



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED:

17 February 2026
DATE

SM MARITZ AJ
SIGNATURE

CASE NO: 041148/2025

In the matter between:

**ABSA HOME LOANS GAURANTEE
COMPANY (RF) (PTY) LTD
[REG NO: 2003/029628/07]**

First Applicant/Defendant

**ABSA BANK LIMITED
[REG NO: 1986/004794/06]**

Second Applicant/Defendant

and

**NISHANYA PREMLAL
[ID NO: 900829 0269 087]**

Respondent/Plaintiff

***EX TEMPORE* JUDGMENT (WITH REASONS FURNISHED IN TERMS OF RULE
49(1)(C) OF THE UNIFORM RULES OF COURT)**

MARITZ AJ

A. INTRODUCTION

- [1] This is the exception application brought by the first and second applicants (defendants in the main action) in terms of Rule 23(1) of the Uniform Rules of Court to the respondent's (plaintiff in the main action) Amended Particulars of Claim dated 25 March 2025. The applicants are ABSA Home Loans Guarantee Company (RF) Proprietary Limited (Registration Number: 2003/029628/07) and ABSA Bank Limited (Registration Number: 1986/004794/06) (collectively "ABSA" or "the excipients" or "applicants"). The respondent is Nishanya Premlal ("the respondent" or "plaintiff").
- [2] Before the matter could be argued, the Court received emails dated 3, 10 and 11 February 2026 from the applicants' attorneys advising that the exception had become moot in light of paragraph 11 of the order granted by Kooverjie J on 17 November 2025 under case number 2025/007277. The respondent was copied on all correspondence. The respondent opposed the removal by email dated 10 February 2026. The matter was accordingly enrolled for virtual hearing on the opposed motion roll on 17 February 2026.
- [3] An *ex tempore* judgment was delivered on 17 February 2026. The respondent thereafter filed a Notice for Leave to Appeal (pending transcript and reasons) and requested written reasons in terms of Rule 49(1)(c). These are the reasons for the *ex tempore* judgment.

B. HEARING

- [4] Adv R Scholtz appeared for the applicants. The respondent was represented by her father, Mr S Premlal, who appeared in terms of a purported power of attorney.
- [5] At the outset the Court directed the parties to address only two preliminary points: (1) whether the exception application is moot; and (2) whether Mr Premlal, a lay person, is competent to represent his daughter (a natural person) before this Court. Only if both points were not upheld would the Court proceed to the merits of the exception.

C. SUBMISSIONS OF THE PARTIES

MOOTNESS OF THE EXCEPTION

Applicants' submissions

- [6] Adv Scholtz submitted that the exception became moot because the parties reached a settlement in the related foreclosure/summary judgment proceedings before Kooverjie J on 17 November 2025. Paragraph 11 of that order (granted by agreement) expressly records that the respondent undertakes to forthwith withdraw the present action under case number 2025/041148, with each party paying their own costs.
- [7] He argued that an undertaking turned into a court order is binding and equivalent to a direction that the plaintiff is compelled to withdraw, irrespective of any current change of heart. Arguing the exception would be premature and would amount to "*business as usual*", directly undermining Kooverjie J's order.
- [8] The respondent has filed a rescission application and a belated application for leave to appeal, but those applications are pending before another court and do not suspend the existing order. No application under Rule 45A to suspend execution was brought. The opposition to removal was described as a waste of judicial resources and an abuse of process.

Respondent's submissions

- [9] Mr Premlal opposed the removal and insisted that the exception be argued. His submissions were, in summary:
- 9.1 This matter has "*absolutely nothing to do with the first matter*" and involves completely different case numbers.
- 9.2 The parties did not agree to the order granted by Kooverjie J.

- 9.3 Kooverjie J did not afford the respondent or her counsel an opportunity to address the Court, which is why recordings were requested and the matter taken on appeal.
- 9.4 A rescission application was filed on 23 November 2025 and an application for leave to appeal and condonation on 19 December 2025.
- 9.5 An urgent application to stay execution was struck off the roll and has since been re-enrolled.
- 9.6 The respondent's family continues to pay the bond but is suing the applicants for damages.
- 9.7 The applicants themselves applied for the hearing date of the exception and cannot now claim it is moot.
- 9.8 He is a pensioner who is unemployed and cannot afford legal representation.
- 9.9 He seeks fairness and justice and would seek legal representation if the Court did not allow him to appear.

REPRESENTATION POINT

Applicants' submissions

- [10] Adv Scholtz submitted that it is a trite principle of the common law — now codified in section 25 of the Legal Practice Act 28 of 2014 — that a lay litigant may not represent another natural person in proceedings before a court of law. He referred the Court to the authoritative decision of the Supreme Court of Appeal ("SCA") in *Commissioner for the South African Revenue Services v Van der Merwe* [2022] ZASCA 106, particularly paragraphs [44] to [46]:

“It follows that there is no discretion to allow a lay person to represent a natural person in a court of law... There is no justification for this court to depart from this established practice which is in accordance with common law. The pitfalls of a natural person representing a lay person who is not a legal practitioner are obvious...”

- [11] He emphasised the obvious pitfalls, including potential disputes over authority and prejudice to the administration of justice. He submitted that Mr Premlal has effectively taken over the management of his daughter’s entire litigation portfolio across multiple matters.
- [12] The Court is bound by the SCA decision. Mr Premlal therefore has no legal right to represent his daughter. In reply, Adv Scholtz submitted that a power of attorney does not override the prohibition as a court may later find that the respondent was coerced or unduly influenced.

Respondent’s submissions

- [13] Mr Premlal acknowledged the general rule but explained that he holds a power of attorney, is a pensioner, and that the family could not afford legal representation. In previous appearances (including before Minnaar J) he had been permitted to address the Court. If the Court ruled he could not appear, he would seek alternative representation, but asked that the matter proceed on the merits because the underlying disputes remain live.

COSTS

Applicants’ submissions

- [14] Adv Scholtz sought a punitive costs order (attorney and client scale) against the respondent. ABSA had warned Mr Premlal by email (uploaded on CaseLines, section 12) that insistence on proceeding with a moot matter would attract punitive costs. The opposition forced ABSA to brief counsel unnecessarily. Lay litigants who ignore agreed removals and cost-saving steps

should not put the opposing party out of pocket. The punitive costs order is also linked to the unauthorised representation.

Respondent's submissions

- [15] Mr Premlal made no specific submissions on costs. His focus remained on the substantive disputes and the alleged unfairness of the Kooverjie J order.

D. EX TEMPORE RULING

- [16] The Court is bound by the Supreme Court of Appeal in *Commissioner for the South African Revenue Services v Van der Merwe* [2022] ZASCA 106 (paras 44–46) and section 25 of the Legal Practice Act 28 of 2014. A lay person may not represent another natural person in a court of law. No power of attorney was presented to the Court. Mr Premlal is therefore not competent to represent the respondent in these proceedings.

- [17] Nevertheless, because a costs order was sought and in the interests of finality, the Court proceeded to consider mootness.

- [18] The exception application has become moot. The order of Kooverjie J dated 17 November 2025 under case number 2025/007277 remains in force and effect. That order was granted by agreement. Paragraph 11 provides:

“The defendant undertakes to forthwith withdraw the action proceedings against the plaintiff’s under case number 2025/041148 in which case each party shall pay their own costs under such case number.”

- [19] No notice of withdrawal of the action under case number 2025/041148 has been filed by the respondent in accordance with the Kooverjie J order. The filing of amended Particulars of Claim in the action under case number 2025/041148 in the face of that order is problematic, but no further finding is made in that regard.

- [20] The filing of a rescission application and an application for leave to appeal does not automatically suspend the operation or enforcement of the order. No separate application under Rule 45A of the Uniform Rules of Court to suspend execution was before this Court. The Kooverjie J order therefore remains binding, and the respondent is obliged to withdraw the action under case number 2025-041148. That action is the subject of an unequivocal undertaking – now embodied in an order of court – requiring its withdrawal, and it bears the same case number as the present exception application in the same main action.

E. COSTS

- [21] The applicants sought a punitive costs order on the scale as between attorney and client. The respondent nevertheless opposed the removal of the matter from the roll despite clear notice of the order of Kooverjie J and notwithstanding that the main action is the subject of an unequivocal undertaking, now made an order of court to withdraw it.
- [22] The Court has considered the full correspondence between the parties, the emails addressed to the Court, and the detailed submissions of both parties. The respondent's opposition to the Notice of Removal of the exception filed by the applicants prior to the hearing, the disregard of the express warning by the applicants' attorneys (email dated 5 February 2026 – CaseLines: section 12) that, should the respondent persist in proceeding with a moot matter, a punitive costs would be sought, and the respondent's continued insistence that the exception be argued notwithstanding the binding order of Kooverjie J, thereby necessitating an unnecessary hearing, justify the granting of a punitive costs order. Such conduct constitutes frivolous and vexatious litigation, compounded by the unauthorised representation of Mr Premlal. Furthermore, Mr Premlal made no specific submissions on costs, focussing instead on the substantive disputes and the alleged unfairness of the order of Kooverjie J. In the circumstances, the applicants are entitled to a punitive costs order.

F. ORDER

The following order is made:

1. The exception application is removed from the roll.
2. The plaintiff/respondent is ordered to pay the costs of the day of 17 February 2026, including the costs of counsel, on the scale as between attorney and client.

BY ORDER



MARITZ AJ (SM)

ACTING JUDGE OF THE HIGH COURT

Representation on behalf of parties:

Attorneys for Applicants: Lowndes Dlamini Attorneys

Counsel for Applicants: Adv R Scholtz

For Respondent: In person (Mr Premlal)

Date of Hearing: 17 February 2026

Date of *Ex tempore* Judgment: 17 February 2026

Date of Delivery of Transcript: 27 March 2026

Date of Delivery of *Ex tempore*: 2 April 2026

Judgment (with reasons)