, to cease and desist from taking any

steps and/or enforcement actions under the Consent Order and/or domestication thereof by the recording thereof as a foreign judgment and/or any court or Administrative Order or Recording in order to give effect to, or in order to achieve the restrained conduct as referred to in paragraphs [2] and [3] above despite the stay of execution of the Consent Order including, if necessary, to terminate her instructions to such attorneys, counsel and legal representatives if her instructions to cease and desist as aforesaid are not heeded forthwith and to provide confirmation thereof in writing to the applicant's attorneys, within 24 hours of the granting of this Order.

[5] The costs of this application shall stand over for determination in the rescission application.

N MAYOSI
ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For applicant:	Advocate E. Wessels SC, Johannesburg
For first respondent:	Advocate AR Newton, Cape Town