



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

Case No.: **8692/2020**

In the matter between:

M[...] A[...] V[...] N.O.

(in his capacity as trustee for the time being of the
Le Casseur Trust) (I[...])

First Applicant

E[...] A[...] V[...] N.O.

(in her capacity as trustee for the time being of the
Le Casseur Trust) (I[...])

Second Applicant

JACOBUS MARTINUS BURGER N.O.

(in his capacity as trustee for the time being of the
Le Casseur Trust) (I[...])

Third Applicant

M[...] A[...] V[...] N.O.

(in his capacity as trustee for the time being of the
V[...] Beleggings Trust) (I[...]2)

Fourth Applicant

JOHANNES PETRUS JACOBUS VAN TONDER N.O.

(in his capacity as trustee for the time being of the
V[...] Beleggings Trust) (I[...]2)

Fifth Applicant

JUANDRE BOTHA N.O.

(in his capacity as trustee for the time being of the
V[...] Beleggings Trust) (I[...]2)

Sixth Applicant

M[...] A[...] V[...] N.O.

(in his capacity as trustee for the time being of the
M[...] V[...] Familie Trust) (I[...]3)

Seventh Applicant

JOHANNES PETRUS JACOBUS VAN TONDER N.O.

Eighth Applicant

(in his capacity as trustee for the time being of the
M[...] V[...] Familie Trust) (I[...]3)

HESTER BLACKBURN N.O.

Ninth Applicant

(in her capacity as trustee for the time being of the
M[...] V[...] Familie Trust) (I[...]3)

EILANDIA PLASE (PTY) LTD

Tenth Applicant

(Registration Number: 1992/005583/07)

KORHAAN HOOGTE EIENDOME (PTY) LTD

Eleventh Applicant

(Registration Number: 2002/01583/07)

ROCKBELT RIDGE AGRI (PTY) LTD

Twelfth Applicant

(Registration Number: 2018/365991/07)

and

E[...] V[...]

Respondent

In re:

In the matter between:

E[...] V[...] (née V[...] S[...])

Applicant

and

M[...] A[...] V[...] N.O.

First Respondent

(in his capacity as trustee for the time being of the
Le Casseur Trust) (I[...])

E[...] A[...] V[...] N.O.

Second Respondent

(in her capacity as trustee for the time being of the
Le Casseur Trust) (I[...])

JACOBUS MARTINUS BURGER N.O.

Third Respondent

(in his capacity as trustee for the time being of the
Le Casseur Trust) (I[...])

M[...] A[...] V[...] N.O.

Fourth Respondent

(in his capacity as trustee for the time being of the
V[...] Beleggings Trust) (I[...]2)

JOHANNES PETRUS JACOBUS VAN TONDER N.O.

Fifth Respondent

(in his capacity as trustee for the time being of the
V[...] Beleggings Trust) (I[...]2)

JUANDRE BOTHA N.O.

Sixth Respondent

(in his capacity as trustee for the time being of the
V[...] Beleggings Trust) (I[...]2)

M[...] A[...] V[...] N.O.

Seventh Respondent

(in his capacity as trustee for the time being of the

M[...] V[...] Familie Trust) (I[...]3)

JOHANNES PETRUS JACOBUS VAN TONDER N.O.
(in his capacity as trustee for the time being of the
M[...] V[...] Familie Trust) (I[...]3)

Eighth Respondent

HESTER BLACKBURN N.O.
(in her capacity as trustee for the time being of the
M[...] V[...] Familie Trust) (I[...]3)

Ninth Respondent

EILANDIA PLASE (PTY) LTD
(Registration Number: 1992/005583/07)

Tenth Respondent

KORHAAN HOOGTE EIENDOME (PTY) LTD
(Registration Number: 2002/01583/07)

Eleventh Respondent

ROCKBELT RIDGE AGRI (PTY) LTD
(Registration Number: 2018/365991/07)

Twelfth Respondent

KORHAAN HOOGTE (PTY) LTD
(Registration Number: 2018/365991/07)

Thirteenth Respondent

THE MASTER OF THE HIGH COURT, CAPE TOWN

Fourteenth Respondent

Neutral citation: *MA V[...] + 11 others vs E V[...] + 7 others* (Case no 8692/2020
[2026] ZAWCHC ... (14-04-2026)

Coram: WELGEMOED AJ

Heard: 25 March 2026

Delivered: 14 April 2026

Summary: Application for security for costs. Discretionary measure on
circumspectus of the entire matter.

ORDER

The application for security for costs by the First to Twelfth Applicants be dismissed
with costs; and

The counter application of Mrs V[...] that Mr V[...] must pay the security for costs in
his personal capacity is granted.

JUDGMENT

WELGEMOED, AJ:

Introduction

[1] This is an application where the Applicants seek security for their costs in a joinder application brought by the Respondent. The Applicants seek security in the amount of R350 000.00.

[2] The Respondent, Mrs V[...], seeks to join the Applicants to the divorce proceedings pending between herself and her husband, Mr V[...], under case number 8692/2020. The Respondent has opposed the application and has instituted a counter application against Mr V[...] wherein she seeks an order that, to the extent that she is ordered to provide such security, that Mr V[...] be ordered to make the payment thereof in his personal capacity.

Background to the application

[3] M[...] A[...] V[...] and the respondent (E[...] V[...]), have a long litigious history backdating to July 2020. They are married out of community of property and Mrs V[...] claims for redistribution of assets in terms of section 7(3) of the Divorce Act and maintenance.

[4] As part of the pending divorce proceedings, Mrs V[...] instituted an application to join the Le Chasseur Trust, the MV Familietrust and the V[...] Beleggingstrust (collectively “**the trusts**”) and Eilandia Plase, Koorhaanhoogte and Koorhaanhoogte Eiendomme (collectively “**the companies**”) to the divorce proceedings (“**the joinder application**”). She alleges that the value of the trusts and companies should be included in her claim in terms of Section 7(3) of the Divorce Act. Mr V[...] is a beneficiary and trustee of the trusts and a director of the companies. The joinder application has not been heard yet, a date of hearing can only be issued once the security of costs has been resolved.

Summary of Applicants submissions

[5] The Applicants seek security in the sum of R350 0000. The basis for the application is provided as follows:

- (a) the Respondent is an unrehabilitated insolvent, and the Applicants believe she will be unable to pay their costs if the Applicants are successful in their opposition to the joinder application. The Respondent was finally sequestrated by this Court in April 2023;
- (b) the joinder application is vexatious and/or reckless and/or amounts to an abuse of the process of the court because:
 - i. the Respondent admits in her application that she does not seek relief from all of the parties to be joined but that she seeks such relief as they have a 'substantial interest' in the 'outcome' of the matter;
 - ii. in 2022, the Respondent instituted a joinder application against all of the applicants, which she did not pursue, and withdrew without any tender for costs. The Applicants aver that she did not tender costs due to her inability to do so; and
 - iii. the Respondent has not attached a particulars of claim to the joinder application thus failing to define the relief she will be seeking against the applicants in her application.
- (c) Further the Applicants argue that the Respondent has no prospect of success because:
 - i. aspects of the relief she seeks is bad in law and no claim in law or fact exists for such relief; to the extent that the relief she seeks is available to her;
 - ii. she fails to make the allegations necessary to sustain the claims against the Applicants.
 - iii. The relief sought against the trusts and companies is mutually exclusive.

Point in limine

[6] The Applicant's aver that the Respondent has no *locus standi* to bring the

joinder application on the basis that the claims against the trust and companies cannot be seen as proceedings which relate to her status and does not affect her estate or in respect of any claim due to or against her (Section 23(6) of the Insolvency Act). They further allege that the Respondent's trustee, who should have instituted the joinder application in her stead, lacked knowledge of the application and did not consent thereto.

Summary of Respondents submissions

[7] The Respondent opposes the application for security for costs on the following basis:

- (d) It may infringe the Respondent's right to litigate in terms of Section 34 of the Constitution. They aver that because an order for security for costs is an exceptional, discretionary remedy, the court must therefore exercise its discretion with heightened care as the order will in practice be a denial of access to the courts, as the respondent is impoverished.
- (e) Abuse of court process: the Respondent argues that Mr. V[...] is not a credible litigant as the application for security for costs is one of the many strategies (others being non-disclosure, contempt of court orders and procedural obstruction) the Applicant has employed to derail the joinder application and financially incapacitate Mrs. V[...].
- (f) The requirements set out in *Fusion Properties 233 CC v Stellenbosch Municipality*¹ are not met as to justify the exceptional remedy of security of costs.
- (g) The deponent (an employee of one of the entities) lacks *locus standi* to bring application for security on behalf of all the applicants.

With regard to the Respondent's sequestration:

- (h) They aver that the Respondent falls squarely into the requirements of Section 23(6) of the Insolvency Act as matrimonial litigation including incidental litigation such as joinder of entities alleged to be the alter ego of a spouse concerns her status or personal rights.
- (i) The Respondent argues that her sequestration is a direct result of Mr

¹ 2021 ZASCA 10.

V[...]’s conduct by withholding maintenance, defying Rule 43 Orders, which prevented her from being able to pay the account of forensic investigators engaged to investigate his financial affairs. This debt triggered her sequestration.

Relief sought

[8] Both parties seek security for costs as envisaged in Rule 47 of the Uniform Rules of Court.

The law

[9] An application for security for costs is not a routine procedural step. It is an exceptional remedy that must be invoked with precision supported by clear factual and legal grounds and exercised with judicial restraint.

[10] Its purpose is to protect the litigant from the risk of being unable to recover costs from an opposing party who is impecunious and who litigates vexatiously. It is not a mechanism to obstruct access to court or to delay the adjudication of substantive claims.

[11] The legal framework governing security for costs is found in Rule 47 of the Uniform Rules of Court. Rule 47(1) requires that a party seeking security must first deliver a notice setting out the grounds upon which security is claimed. Rule 47(3) provides that if the party from whom security is demanded fails to furnish it or to respond within the prescribed time, the applicant may apply to court for an order compelling the furnishing of such security.

[12] However, the mere delivery of a notice does not entitle the applicant to relief. The court must be satisfied that the applicant is *bona fide*, procedurally compliant and substantively justified.

[13] Courts have a clear discretion to deny security for costs where it is used to oppress or delay proceedings (Erasmus Superior Court Practice D1/474). It is the contention of Mrs V[...] that the Applicants have not demonstrated any risk of prejudice. Instead, according to her, the Applicants have invoked Rule 47 tactically

after failing to answer the joining application. Mrs V[...] submits that the effect of the application is not to protect legitimate interests but to paralyse the litigation and shield Mr V[...]’s financial affairs from scrutiny.

[14] The court’s discretion must be exercised to refuse security both to prevent oppression of a vulnerable litigant and to ensure that Rule 47 is not weaponised as a tool of delay. Mrs V[...] submits that to grant security in these circumstances would be to sanction procedural abuse and undermine the constitutional guarantee of access to courts under Section 34 of the Constitution.

[15] The discretion to grant security must be exercised judicially with due regard to the specific circumstances of a case.

Case law

[16] In the matter of *Fusion Properties 233 CC v Stellenbosch Municipality*,² the Supreme Court of Appeal reaffirmed the principles:

- (j) A court retains an unfettered discretion in deciding whether to order security.
- (k) The court must balance in the potential injustice to a plaintiff if prevented from pursuing a legitimate claim against the injustice to a defendant who successfully defends but cannot recover costs.
- (l) The purpose of security is to deter vexatious or reckless litigation, not to stifle genuine claims.
- (m) Security for costs must not be used to shut the courthouse door to *bona fide* litigants.

[17] These principles are reinforced by *Shepstone & Wiley v Geyser*.³ In this matter, the SCA held that good prospects of success may outweigh impecuniosity. In essence, the Applicants’ application for security for costs involves the application of the court’s discretion on the following points, in that:

- (n) the Respondent is an unrehabilitated insolvent;
- (o) the joinder application is vexatious and reckless and amounts to an

² 2021 ZASCA 10.

³ 1998 (3) SA 1036 (SCA).

- abuse of the court's process;
- (p) the respondent has no prospects of success in the joinder application; and
- (q) the Applicants aver that the Respondent has no *locus standi* to bring the joinder application.

[18] In the exercise of my discretion, I find that there are no merits in the Applicants' submissions.

Finding

[19] I hereby dismiss the Applicants' application for security for costs against Mrs V[...] and find that Mr V[...] must provide security for costs in his personal capacity.

Order

[20] It is hereby ordered that:

- (r) the application for security for costs by the First to Twelfth Applicants be dismissed with costs; and
- (s) the counter application of Mrs V[...] that Mr V[...] must pay the security for costs in his personal capacity is granted.

Costs

I consider the cost order against the protracted litigation as a whole. There is little doubt in my mind that it is a tactical, obstructive manoeuvre in order to close the doors of the court to Mrs V[...]. Various spurious allegations are made. There can be no doubt that the Applicants need to be part of the proceedings and joined to the final divorce action.

An organigram of the Trusts and Companies clearly shows that Mr V[...] has a direct interest in all the Applicants. The veil must be pierced, and Mrs V[...] has a right to have insight into the financial realities in the various Applicants.

I accordingly dismiss the application for costs and uphold the counter application.

Further, that Mr V[...] pay the costs on an attorney and client basis under Scale B.

D WELGEMOED

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant : Adv. HJ Loots SC
Adv. L Bezuidenhout

For the Respondent: Adv. R Ferreira