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

Case Number: 2022-047319

|     |                                 |
|-----|---------------------------------|
| (1) | REPORTABLE: NO                  |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES                    |

**12 March 2026**

DATE

SIGNATURE

In the matter between:

**PETROS THEMBA RADEBE**

First Applicant

**JABULILE PRETTY RADEBE**

Second Applicant

and

**WHITE HORSE HARDWARE**

Respondent

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**JUDGMENT**

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**WANLESS J**

**Introduction**

- [1] This matter concerns a commercial eviction application and a counter-application for a stay of those proceedings. At the heart of the dispute lies a vacant piece of land in Soweto, Erf 8[...], Jabavu Extension 2 (*"the property"*), which the Applicants claim to own and seek to evict the Respondent from. The Respondent opposes the eviction on multiple grounds, including a claim to have acquired ownership of the property by acquisitive prescription; a claim for a lien (*right of retention*) based on improvements allegedly made to the property and a challenge to the validity of the Applicants' ownership of the property. The Respondent has instituted a counter-application seeking that the eviction proceedings be stayed pending the finalisation of an action already instituted by it (*under case number 2023-025911*), in which it seeks a declaration of rights over the property and other claims.
- [2] The Applicants are Petros Themba Radebe and Jabulile Pretty Radebe (*"the Radebes"*), a married couple, who are the registered joint owners of the property. The Respondent is White Horse Hardware (*"White Horse"*), a sole proprietorship conducting business as a hardware store, owned by Benjamin Velapi Mabuza (*"Mabuza"*). For ease of reference, the Respondent and Mabuza will be referred to herein collectively as *"White Horse"* where the context permits, as the distinction is not material to the core issues in this matter.
- [3] The matter raises a number of fairly complex and inter-related issues, including the operation of the Prescription Act 68 of 1969 (*"the Prescription Act"*); the application of section 171 (*quat*) of the Local Government Ordinance 17 of 1939 (*which prohibits the prescription of municipal land*); the nature of a *ius retentionis* (*right of retention*); the abstract theory of transfer of ownership; the exercise of this Court's discretion to stay proceedings and whether the eviction application can properly be decided by way of motion or whether the factual matrix requires ventilation through oral evidence and trial procedures.

### **Relief sought**

- [4] In the main application, the Radebes seek an order evicting White Horse from the property. The specific relief claimed in their Notice of Motion and as reflected in their draft order, is as follows:

*“1. That the Respondent be evicted from Erf 8[...] Jabavu Extension 2, situated at 1[...] S[...] Street, W[...] C[...] J[...] , Soweto.*

*2. That the Respondent vacate the property within 30 calendar days.*

*3. That the Respondent cause the boundary walls erected around the property and adjacent municipal land to be demolished and all rubble removed, at the Respondent's cost, before the eviction.*

*3. That the Respondent pay the costs of the application.”*

- [5] In the counter-application, White Horse seeks the following relief, namely:

1. That the eviction application be stayed pending the outcome of the action instituted by White Horse under case number 2023-025911, which action seeks a declaration of rights over the property and other claims.
2. That the costs of the main application be reserved for determination by the trial court.

- [6] In addition, White Horse brought a separate application (*referred to in its updated practice note*) for leave to supplement its answering affidavit to formally place the institution of the action proceedings before this Court. Given that the summons in the action is already part of the record, this application is somewhat moot, but it underscores the existence of the pending action.

## **Background**

- [7] The property (*Erf 8[...]*) is a vacant stand measuring 1522 square metres. It is situated at the corner of S[...] and S[...] Streets in Jabavu Extension 2, Soweto. Adjacent to it is Erf 8[...], owned by Mabuza, from which White Horse operates

its hardware business. Between these two properties lies unregistered municipal land.

- [8] The Radebes became the registered owners of the property on 25 January 2008 by virtue of Deed of Transfer T[...]. They are married in community of property. The Radebes contend that the property is vacant and unimproved, save for a boundary wall erected around it. They allege that White Horse uses the property without their consent as a warehousing facility for building materials, causing them financial prejudice, as they are liable for municipal rates and taxes (*which, at the time of launching the application, amounted to over R 300 000.00*).
- [9] White Horse, through Mabuza, tells a very different story. Mabuza avers that he has been in open and undisturbed possession of the property since 1982. He states that he applied to the then Soweto City Council for its usage in the early 1980s. He erected a boundary wall around the property in 1986 to secure building materials stored there for his business. He has controlled access to the property since that time, with a gate that is locked after business hours. Mabuza states that he understood that his application to the Council had been approved and that the property effectively belonged to him. He was only made aware of the Radebes' claim to ownership in March 2020, when a letter from the attorneys, Anthony Wilton Thinane Inc, was delivered to his premises. He did not take that letter seriously, suspecting a property scam, and took no further action until the present eviction application was served on him in December 2022.
- [10] The Radebes assert their ownership based on the deed of transfer. White Horse disputes the lawfulness of that transfer; claims to have become the owner through acquisitive prescription and, in the alternative, claims a lien (*right of retention*) for the value of the wall it erected. It has now instituted a separate action (*case no: 2023-025911*) to have its rights declared and, if necessary, to have the registration of the property in the Radebes' names set aside.

### **The facts**

- [11] The following facts are either common cause or cannot be seriously disputed by the parties on the application papers presently before this Court.
- [12] Erf 8[...] Jabavu Extension 2 (*the property*) is registered in the names of the Radebes. Erf 8[...] Jabavu Extension 2 is registered in the name of Mabuza. A portion of municipal land lies adjacent to both properties. The properties are located in a commercial area of Soweto.
- [13] White Horse, through Mabuza, has been conducting its hardware business from Erf 8[...] since at least 1982. It is common cause that White Horse also uses the property (*Erf 8[...]*) for the storage of its building materials, including sand, bricks and gravel.
- [14] A boundary wall has been erected around the perimeter of the property and the adjacent municipal land. This wall blocks direct access to the property from S[...] Street and S[...] Street. The only access to the property is through an entrance controlled by White Horse via a gate, which is locked outside of business hours. White Horse avers that this wall was erected in 1986. The Radebes state that they first became aware of the wall being erected around the property in 2009.
- [15] In March 2020, a letter from the attorneys Anthony Wilton Thinane Inc was delivered to White Horse's premises. The letter, addressed to Mabuza, informed him that the property belonged to the Radebes and called upon him to vacate. White Horse did not vacate the property or respond to the letter.
- [16] The present eviction application was served on White Horse on 15 December 2022. White Horse delivered a notice of intention to oppose on 5 January 2023. Its answering affidavit, which also serves as the founding affidavit for its counter-application, was filed on 24 February 2023, after the prescribed time periods had elapsed.

[17] White Horse has instituted action proceedings under case number 2023-025911 against the Radebes. In that action, White Horse seeks a declaration that it (*or Mabuzza*) is the owner of the property by virtue of acquisitive prescription, in the alternative, payment of compensation for improvements to the property.

### **The issues and non-issues**

[18] These are as follows:

#### ***Condonation***

White Horse applied for condonation for the late filing of its answering affidavit. During the course of argument, Counsel for the Radebes conceded (*correctly in the opinion of this Court*) that condonation should be granted. In the premises, this aspect is no longer an issue to be determined by this Court.

#### ***Stay of Proceedings***

Whether, in the exercise of its discretion, this Court should stay the eviction proceedings pending the finalisation of the action instituted by White Horse. This requires an assessment of, *inter alia*, whether there are material disputes of fact that are genuine and cannot be resolved on the papers and whether the interests of justice favour a stay.

#### ***Competence of Demolition Order***

Whether, in the context of these motion proceedings, it is competent for this Court to order the demolition of the boundary wall. This is intricately linked to White Horse's lien claim and the unresolved disputes over the nature and value of the wall as an improvement.

#### ***Substantive Defences***

An evaluation of the strength and *bona fides* of the defences raised by White Horse, namely:

- (a) The challenge to the validity of the Radebes' ownership and the abstract theory of transfer.
- (b) The claim of ownership by acquisitive prescription, including the application of section 171(quat) of the *Local Government Ordinance 17 of 1939*.
- (c) The claim for a lien (*right of retention*) based on improvements (*the boundary wall*) to the property.

### **The law**

[19] The legal principles relevant to this matter are well-established and, for the most part, uncontroversial. They are set out below.

#### ***Stay of Proceedings***

[20] A court has an inherent discretion to stay its own proceedings in order to prevent an injustice or an abuse of process. This discretion must be exercised judicially and on sound principles. As was stated in *Fisheries Development Corporation of SA Ltd v Jorgensen and Another*, while a court does not act on abstract ideas of justice, it may stay proceedings where the interests of justice clearly require it.<sup>1</sup> In the context of motion proceedings, where a court is confronted with a genuine, material dispute of fact that cannot be resolved on the papers, it may, instead of dismissing the application or referring the matter to oral evidence or trial, stay the proceedings pending the outcome of a separately instituted action. This is particularly apposite where the dispute of fact goes to the root of the applicant's *locus standi* or right to the relief claimed.<sup>2</sup>

[21] A court will not lightly grant a stay simply because a party raises a bare denial. The disputes raised must be real and not merely fictitious or intended to delay. As held in *Engar and Others v Omar Salem Essa Trust*, a bare denial of material averments is insufficient. Enough must be stated to enable the court to

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<sup>1</sup> *Fisheries Development Corporation of SA Ltd v Jorgensen and Another*; *Fisheries Development Corporation of SA Ltd v AWJ Investments (Pty) Ltd and Others* 1979 (3) SA 1331 (W) at 1340B-D.

<sup>2</sup> Respondent's Heads of Argument, para 23, CL 07-34.

ascertain that the denials are not fictitious.<sup>3</sup> However, where a respondent sets out a version that is not far-fetched or clearly untenable, and that version gives rise to factual disputes which can only properly be determined after *viva voce* evidence, the court should be slow to decide those disputes on affidavit.<sup>4</sup>

### ***Ownership and the Abstract Theory of Transfer***

- [22] It is trite that the best evidence of ownership of immovable property is the deed of transfer.<sup>5</sup> A deed of transfer is *prima facie* proof of the owner's title. The onus is on any person who disputes that title to provide evidence to rebut it.
- [23] In South Africa, ownership of immovable property passes by registration of transfer in the Deeds Office, in accordance with the abstract theory of transfer. This theory holds that transfer is effected by delivery (*registration*) coupled with a real agreement, which requires the transferor's intention to transfer ownership and the transferee's intention to become the owner. Importantly, the validity of the underlying contract (*such as a sale agreement*) is not a prerequisite for the passing of ownership. A mistake about the validity of the underlying contract is generally a mistake in motive and does not vitiate the real agreement unless the contract was made expressly dependent on that motive.<sup>6</sup>

### ***Acquisitive Prescription***

- [24] Acquisitive prescription is governed by the Prescription Act. Section 1 provides:
- "A person shall by prescription become the owner of a thing which he has possessed openly and as if he were the owner thereof for an uninterrupted period of 30 years or for a period which, together with any periods for which such thing was possessed by his predecessors-in-title, constitutes an uninterrupted period of 30 years."*<sup>7</sup>
- [25] The possession required for acquisitive prescription must be *nec vi, nec clam* and *nec precario* (*not by force, not secretly and not with permission*). It must be

<sup>3</sup> Engar and Others v Omar Salem Essa Trust 1970 (1) SA 77 (N) at 84H-85A.

<sup>4</sup> Glaston House (Pty) Ltd v Cape Town Municipality 1975 (2) SA 581 (C) at 588A.

<sup>5</sup> Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd 1993 (1) SA 77 (A) at 83C-D.

<sup>6</sup> Legator McKenna Inc and Another v Shea and Others 2010 (1) SA 35 (SCA) paras 22-24.

<sup>7</sup> Prescription Act 68 of 1969, s 1.

possession as an owner (*animus domini*), adverse to the rights of the true owner and constitute full juridical possession (*possessio civilis*) as opposed to mere detention (*detentio*).<sup>8</sup> The possession must also be without recognition of the owner's title.<sup>9</sup>

### ***The Local Government Ordinance 17 of 1939***

- [26] Section 171 (*quat*) of the *Local Government Ordinance 17 of 1939* provides a statutory bar to the prescription of land owned by or vested in a local authority. It states that, notwithstanding any rule of law to the contrary, any land owned by, vested in, or under the control of, a local authority shall not be capable of being acquired by any person by prescription. This section prohibits prescription as contemplated by section 18 of the Prescription Act.<sup>10</sup>
- [27] The Radebes argue that this section has not been repealed. Whilst the Gauteng Local Government Law Amendment Act 1 of 2006 repealed various sections of the 1939 Ordinance, the commencement of the repeal of section 171(*quat*) was specifically excluded in the proclamation fixing the commencement date. The Premier's Proclamation (*Provincial Notice 301 of 17 August 2006*) explicitly excluded the repeal of section 171(*quat*). Therefore, the section remains in force and applicable to land owned by a local authority.<sup>11</sup>

### ***Right of retention (Lien)***

- [28] A right of retention (*ius retentionis*) is a real right that entitles a person who has effected improvements to the property of another to retain possession of that property until compensated for those improvements. The claim is founded on unjustified enrichment. To succeed, the possessor must be *bona fide* (*though the requirement of bona fides is less strict in the context of a lien than for a full enrichment claim*), and the improvements must be necessary or useful. The onus is on the person claiming the lien to prove the facts establishing it,

<sup>8</sup> Morkels Transport (Pty) Ltd v Melrose Foods (Pty) Ltd and Another 1972 (2) SA 464 (W) at 471H-472A.

<sup>9</sup> Voet 44.3.9, cited with approval in Morkels, supra, at 472A.

<sup>10</sup> Prescription Act 68 of 1969, s 18.

<sup>11</sup> Gauteng Local Government Laws Amendment Act 1 of 2006, s 38, 40; Provincial Gazette – Gauteng, Vol 12, Provincial Notice 301, 16 August 2006; Applicants' Heads of Argument, paras 25-27, CL 07-11.

including that the improvements are useful or necessary and that they have enhanced the value of the property.<sup>12</sup>

- [29] Importantly, for a lien to operate against a successor in title, the enrichment must generally be at the expense of that specific owner. If the improvements were effected whilst the property was owned by a previous owner (*such as a municipality*), the claim for enrichment likely lies against that previous owner and not against a subsequent *bona fide* purchaser for value.<sup>13</sup>

### **The respective submissions of the parties**

#### ***The case for the Applicants (the Radebes)***

- [30] The Radebes' case is built on their status as registered owners. They submit that the deed of transfer is the best evidence of their ownership and that White Horse's challenge to the underlying sale agreement is irrelevant under the abstract theory of transfer. They argue that the counter-application is a desperate attempt to delay their eviction.
- [31] On the issue of acquisitive prescription, the Radebes contend that for the period during which White Horse claims to have possessed the property (since 1982), the property was owned by, or vested in, the Soweto City Council (*later the City of Johannesburg*). Section 171(*quat*) of the Local Government Ordinance 17 of 1939, which remains in force, prohibits the acquisition of such land by prescription. Consequently, prescription could not run against the Municipality. The 30-year period could only potentially start to run from 25 January 2008, when the property was transferred to the Radebes, and would therefore only be completed in 2038.
- [32] Even if section 17 (*quat*) did not apply, the Radebes argue that White Horse's possession was not adverse or with the requisite *animus domini*. They point to White Horse's own version, which indicates that Mabuza applied for permission to use the property and awaited the Municipality's approval, thereby

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<sup>12</sup> United Apostolic Faith Church v Boksburg Christian Academy 2011 (6) SA 156 (GSJ) paras 30-31.

<sup>13</sup> JC Sonnekus, Unjustified Enrichment in South Africa (2nd ed, LexisNexis) at 106-107.

acknowledging the Municipality's title. This, they submit, is incompatible with the possession required for acquisitive prescription.<sup>14</sup>

- [33] Regarding the boundary wall and the lien claim, the Radebes argue that the wall is not a useful improvement but a nuisance, as it impedes their access to their own property from two public roads. They also contend that any enrichment claim lies against the Municipality, who was the owner when the wall was erected in 1986, and not against them. Furthermore, they submit that White Horse has failed to provide admissible evidence of the wall's value, relying solely on Mabuza's inadmissible opinion.
- [34] In conclusion, the Radebes submit that there is no genuine dispute of fact; that White Horse's defences are fundamentally flawed in law and that the main application should be granted, with costs, with the counter-application to be dismissed with costs.

### ***The case for the Respondent (White Horse)***

- [35] White Horse's primary submission is that the eviction application is premature and should be stayed. It argues that the papers reveal a myriad of material factual disputes which can only properly be resolved in the trial action that has already been instituted. These disputes include the circumstances surrounding White Horse's possession since 1982; the nature and duration of its control over the property; the erection and maintenance of the wall; the interaction with the Municipality and the *bona fides* of the Radebes' claim of ownership.
- [36] On the defence of acquisitive prescription, White Horse submits that it has made out a *prima facie* case for being the owner through open and undisturbed possession for more than 30 years, as evidenced by the facts set out in its affidavits. It contends that the Radebes' reliance on section 171(*quat*) is misguided, as the section has been repealed. *Alternatively*, it argues that the purpose of the section was to protect Municipal land, and that once the land was alienated to the Radebes, the prohibition on prescription fell away and its possession since 1982 could be aggregated with the period post-2008. It also

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<sup>14</sup> Paragraphs 33-43 *ibid*

points out that the Radebes waited 12 years after allegedly acquiring title before taking any action, which it submits is indicative of the strength of their possession.

- [37] On the issue of the lien, White Horse argues that it has a clear right of retention over the property for the useful improvements (*the boundary wall*) it has affected. It submits that the wall has secured the property for over 30 years, directly benefiting the Radebes if they are ultimately declared the owners. The cost of the wall (*approximately R 350 000.00*) and the maintenance costs over the years, represent a substantial enrichment of the Radebes at White Horse's expense. It argues that the demolition of the wall, as prayed for by the Radebes, cannot be ordered without first determining this lien claim.

### **Discussion and analysis**

- [38] Having carefully considered the extensive papers filed of record; the comprehensive Heads of Argument and the applicable legal principles, this Court has come to the conclusion that this matter is not ripe for final determination by way of motion proceedings. The counter-application for a stay must succeed for the reasons set out hereunder.

### ***The existence of material disputes of fact***

- [39] This matter is replete with genuine, material factual disputes incapable of resolution on the papers. The mere fact that the Radebes have a title deed does not, in the face of a properly pleaded and not-untenable counter-narrative, entitle them to immediate relief in motion proceedings. The disputes are not, as the Radebes contend, "*spurious*", "*contrived*," or "*bald denials*". They are detailed, specific and corroborated to some extent by objective facts, such as the long-standing presence of the boundary wall and White Horse's decades-long uncontested use of the property.

- [40] The factual disputes identified by this Court include:

### ***The nature and commencement of possession***

40.1 Mabuza states he has been in open and undisturbed possession of the property since 1982, using it as a necessary extension of his hardware business. Radebe states he only became aware of the wall in 2009, and that prior to that only occasional, permissive use of the property was made by surrounding businesses. This is a direct, irreconcilable conflict over a foundational fact.

### ***The erection of the wall***

40.2 Mabuza states he built the wall in 1986. The Radebes state the wall was erected in 2009. This is not a minor discrepancy. It goes to the heart of White Horse's claim of long-term, owner-like control and to the validity of any lien. The date of the wall's construction is critical.

### ***Acknowledgement of Title***

40.3 Mabuza's version, including his application to the Council in the 1980s and his statement that he *"has been awaiting the confirmation of the approval of my application since 1985"*, suggests a recognition of the Municipality's title. The Radebes seize on this to argue that possession was *precario* and lacked *animus domini*. However, this is not a simple matter of law. It is a factual enquiry into Mabuza's state of mind and his understanding of his rights over a 30-year period. Did his application and waiting for approval negate the *animus domini* that might otherwise be inferred from his later, long-term, exclusive and controlling conduct? This is a factual nuance that requires testing through oral evidence.

### ***Communications and bona fides***

40.4 There is a direct conflict regarding whether the Radebes personally attended White Horse's premises prior to March 2020. The Radebes claim to have done so on multiple occasions. Mabuza denies ever meeting Mr Radebe.

In addition, thereto, the identity of the person who delivered the March 2020 letter and the circumstances surrounding it are also in dispute. These disputes impact the credibility of the parties and their respective *bona fides*.

***The legal defences are not clearly untenable***

[41] Whilst the Radebes have raised strong legal arguments, particularly on the application of section 171(*quat*) of the *Local Government Ordinance*, this Court is not persuaded that White Horse's defences are so clearly untenable that they should be dismissed out of hand, especially given the factual matrix.

[42] The Radebes' argument that section 171(*quat*) is still in force and completely bars any prescription period that includes time prior to 2008 is, on the face of it, rather compelling. However, White Horse's argument that the section's purpose is spent once the land is alienated and that its possession since 1982 can be "*rolled over*" post-2008, raises a novel and arguable point of law. The interplay between the statutory prohibition on prescription against a Municipality and the subsequent transfer of that land to a private owner, cannot be settled by a simple reading of the Prescription Act and the Ordinance. It requires a more nuanced analysis of the legislation's purpose and of prescription as a continuous process. This is a matter best determined in a trial where all the facts regarding the possession can be properly established.

***The Lien Claim***

[43] Similarly, White Horse's lien claim cannot be dismissed as legally hopeless. It is true that a lien is an enrichment claim and that enrichment is generally not claimable against a successor in title for improvements made before that successor acquired ownership. However, White Horse's claim is that it has been in continuous possession and that the Radebes acquired the property with full knowledge (*or at least constructive notice*) of its possession and the improvements. The value of the wall, the nature of the improvement, and whether it is a "*nuisance*" or a "*benefit*" are all factual issues that need to be resolved. The demolition of a wall that has stood for decades (*whether since*

1986 or 2009) is a drastic remedy that should not be ordered without a proper enquiry into the rights and obligations surrounding it.<sup>15</sup>

### ***The discretion to stay***

- [44] The existence of these material factual disputes and the arguable nature of the legal defences, combined with the fact that White Horse has already instituted a separate action to comprehensively ventilate all these issues, strongly militates in favour of granting a stay. An action is the appropriate forum to resolve disputes of this nature, with its procedures for discovery, subpoenas and *viva voce* evidence.
- [45] The Radebes argue that they will be prejudiced by a stay as they continue to pay rates and taxes and are denied the use of their property. However, the Radebes knew of White Horse's occupation by at least March 2020, if not earlier. Nevertheless, they waited until December 2022 to institute this application. They stood by for 14 years after acquiring ownership. Any further delay occasioned by allowing the action to run its course is, in the opinion of this Court, a consequence of their own initial inaction. It does not constitute the kind of prejudice that outweighs the potential for a grave injustice to White Horse. As held in *Fisheries Development Corporation*, the court's discretion to stay proceedings exists to avoid injustice and inequity.<sup>16</sup>
- [46] If the eviction were to proceed now with the wall being demolished, and if White Horse were to later succeed in its action (*whether on prescription or on the lien*), the situation would be irreversibly prejudicial to it. An award of damages would be a poor substitute for the loss of a long-held property right or the destruction of a valuable improvement. On the other hand, if the Radebes ultimately succeed in the action, they will still obtain their eviction order and the question of the wall (*and costs*) can be properly dealt with at that stage. The balance of convenience and the interests of justice favour preserving the *status quo* pending the final determination of the parties' rights in the action.

### ***The demolition of the wall***

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<sup>15</sup> See *United Apostolic Faith Church v Boksburg Christian Academy*, *supra*, para 30.

<sup>16</sup> *Fisheries Development Corporation v Jorgensen*, *supra*, at 1340B-D.

[47] In light of the foregoing, it follows that the order for the demolition of the wall sought by the Radebes is not competent at this stage. The wall is central to White Horse's lien claim. Its value, nature, and the circumstances of its construction, are all in dispute. An order for its demolition would effectively destroy the subject matter of White Horse's alternative claim for compensation and render any right to a lien nugatory. Moreover, such an order cannot be granted in motion proceedings where the right to it is so hotly contested.

### **Conclusion**

[48] This matter is characterised by deep-seated and genuine factual disputes that cannot be resolved on the basis of application papers. The legal defences raised by White Horse, whilst subject to strong counter-arguments, are not so clearly untenable as to be dismissed without a proper trial. In these circumstances, the just and equitable course is to stay the eviction proceedings pending the finalisation of the action already instituted by White Horse, in which all issues between the parties can be comprehensively and fairly determined.

### **Costs**

[49] The general rule is that costs follow the result. Here, White Horse has been successful in its counter-application for a stay. However, the primary dispute is still to be determined in the action. It would be premature and potentially unjust to award costs in respect of either the application or the counter-application at this stage. The appropriate order, as suggested by White Horse and provided for in its draft order, is to reserve the costs of the eviction application (*the main application*) for determination by the court that hears the action. The success of the counter-application (*excluding the costs of the main application*) would normally attract a costs order in favour of White Horse, but given that it is an interlocutory step in a broader dispute and the parties have yet to finally establish their rights, this Court is of the view that the just and equitable order would be that these costs also be reserved for the decision of the trial court. Regarding the application for condonation, each party shall pay their own costs.

On the one hand, White Horse sought condonation. On the other hand, the Radebes opposed the condonation application and only conceded that condonation should be granted at the hearing of this matter.

### **Order**

[50] This Court makes the following order:

1. Condonation is granted to the Respondent for the late filing of its answering affidavit.
2. The eviction application under case number 2022-047319 is stayed pending the final determination of the action instituted by the Respondent under case number 2023-025911 in the Gauteng Division, Johannesburg.
3. The costs of the main eviction application and the counter-application instituted by the Respondent are reserved for determination by the court hearing the action under case number 2023-025911.
4. Each party shall pay their own costs in respect of the Respondent's application for condonation.

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**BC WANLESS  
JUDGE OF THE HIGH COURT  
JOHANNESBURG**

**Date of Hearing:** 18 February 2026

**Date of Judgment:** 12 March 2026

**Appearances**

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