IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case number: **8343/2024**

In the matter between:

ANINA MALHERBE	Applicant / Defendant
and	
WESBANK, A DIVISION OF FIRSTRAND BANK LIMITED	Respondent/Plaintiff

Coram: **Montzinger AJ**

Heard: 09 March 2026

Delivered: 11 March 2026

Summary: Urgent application in terms of Uniform Court Rule 45A to urgently stay execution process – principles of urgency and stay of execution

applied – Applicant appears in person – Application failed to meet the requirements of urgency and to stay execution. Application dismissed.

ORDER

1. The application for the stay of execution is dismissed.

2. The applicant/defendant is ordered to pay the costs of the application on the scale as between attorney and client.

JUDGMENT

Montzinger AJ:

Introduction

[1] This is an urgent application. The applicant, Ms Anina Malherbe, seeks relief in terms of Uniform Rule 45A. She seeks an order staying the execution of a summary judgment granted against her by this Court, pending the final determination of a purported application for the rescission of that judgment. The respondent, WesBank (a division of FirstRand Bank Limited), opposes the application.

[2] The applicant appeared in person. While she indicated to the Court that she is a layperson, it is patently clear from the papers filed, her conduct in court, and her compliance with the procedures prescribed by the rules, that she possesses a reasonable understanding of the legal process and the substantive requirements of the relief she seeks. Whether through self-study

or unacknowledged legal assistance, she clearly knows her way around the court system and has participated fully at every stage of the proceedings.

A brief litigation background

[3] The background to this matter is well documented. On 12 December 2019, the parties concluded an instalment sale agreement for a 2018 Land Rover Evoque 2.0 SI4 convertible motor vehicle. The applicant subsequently fell into arrears. Despite the debt being restructured pursuant to a debt review process in 2023, the applicant defaulted once again, having made no payments toward the vehicle for well over two years while continuing to utilise it.

[4] Consequently, the respondent instituted action proceedings. After the applicant raised several special pleas in the plea, the respondent applied for summary judgment. On 4 September 2025, Kusevitsky J granted the summary judgment, cancelling the agreement and ordering the immediate return of the motor vehicle to the respondent. Unsatisfied with the summary judgment, the applicant sought leave to appeal. That application was considered and dismissed by Kusevitsky J on 23 February 2026.

[5] Having exhausted her attempts to appeal the judgment, the applicant approached the urgent court on 9 March 2026 on extremely abridged timeframes, seeking an urgent stay of the execution process on the basis that she intends to rescind the summary judgment and possibly appeal.

Legal principles: Urgent applications and rule 45A

[6] Urgency is determined with reference to several different levels of urgency, depending on the nature of the urgency and the facts of each individual matter that is before the court as an urgent matter. The presiding judge has to exercise a discretion in application of the facts with due regard to the law in relation to urgency.

[7] Rule 6(12)(b) of the Uniform Rules of Court requires an applicant in an urgent application to explicitly set out the circumstances which render the matter urgent, and the reasons why substantial redress cannot be afforded at a hearing in due course. As our courts have repeatedly held, an applicant cannot sit idle and then rely on urgency that is entirely self-created[1].

[8] As Fagan J held in *IL & B Marcow Caterers*[2], the indulgence of an urgent hearing is justified only where "sufficient and satisfactory" grounds are shown, including an explanation why ordinary time-periods will not provide substantial redress, and with due regard to the prejudice to the respondent and to other litigants whose cases are displaced on the roll. Urgency is assessed objectively and mere importance to the applicant does not suffice, and self-created urgency will generally not warrant departure from the ordinary procedures[3]. Although delay is relevant, it is not determinative and is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The

---

[1] *Schweizer-Reneke Vleis Maatskappy. (Edms) Bpk v Minister van Landbou & andere* 1971 (1) PH F11 (T) at F11-12

[2] *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd and Another* 1981 (4) SA 108 (C) p 112 - G

[3] *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* (CCT110/19) [2019] ZACC 27; 2019 (9) BCLR 1104 (CC) (3 July 2019) paras 6 - 9

important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course[4].

[9] In respect of the substantive relief, Rule 45A confers a discretion on the court to suspend the execution of any order. To succeed under Rule 45A, an applicant must demonstrate that real and substantial injustice will result if the suspension is not granted[5]. Also, since the court will be guided by considering the factors usually applicable to interim interdicts it means that where a stay is sought pending a rescission application or some other substantive challenge, the applicant must demonstrate, at a minimum, that there in fact is a rescission application, or the other challenge, and that the application or other challenge has reasonable prospects of success. The last mentioned approach relates to the requirement of having to establish a *prima facie* right. This is because an applicant will suffer irreparable harm if the execution is allowed while the rescission application or some other challenge, may ultimately be successful[6].

Application of principles to the facts

[10] Applying the foreshadowed principles to the facts at hand, this application falls at both hurdles. There is a clear lack of urgency and also no merits in the application. The reality that the respondent could execute upon the summary judgment and impound the vehicle was known on 4 September 2025. Almost six months have passed since then. The applicant's application for leave to appeal had no bearing on the institution of a possible rescission

[4] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011); [2012] JOL 28244 (GSJ)
[5] *Gois t/a Shakespeare's Pub v Van Zyl and Others* 2011 (1) SA 148 (LC)
[6] *Gios supra* par 38

application. Hauling the respondent to court on a mere five days' notice is a blatant abuse of process. The urgency is entirely self-created.

[11] Furthermore, the applicant has failed to establish that she will suffer substantial prejudice if the execution proceeds. She complains of personal inconvenience and relies on the execution of the court order causing her "irreparable harm". The lawful execution of a valid court order to recover a luxury depreciating asset does not constitute prejudice. On the contrary, the balance of convenience heavily favours the respondent, which is legally obliged to mitigate its damages by recovering the asset.

[12] Most fundamentally, the relief sought is entirely stillborn because there is, in fact, no rescission application before this Court. There is consequently nothing that can notionally impugn Kusevitsky J's judgment. Consequently, the applicant cannot show that real and substantial injustice will result[7] if the execution process is allowed to continue.

The applicant's purported grounds for rescission

[13] Despite the absence of a rescission application, the applicant foreshadows her purported grounds for rescission in her founding affidavit. In the interest of clarity, my reference to the rescission application is not a finding that a rescission application can in fact be employed to impugn a summary judgment. Counsel for the respondent, Mr Randall, referred to various judgments that supports the proposition that a summary judgment is incapable

[7] *Firm Mortage Solutions (Pty) Ltd and Another v ABSA Bank Ltd and Another*; 2014 (1) SA 168 (WCC)

of rescission. Especially, where the defendant filed an affidavit opposing summary judgment and participated in the hearing.

[14] I shall, in any event, briefly dispose of the purported rescission grounds to illustrate why any intended rescission application lacks any prospect of success and why this application must fail. The same grounds raised in support of this application were substantially also raised before Kusevitsky J at the hearing of the summary judgment application and the leave to appeal application.

[15] First, the applicant relies on Rule 42(1)(a), alleging the order was erroneously sought or granted in her absence, claiming that the required Rule 32(2) affidavit was not before the court. This is factually and legally baseless. The applicant was not absent; she was present, opposed the summary judgment, and argued the matter in person. Moreover, it is clear from the record that the summary judgment application and supporting affidavit were properly served on her and was before the court when the matter was heard.

[16] Second, the applicant alleges a patent ambiguity in the order under Rule 42(1)(b) regarding the identity of the execution creditor (alleging confusion between Wesbank, FirstRand Bank Ltd, and FirstRand Auto Receivables RF Ltd). This exact issue was raised by the applicant as a special plea before Kusevitsky J, who rejected it as disingenuous. I take the same view.

[17] Third, the applicant invokes the common-law ground of *iustus error*, claiming she did not conclude the finance agreement with Wesbank. As Mr Randall, who appeared for the respondents, correctly points out, *iustus error* generally applies where a party is induced to contract based on a

reasonable mistake[8]. Even if this bizarre proposition was true, if the applicant truly believed she never contracted with the respondent, she would have no legal basis to retain possession of the vehicle and would still be obliged to return it.

Conclusion

[18] I therefore find that this application is a transparent and disguised attempt to reopen the merits of a summary judgment against which leave to appeal has already been refused. The applicant has sought to delay the lawful execution process through meritless arguments and an abuse of the urgent court roll. Although, the applicant failed to establish urgency, the application also had no merits. While ordinarily the resultant order is to simply struck the matter off the roll, in this instance a dismissal of the application is warranted.

[19] The respondent has requested a punitive costs order. Given the applicant's obvious understanding of legal procedure and her vexatious attempts to frustrate the execution of a valid court order while retaining a luxury asset at the respondent's expense, a punitive costs order is undoubtedly warranted.

[20] In the result, I make the following order:

1. The application to stay execution is dismissed.

[8] *Sonap Petroleum (South Africa) (Pty) Ltd v Pappadogianis (483/90) [1992] ZASCA 56; 1992 (3) SA 234 (AD); [1992] 2 All SA 114 (A)*

2. The applicant/defendant is ordered to pay the costs of the application on the scale as between attorney and client.

[redacted]

A MONTZINGER
ACTING JUSTICE OF THE HIGH COURT

Appearances:

For applicant:	Ms Malherbe in person
For respondent:	Mr Ross Randall Schneider Galloon Reef & Co. Ms C Stockenstroom