



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

Case No. 2026 – 024042

In the matter between:

KEVIN WILLIAMS

FIRST APPLICANT

**CONCERNED BROTHERS OF THE
KNIGHTS OF DA GAMA**

SECOND APPLICANT

and

**SUPREME OFFICERS OF THE
KNIGHTS OF DA GAMA**

FIRST RESPONDENT

THE AWP BOARD OF MANAGEMENT

SECOND RESPONDENT

**THE SOUTHERN AFRICAN CATHOLIC
BISHOPS CONFERENCE (SACBC)**

THIRD RESPONDENT

THE SOUTH AFRICAN REVENUE

SERVICES

FOURTH RESPONDENT

THE DEPARTMENT OF SOCIAL DEVELOPMENT

FIFTH RESPONDENT

Corum: MAGONA-DANO AJ

Hearing Date: 12 February 2026

Order: 12 February 2026

Reasons: 02 March 2026

Summary: urgent application-applicant declared a vexatious litigant before--date of institution of these proceedings to the vexatious order- intention to litigate or preparatory steps not amounting to instituting of proceedings- service of application papers could be a ground to argue but issuing of the papers is required- condonation or seeking leave retrospectively impermissible-failure to prove instituting proceedings before vexatious order was granted nullifies the proceedings-failure to adhere to warnings to withdraw and consequences thereof.

REASONS

MAGONA-DANO AJ

INTRODUCTION

[1] This was an urgent application brought by the First and Second Applicants on 12 February 2026 seeking an array of reliefs some of which were declaratory orders, interim interdict and further relief directing the further conduct of the matter.

[2] On the same day, an order striking the matter from the roll with costs *de bonis propriis* was granted against the First Applicant as he was declared a vexatious litigant before instituting these proceedings.

[3] From 16 February 2026, the First Applicant, requested reasons to the order that was granted by this Court. These are the reasons.

[4] For convenience sake, I will refer to the First Applicant as Mr. Williams and use the designated names as listed in the papers for other parties. Only the First and Second Respondents opposed the application.

RELEVANT BACKGROUND

[5] Mr Kevin Williams (Mr Williams) appeared on his behalf and on behalf of the Second Applicant. The First and Second Respondents were represented by Ms Samkange.

[6] Prior to dealing with the main application, the First and Second Respondents raised several preliminary points, including that the Applicant had been declared a vexatious litigant prior to filing this application.

[7] As indicated before the court upheld this point *in limine*, striking the matter from the roll with costs *de bonis propriis* against Mr. Williams. The reasons address only this issue, which was central to the Court's decision.

[8] As indicated before, the point *in limine* raised was fatal to the application being heard. The point raised related to an order where Mr Williams was declared a vexatious litigant on 04 February 2026.

BACKGROUND HISTORY

[9] It is common cause that Mr Williams was declared a vexatious litigant by order of this Court case no **2025-058552**, dated 04 February 2026, the order was granted in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 (the Act). The order partly read as follows:

“1. Mr Kevin Williams is declared to be a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956.

2. No legal proceedings shall be instituted by Mr Kevin Williams, acting in his personal capacity or in any representative capacity in terms of which he purports to represent any legal entity including Paper and Tissue Solutions (Pty) Ltd, against Thomson Wilks Inc and/or Mr Nicholas John Elliot, in any court or inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.

3. Mr Kevin Williams is declared to be a vexatious litigant in terms of the common law...”

[10] The effect of that order was to prohibit Mr Williams from instituting or continuing any legal proceedings without the prior leave of this Court.

[11] Notwithstanding the aforesaid order, Mr Williams, acting on his behalf and for the Second Applicant issued the present application on 05 February 2026 through court online and had it served on all Respondents. Only the First and Second Respondents opposed the application. As indicated there were several points in limine raised by the First and Second Respondents.

Point in Limine -Vexatious Litigant

First Applicant's case

[12] Mr Williams filed a supplementary affidavit relating to this point and averred that the vexatious litigant proceedings were separate and distinct to those before this Court. The subject matter of the parties and issues in that matter (vexatious application)were wholly distinct from the issues raised in the current application.

[13] Additionally, the urgent application in this matter was prompted by actions taken by the First Respondent, as detailed in a correspondence dated 12 December 2026, which had an impact on the interests of the Second Applicant. On his return from Europe, Mr Williams took a flight to Cape Town where he attended to the application papers deposing to a founding affidavit which was commissioned on 26 January 2026. According to him this was the date the proceedings were instituted in terms of the law.

[14] Further that he had been trying to load the application papers on the court online system between 30 January and 04 February 2026, he also sent emails to court online support desk and attempted to contact the helpline number multiple times during this period to no avail.

[15] On 03 February 2026, he had couriered hard copies to be served privately on First, Second and Third Respondents in Gauteng and Pretoria before issuance in this Court, the waybill from DHL was proof.

[16] On 05 February 2026 upon receipt of a case number at about 08h00, he proceeded to serve immediately on the Respondents and by 11:45 am, they were served.

[17] Mr Williams repeated that the proceedings were instituted on 26 January 2026, the date he signed the founding affidavit, and this was before he was declared a vexatious litigant, the latter case was argued on 29 January 2026 and a judgment delivered on 04 February 2026.

[19] He confirmed receiving correspondence dated 06 February 2026 from the First and Second Respondents' Attorneys demanding that he removes this application which was enrolled on urgents court for 12 February 2026 or a punitive cost order would be sought against him. Mr Williams did not comply because he believed in the above stated.

[20] He further averred that should the court not be with him regarding his defence above he was also seeking condonation and that leave be granted due to the merits of the case and the history of his attempts stated above. That public interest and the interests of justice require that this matter cannot simply be strike out.

[21] To Mr Williams, the proceedings were *prima facie* meritorious and not instituted to harass.

[22] The court should find that the proceedings were instituted on 26 January 2026 before the vexatious litigant order. Alternatively grant him condonation and leave to institute and prosecute these proceedings, with retrospective effect.

The First and Second Respondent's case

[23] These Respondents averred in their answering affidavit that the urgent application had preliminary issues that were dispositive of the matter in toto, namely:

- a. Applicant was declared vexatious litigant and absence of leave to institute these proceedings;
- b. Urgency;
- c. Applicant's locus standi;
- d. Court's jurisdiction.

[24] They confirmed that Mr Williams was declared a vexatious litigant by this Court on 04 February 2026 (vexatious order). He instituted these proceedings on 05 or 06 February 2026.

[25] The vexatious order was granted pursuant to the Act in particular section 2(1)(b) which prohibits institution of further proceedings without prior leave, and it operates prospectively from the date it was granted.

[26] The Act is preventative in nature with a purpose to protect courts and litigants from further abusive litigation. It is not punitive.

[27] Further, Mr Williams has tried to avoid this statutory prohibition using the preparatory steps taken before the order was granted or attempted electronic uploads as instituting of fresh proceedings, this he was wrong in. In motion

proceedings, legal proceedings are instituted upon service of the notice of motion on the respondent.¹

[28] That leave is a precondition to institution and cannot be granted retrospectively as Mr Williams wanted. Allowing such would negate the statutory safeguard of the Act.²

[29] To the First and Second Respondent the institution of these proceedings was in direct contravention of the Court's order, and this Court should render them incompetent and the application stand to be dismissed on this ground alone.

ISSUES TO BE DETERMINED

- (a) Whether the present proceedings were instituted prior or after the vexatious order was granted ; if after
- (b) Whether Mr Williams lawfully instituted the proceedings by seeking the required leave of the Court before such institution; if not
- (c) Whether can such failure to seek leave be condoned and leave be granted belatedly with retrospective effect;
- (d) Whether the application constitutes an abuse of process warranting dismissal with a punitive cost order or not.

¹ Republikuinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A).

² Beinash v Wixley 1997 (3) SA 721 (SCA) and confirmed in Beinash v Ernst Young 1999 (2) SA116 (CC).

LEGAL PRINCIPLES

[30] Once a litigant is declared vexatious, access to court is conditional upon leave, and proceedings instituted without such leave are a nullity attracting punitive consequences.

[31] The right of access to courts does not extend to litigation that is repetitive, meritless, or oppressive and constitutes an abuse of judicial process. *Beinash v Wixley*.³

[32] A litigant declared vexatious may not institute or continue proceedings without prior leave of the Court; proceedings instituted without such leave are incompetent. (*Corderoy v Union Government* 1918 AD 512 at 517).

[33] Non-compliance with a vexatious order cannot be cured retrospectively by explanation, condonation, or reliance on alleged earlier attempts to litigate. (*Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271).

[34] It is trite that proceedings are instituted when process is issued by the Registrar. Preparatory steps, draft pleadings, or unsuccessful attempts to file papers do not constitute the institution of proceedings. The operative date is the date of issue (*Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654E–F).

DISCUSSION AND ANALYSIS

When were the proceedings instituted?

³ supra at 734E–H.

[35] Mr Williams submitted that proceedings were instituted when he signed the affidavit on 26 January 2026 and therefore not when the documents were physically filed or served-citing the Absa case.⁴ This was before the vexatious litigant order.

[36] He further made submissions suggesting that even the attempts made to file on several dates on case line from 30 January to 04 February 2026 ought to be considered as they demonstrated that he was attempting to file these proceedings well before 4 February 2026.

[37] Ms Samkange submitted these proceedings were instituted from the time the papers were served on the Respondents (after being issued) on 05 February 2026. This was a day after the vexatious order. The preparatory steps taken before the order was made did not form part of “instituting” of proceedings.

[38] The Absa Bank case Mr Williams depended on was not supportive of his case, not only was it distinguishable, but his dependence on it was also ill-conceived. That case dealt with the issue relating to when does service of process occur for purpose of interrupting prescription. It held that for purpose of prescription, service occurred upon service of process on the debtor, not upon drafting or internal preparation of documents.

Analysis

[39] I had taken into account that the Supreme Court of Appeal repeatedly affirmed that it is the issue of process which brings litigation into existence. (*Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd 1998 (1)*

⁴ Mr Williams referred to *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk 1995 (1) SA 653 (A)*.

SA 811 (SCA); Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199 (SCA). Antecedent steps, however earnest, do not constitute the commencement of proceedings.

[40] Importantly, our courts have also rejected reliance on failed filing attempts or unissued papers as constituting instituted proceedings. In *Naidoo v Matlala NO 2012 (1) SA 143 (GNP)*, the court held that until papers are issued by the Registrar, they have no legal force and cannot be regarded as proceedings before court, regardless of attempts to file or serve them. Similarly, in *Moulded Components and Rotomoulding SA (Pty) Ltd v Coucourakis 1979 (2) SA 457 (W)*, it was emphasised that litigation is a formal juridical act regulated by the court, not an informal process capable of being initiated by unilateral conduct of a litigant.

[41] In my view, based on the above, it must be the date of issue of the papers on 05 February 2026 that can only be regarded as the date of instituting of these application proceedings before me, this was when the legal proceedings had legal force. Service thereafter merely perfected the proceedings as against the respondent and triggered procedural time periods, while attempted service of unissued papers is a nullity in law.⁵

Was there leave obtained to institute these proceedings?

[42] I bears to mention that the history of this matter shows how Mr Williams got himself involved in a matter well aware that a court was seized with the question of whether his conduct warrants a vexatious-litigant declaration.⁶ One

⁵ *Naidoo v Matlala NO 2012 (1) SA 143 (GNP)*.

⁶ The vexatious order application was heard on 29 January 2026 and he appeared in person.

would think he would reasonably exercise restraint and await the court's determination.

[43] Mr Williams did the opposite. Strictly speaking, his decision to continue launching proceedings during that period reflects a disregard for the authority of the court and illustrates a pattern of conduct consistent with vexatious litigation.

[44] Returning to dealing with the question above, the vexatious judgment was delivered on 04 February 2026. He continued to have the application papers issued on 05 February 2026 and have them served without obtaining leave from the Court first.

[45] He was approached by the First and Second Respondent's Attorneys who expressly informed him that the proceedings had been instituted in breach of a standing vexatious litigant order. He was warned that the application was irregular and was invited to withdraw it or a punitive cost order against him would be sought.

[46] Despite this warning, Mr Williams elected to persist with the application. The continuation of the proceedings in the face of a clear statutory prohibition granted by a Court of law and a direct warning, constituted an abuse of the process of this Court.

[47] The purpose of the Vexatious Proceedings Act is to prevent precisely this type of conduct and to protect both litigants and the courts from repetitive and unlawful litigation (*Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734B–C).

[48] In my view having found that the proceedings were instituted on 05 February 2026, I find that Mr Williams did not seek nor obtain the leave of this

Court prior to issuing the application. In the absence of such leave, the Court was not competent to entertain the matter.

Compliance with statutory and court-imposed preconditions to litigation is not optional and goes to the legitimacy of the proceedings.

Can Condonation be granted and leave granted retrospectively?

[49] Mr Williams filed a supplementary affidavit addressing the allegations relating to him being declared a vexatious litigant. In that affidavit, he sought leave to have his failure to not comply with the vexatious order condoned and that he be granted leave to institute these proceedings with retrospective effect from 26 January 2026.

[50] Ms Samkange made submissions that there was no proper application seeking leave before this Court, this was only mentioned in the replying affidavit and in any event, such leave cannot be granted retrospectively.

[51] In my view, the nature of the vexatious order is clear on the process to follow, obtain leave first before you can institute any other proceedings. This can only be by a full application proceedings, not in the middle of proceedings through making averments in an affidavit seeking leave with unsubstantiated grounds. This was improper and could not be considered.

[52] In any case, there was no proper condonation application for bringing application for leave before this Court. To be clear regarding the notice of motion before this Court, Rule 6(12) condones procedural non-compliance; it does not resurrect proceedings that are jurisdictionally barred.

[53] Condonation constitutes substantive relief and must be sought expressly in the notice of motion, *in casu*, it was not. It cannot be inferred from or granted on the basis of explanatory averments contained only in an affidavit.⁷

[54] Therefore Rule 6(12) of the Uniform Rules permits the Court, in urgent matters, to condone non-compliance with procedural requirements relating to form and time, but it does not dispense with compliance with substantive legal or jurisdictional prerequisites.⁸

[55] Once a litigant has been declared vexatious, prior leave of the Court is a threshold jurisdictional requirement, and proceedings instituted without such leave are a nullity.⁹ Jurisdiction cannot be conferred by urgency, waiver or indulgence. (*Chirwa v Transnet Ltd* 2008 (4) SA 367 (CC)).

[56] Having stated all the above in my view; litigation cannot be retrospectively validated by reference to intention or failed administrative steps. Procedural acts acquire legal effect only once properly completed in accordance with the Rules of Court (*Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271).

[57] Since Mr Williams acted on behalf of the Second Applicant, deposed to the founding affidavit on their behalf, their case had to fall with him.

⁷ NDPP v Zuma 2009 (2) SA 277 (SCA).

⁸ Luna Meubel Vervaardigers (Edms) Bpk v Makin 1977 (4) SA 135 (W); Phillips v NDPP 2006 (1) SA 505 (CC).

⁹ Beinash v Wixley supra.

[58] It was based on these circumstances, the application was struck from the roll since it was instituted in contravention of a valid court order that declared Mr Williams a vexatious litigant.

[59] Having reached the finding detailed above, it was unnecessary to address any additional issues pertaining to this matter. The sole remaining consideration was the determination of costs related to the application that was struck out.

Costs

[60] Ms Samkange made submissions that a punitive cost order was warranted in light of the circumstances of this matter.

[61] That as stated on 06 February 2026 after service of the application to the Respondents, the First and Second Respondent's Attorney forwarded correspondence to Mr Williams warning him, amongst others, that he was declared a vexatious litigant and ought to withdraw this application or a punitive cost order would be sought against him. He defiantly proceeded with the matter.

[62] Submissions were further made that such a punitive cost order was warranted to send a message to the applicants and others who abuse the Court that such abuse shall not be tolerated.

[63] Mr Williams submitted that the Biowatch¹⁰ principle applied, this was a public interest matter that he ought not be punished for, he represented members of the public who stood to suffer if he did not intervene as he was requested to

¹⁰ 2009 (6) SA 232 (CC).

do so on behalf of the Second Applicants and elderly people belonging to the NPO.

[64] I considered the parties submissions above and can state that I understand the Biowatch principle to say that in constitutional litigation against the State:

- a. If a private party challenges the constitutionality of State conduct in good faith, and, even if that party is unsuccessful, they should not ordinarily be ordered to pay the State's costs.

[65] The rationale is to avoid deterring litigants from vindicating constitutional rights for fear of adverse costs orders. Constitutional litigation serves the public interest.

[66] I was not convinced that there was any public interest litigation involved, Mr Williams is a private person who was declared a vexatious litigant and should not have pursued this litigation without the required leave.

[67] As he explained his role in this matter, he was merely designated to only depose to an affidavit and represent a group of individuals who wanted to challenge decisions made over the years by the governing structures of an NPO¹¹ they are members of. Mr Williams confirmed he was not a member of the NPO and that he had no ties with it.

[68] Mr. Williams completely disregarded the Court's processes and orders; despite the vexatious order dated 04 February 2026, he issued and served these proceedings on 05 February 2026. He initiated these proceedings without obtaining the Court's permission and continued despite being cautioned

¹¹ Catholic Order of the Knights of da Gama.

regarding his misconduct. Consequently, he caused the respondent to incur unnecessary legal expenses and expended judicial time on an urgent basis, fully aware that he was in contempt of a court order. I was of the view that an ordinary costs order would not have adequately reflected the Court's disapproval.

[69] In that regard, I was of the view that costs *de bonis propriis* was warranted where a litigant acts in bad faith, with recklessness, or in wilful disregard of the authority of the Court (*Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at paras 223–225). I regarded that Mr Williams's persistence in unlawful litigation justified such an order.

[70] The costs order had to be imposed, and it was accordingly not punitive for its own sake, but necessary to protect the integrity of the judicial process and to deter further abuse.

CONCLUSION

[71] It is based on the above reasons that the order was made on 12 February 2026 that:

- a. The matter was struck from the roll with costs *de bonis propriis* against Mr Williams (the First Applicant).

[72] Finally, it needs to be mentioned that on 16 February 2026 my Registrar received a request for reasons from Mr Williams. Following this, he sent multiple emails over the subsequent days; initially, he sought reasons, but later

his correspondence included threats to report me if I did not provide the reasons according to his constantly changing deadlines.

[73] The frequency and tone of the communication went beyond a legitimate enquiry as to progress and amounted to an attempt to impose undue pressure through threats and influence over the judicial process. Such conduct is inconsistent with the dignity of the court, undermines judicial independence, and is to be condemned.

[74] While parties may request reasons and make reasonable enquiries regarding progress, the preparation of reasons is a judicial function that cannot be subjected to pressure or self-imposed timelines.

[75] I consider it necessary to record that the preparation and delivery of reasons is an integral component of the judicial function. In terms of section 165 of the Constitution of the Republic of South Africa, 1996, the courts are independent and subject only to the Constitution and the law. Judicial authority is exercised without fear, favour or prejudice, and no person (or organ of state) may interfere with the functioning of the courts.

[76] The delivery of judgment and reasons is regulated within the constitutional and statutory framework, including the Superior Courts Act 10 of 2013, and the ethical standards issued under the authority of the Judicial Service Commission. These instruments recognise both the obligation to deliver judgments within a reasonable time and the institutional independence necessary to do so properly.

[77] The timing of Court's reasons is determined by the proper discharge of its judicial duties, having regard to the complexity of the matter, the Court's caseload, and the demands of justice. It is not open to litigants to seek to impose timelines, exert pressure through threats, or otherwise attempt to influence the Court in the performance of its function.

[78] This observation is made to guide future conduct, communications with the court should remain measured, respectful, and procedurally appropriate otherwise courts cannot function if judicial officers are required to work under the shadow of daily ultimatums or threats of complaint.

**MAGONA-DANO AJ
ACTING JUDGE OF THE HIGH
COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT**

APPEARANCES

For First Applicant:	In person(Mr Kevin Williams)
For Second Applicant:	Mr Kevin Williams kevwilliams231@gmail.com
Instructed by	The Second Respondents

Counsel for the First & Second

Respondent:

Adv Gugulethu Samkange

gugz@capebar.co.za

Instructed by:

Thomson Wilks Inc.