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

CASE NO: 2024/074554

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

DATE: **30.04.2026**

SIGNATURE OF JUDGE: **JR MEADEN**

In re: the exceptions in the main action between

YUNUS MOOLLA

First

Excipient/First

Defendant

(Identity Number: 6[...])

IMRAAN MOOLLA

Second

Excipient/Second

Defendant

(Identity Number: 9[...])

YUNUS MOOLLA N.O.

Third Excipient/Third Defendant

(Identity Number: 6[...])

IMRAAN MOOLLA N.O.

Fourth

Excipient/Fourth

Defendant

(Identity Number: 9[...])

FOR THE TIME BEING THE TRUSTEES OF

Fifth

Excipient/Fifth

Defendant

SAFY TRUST

SPRINGS CAR WHOLESALERS (PTY) LTD

Sixth

Excipient/Sixth

Defendant

(Registration Number: 2008/014857/07)

HIRED BY BLACK WOMEN (PTY) LTD

Seventh Excipient/Seventh

Defendant

(Registration Number: 2021/125051/07)

and

DOLLAR RENT A CAR INCORPORATED

First

Respondent/First

Plaintiff

THRIFTY RENT-A-CAR SYSTEM LLC

Second

Respondent/Second

Plaintiff

HERTZ INTERNATIONAL LTD

Third Respondent/Third Plaintiff

JUDGMENT – SECURITY FOR COSTS

MEADEN AJ

- [1] In the course and scope of the above ongoing action, I have been presented with two opposed exception arguments, launched at the instance of the Defendants and by way of two notices drawn in terms of Rule 23 of the Uniform Rules of Court as well as a separate opposed application for security for costs launched in terms of Rule 47 of the Uniform Rules of Court.
- [2] I have dealt with the above exceptions in a separate comprehensive judgment and Order. This judgment and related Order contend with the above Rule 47 application for security for costs.
- [3] I refer to the parties as cited in the ongoing action proceedings launched under the above case number ("main action").
- [4] The First and Second Plaintiffs - being Dollar Rent A Car Incorporated ("Dollar") and Thrifty Rent-A-Car System LLC ("Thrifty") are American corporations duly incorporated as such in accordance with the company laws of the State of Oklahoma, United States of America, having registered addresses at 5[...] E[...] 3[...] Street, T[...], T[...] County, Oklahoma, 7[...], United States of America.
- [5] The Third Plaintiff - Hertz International Limited ("Hertz International") is an American company duly incorporated as such in accordance with the Company laws of the State of Delaware, United States of America; having its registered address at 1[...] O[...] Street, C[...] T[...] C[...], Wilmington, Delaware 1[...], United States of America.

- [6] The First, Second and Third Plaintiffs operate within the Hertz Corporation and conduct car rental businesses through, inter alia; the brands of Hertz, Dollar Rent-A-Car and Thrifty Car Rental. The First, Second and Third Plaintiffs are vis-à-vis South Africa, foreign companies.
- [7] The First and Second Defendants are Yunus and Imraan Moolla, adult male employees of the Sixth Defendant. The Third and Fourth Defendants are Yunus and Imraan Moolla N.O in their nominated official capacities as trustees of the Safy Trust – the Fifth Defendant. The Sixth Defendant is a sub-licensee of the Safy Trust. The Seventh Defendant is Hired for Black Women (Pty) Ltd (“HBW”) cited by the Plaintiffs as a co-Defendant in circumstances where it is alleged that HBW utilised the Plaintiffs’ trademarks referenced in the main action and when not entitled so to do. All of the above Defendants are located/resident in South Africa and are *incolae* of South Africa.
- [8] It is noteworthy from the Plaintiffs’ amended Particulars of Claim that no particulars are recorded relating to the actual business addresses and operations of the Plaintiffs in the Republic of South Africa. Instead and on a convenience basis, the Plaintiffs only cite as their chosen address in South Africa and which falls within the jurisdiction of this Court; that of their attorneys of record – Bowman Gilfillan, Johannesburg.
- [9] What is apparent from the Plaintiffs’ Answering Affidavit on this security for costs application is that the Plaintiffs are not conducting business in their own rights and names in South Africa. Instead, the Plaintiffs have entered into confidential International Master License Agreements style agreements (“IMLA”) with independent undisclosed entities in South Africa and which then are in turn authorised and empowered to use the Plaintiffs’ trademarks and from which the Plaintiffs then derive royalties.

- [10] It was held in *JM v NLJC*¹ that a foreign *perigrinus* is someone who is domiciled or resident outside of the Republic of South Africa and this is exactly what the Plaintiffs are.
- [11] Having due regard to the court papers before me, there is nothing contained therein that convinces me to the contrary that the Plaintiffs are anything other than foreigners – *perigrini*.
- [12] Further, aside from referencing the Plaintiffs' various trademarks registered in South Africa (and which are incorporeal movable assets), the Plaintiffs do not allude to owning any other categories of assets registered in their respective names (including immovable assets) in the Republic of South Africa.
- [13] In the absence of the Plaintiffs owning unencumbered immovable property in South Africa, the First – Seventh Defendants have demanded that the Plaintiffs, being *perigrini*; furnish security for costs in the ongoing action in favour of the Defendants and in the amount of R 1,8 million. The Plaintiffs have opposed so doing.
- [14] Consistent with Rule 47(1), the Defendants have resorted to this application for security for costs at the inception of their defence of this action and following on their entering an appearance to defend and with that; then also raised various exceptions to the Plaintiffs' amended Particulars of Claim.
- [15] As rule of practice, the merits of this litigation are not considered at this stage of the proceedings, except in cases where it is alleged that the defence is vexatious and which has not been substantively made out here.²

¹ (2023/00100) [2024] ZAGPJHC 762 (16 August 2024) at para 8.

- [16] Further and again as a general rule of practice, a *peregrinus* who is a Plaintiff or Applicant and who does not own unmortgaged immovable property in South Africa, may be ordered to give security for the costs of his/her action.³
- [17] Per *Magida v Minister of Police*⁴, a court has a discretion whether or not to order security to be lodged. This court discretion is to be exercised by having regard to all the relevant facts as well as considerations of equity and fairness to both parties. In the exercise of the court's discretion all the relevant factors have to be weighed, having regard to the particular circumstances of the case as well as on consideration of equity and fairness to both the *incola* and the *perigrinus*.⁵
- [18] The Plaintiffs in their answer on this security for costs application do not provide the Defendants with comfort that any costs orders made against the Plaintiffs would be summarily covered and paid in favour of the Defendants and which would be the logical way in which to assuage the Defendants' concerns and while being embroiled in the ongoing substantial, complex and costly legal action as framed by the Plaintiffs.
- [19] The likelihood of the Defendants having to proceed against the Plaintiffs in recovering the costs in the United States of America are not dispelled here by the Plaintiffs.
- [20] The Supreme Court of Appeal in *Exploitatie – en Beleggingsmaatschappij Argonauten 11 BV v Honig*⁶ held that the associated uncertainty and inconvenience that this would entail is one of the fundamental reasons why a *peregrinus* should provide security for costs. Further, there is no perceivable prejudice to the Plaintiffs in putting up the requested security

² *Dinos and Another v Agro V.I.M SA and Another* (08284/14) [2015] ZAGPJHC 72 (29 January 2015) at para 3.

³ *Silvercraft Helicopters (Switzerland) Ltd v Zonnekus Mansions (Pty) Ltd* 2009 (5) SA 135 (W) at 143 G – H.

⁴ At para 14E and 15D.

⁵ *Dinos and Another v Agro V.I.M SA and Another* (08284/14) [2015] ZAGPJHC 72 (29 January 2015) at para 5.

⁶ 2012 (1) SA 247 (SCA).

for costs and for that matter, increasing such security for costs should the need be motivated by the Defendants in due course.

[21] The Plaintiffs further do not allege that they will be unable to pursue their action against the Defendants or that they will be affected in any way if ordered to put up security for costs. On the contrary, the Plaintiffs contend that they are well able to provide such security, however; contest being liable so to do.

[22] I am accordingly satisfied that there are no facts justifying deviating from the general rule that a *perigrinus* should provide security for an *incola*'s costs. I have not been persuaded in the exercise of my discretion in favour of the Plaintiffs and in absolving them from furnishing security for costs.

ORDER

[23] I accordingly make the following Order:

1. *The First – Third Respondent/Plaintiffs are ordered to furnish security for costs in favour of the First – Seventh Applicant/Defendants in re the action and associated process launched under the above case number and in the amount of R 1,800,000.00 (One million, eight hundred thousand rands) and within 15 (fifteen) days of the date of this Court Order.*
2. *The First – Third Respondent/Plaintiffs are to deposit the above R 1,800,000.00 in trust with their attorneys of record – Bowman Gilfillan and simultaneously provide Bowman Gilfillan with written instructions in terms of section 86(5) of the Legal Practice Act 28 of 2014 regarding depositing the above security amount in a section 86(4) interest-bearing account linked to the trust account of Bowman Gilfillan. Interest accruing on the above security amount will be for the benefit of the recipient of such security monies held in trust.*
3. *Ongoing action proceedings under the above case number between the above parties are stayed pending the Respondent/Plaintiffs' full compliance with that recorded in 1 and 2 above.*
4. *Where monies are paid out in favour of the Applicant/Defendants from the above security for costs deposit, then the Respondent/Plaintiffs are required to top up the*

security and maintain this at R 1,800,000.00 and while this action remains ongoing. Should the Respondent/Plaintiffs fail so to do, then the Applicant/Defendants may approach this Court on same papers, duly amplified for relief here.

- 5. Bowman Gilfillan will retain the above security monies in trust for the duration of this matter incorporating action proceedings under the above case number and regardless whether its professional mandate is terminated at any time by the Respondent/Plaintiffs.*
- 6. Bowman Gilfillan will on a monthly basis provide the Plaintiffs and Defendants with a written account reconciliation of the above security monies being held in trust.*
- 7. The above security monies may be paid out of trust either by written agreement between the Plaintiffs and Defendants or in terms of an order of this Court directing payment.*
- 8. The costs of this security for costs application are granted against the Respondent/Plaintiffs on the attorney and client scale, including that of two legal counsel on scale C and as referred to in Rule 69 of the Uniform Rules of Court.*

MEADEN JR
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, JOHANNESBURG

For Applicant/Defendants:

Adv. A Rafik Bhana SC

Adv. Suhail Mohamed

Instructed by:

Knowles Husain Lindsay Inc

For Respondent/Plaintiffs:

Adv. Anthony Stein SC

Adv. Anthonie Jansen Van Vuuren

Instructed by:

Bowman Gilfillan Inc.

Date of Hearing:

6 February 2026

Date of Judgment:

30 April 2026

This judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CourtOnline/CaseLines. The date and time for the hand down is deemed to be 11h00 on this 30th day of April 2026.