



**THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

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

Case 2025-046062

Date: 26 May 2026

In the matter between:

**BARBRA GOTORA N.O.**

First Applicant

**TRIPLE DESIRE TRADING AND PROJECTS 246**

Second Applicant

**HONESTYTRADE 327 (PTY) LTD**

Third Applicant

**PROXIVOX (PTY) LTD (IN LIQUIDATION)**

Fourth Applicant

and

**FIRSTRAND BANK LIMITED  
T/A FIRST NATIONAL BANK**

Respondent

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**JUDGMENT**

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DU PLESSIS J

*Introduction*

[1] This is an application for summary judgment for payment of approximately R39 million, together with interest and costs. The respondent (defendant in the main action) elected to give security in terms of Rule 32(3)(a) instead of disclosing a bona fide

defence in terms of Rule 32(3)(b). The dispute turns on the adequacy, or not, of the security. The parties will be referred to as they are in the action.

### *Background*

[2] To understand the issues, the pleaded facts need to be explained in broad terms. The late Obert Karombe banked with the defendant in his personal capacity and was the authorised signatory for the second to fourth plaintiffs. He died in 2022. After his death, unauthorised debits were made on his accounts. The plaintiffs allege that the defendant is liable, primarily in contract and alternatively in contractual negligence, for the losses sustained from the unauthorised debits, amounting to approximately R39 million.

[3] The first plaintiff sues in her capacity as the executrix of the deceased's estate and as a cessionary of the claims of the corporate plaintiffs. The defendant has raised several defences, including challenging the first plaintiff's standing and advancing other contractual arguments to challenge the claims. It is not necessary to examine these defences in detail.

[4] This is because the defendant has furnished a bank guarantee in the amount of R57 million. According to its terms, that amount is held as security for any judgment, including interest and taxed costs, which may be given against the defendant in favour of the plaintiffs in this action. The guarantee was furnished after engagement between the parties regarding the form and amount of the security, and after the plaintiffs' earlier objections to a draft guarantee.

[5] The plaintiffs nevertheless persisted in objecting to the guarantee on several grounds. These included objections to the amount, the requirement in the guarantee of a final unappealable judgment, the ten-year expiry provision, and the complaint that the instrument amounted to a so-called "self-guarantee" because it emanated from within the FirstRand group. They also contended that the guarantee did not adequately secure future interest and costs, particularly given the likely duration of the litigation. This, however, they did by filing a further affidavit, the permissibility of which the defendants challenged.

### *Further affidavits*

[6] The affidavits followed this sequence: the plaintiffs applied for summary judgment and filed an affidavit. When the applicants rejected the security offered by the defendant, the defendant filed an affidavit under Rule 32(3)(a), explaining how the amount was calculated after discussions with the plaintiff's attorneys. In response, the plaintiff filed an affidavit challenging the security amount, the terms, and the possibility of a self-guarantee. This led the defendants to submit another affidavit opposing the admission of the plaintiff's affidavit and, if admitted, to present a report by a chartered accountant in reply to the plaintiff's claims.

[7] The question is thus whether a plaintiff is entitled to file an additional affidavit before the Court in response to the defendant's security affidavit. This is because Rule 32(4) limits the adducing of evidence by a plaintiff other than by the affidavit referred to in subrule (2). The defendant submitted that the plaintiffs' further affidavit was inadmissible.

[8] The plaintiffs, relying inter alia on *City Square Trading 522 (Pty) Ltd v Gunzenhauser Attorneys (Pty) Ltd*,<sup>1</sup> submitted that the Court retained discretion to admit it in the interests of justice, particularly because the security issue arose only after the summary judgment application had been launched and they could not have anticipated the content of the defendant's affidavit.<sup>2</sup>

[9] The defendants relied on *Royal Square Investors (Pty) Limited v SDK Agencies (Pty) Limited*,<sup>3</sup> which required strict compliance with the rules, as summary judgment is an extraordinary procedure. *Lessing v Quanza Holdings (Pty) Ltd*<sup>4</sup> pointed out the expeditiousness of the procedure, which means that courts will seldom allow the filing of supplementary affidavits. The defendants also pointed out that the supplementary affidavit was only allowed in *City Square Trading 522 (Pty) Ltd v Gunzenhauser*

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<sup>1</sup> 2022 (3) SA 458 (GJ).

<sup>2</sup> *Dickinson v South African General Electric Co (Pty) Ltd* 1973 (2) SA 620 (A) 628F.

<sup>3</sup> 2024 JDR 2268 (GJ).

<sup>4</sup> 2019 JDR 0332 (ECM).

*Attorneys (Pty) Ltd*,<sup>5</sup> because the plea was amended after the launching of the summary judgment proceedings, and then based on Rule 28(8) that allows for consequential amendments to documents, rather than in terms of Rule 32.

[10] Summary judgment is an option for a plaintiff facing a defendant who appears to oppose the claim solely to delay the matter. It is thus a “shortcut” to judgment, avoiding trial when the defendant does not have a bona fide defence. In the case of giving security, the defendant shows that he is at least able to make payment should the plaintiff succeed, and that an inability to pay is not the reason for defending the matter.

[11] As a general proposition, only two affidavits are permitted because this streamlined process is intended to prevent unnecessary costs for fundamentally weak claims. I also accept that there may be exceptional situations where a plaintiff could not reasonably have anticipated when the founding affidavit was delivered, warranting a further affidavit. However, in this case, the plaintiffs did not identify any exceptional circumstances that would justify admitting a third affidavit. Nor did they advance facts or principle-based reasons showing why the admission of a third affidavit would, in this matter, serve the interests of justice. Reliance on the ‘interests of justice’ does not, without more, justify a departure from the ordinary rule; it must be anchored in identified facts and reasons demonstrating why allowing a further affidavit would itself serve the interests of justice in this matter.

[12] To determine whether such affidavits should be received, the court must necessarily read them. That produces a somewhat curious position: the court must consider the affidavits to decide whether to admit them, and may then have to decide not to have regard to them despite having read them. That said, having read the further affidavits for that limited procedural purpose, I am satisfied that nothing turns on their formal admission. The further affidavit is accordingly not admitted. Even if it were, nothing in it would change the outcome. The disputes ventilated concern the precise sufficiency and wording of the guarantee, which are adequately addressed on the admitted papers. That does not preclude counsel from advancing legal submissions,

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<sup>5</sup> 2022 (3) SA 458 (GJ).

including submissions foreshadowed in the proposed further affidavit, on the basis of the pleadings, the existing affidavits and the documents properly before the court.

[13] The test under Rule 32(3)(a), as set out below, is whether the security is to the satisfaction of the court for any judgment, including costs, that may be given. It is not necessary to prove every conceivable future contingency with precision at the summary judgment stage. On the papers, and for the reasons set out below, I am satisfied that the security tendered is sufficient to ward off summary judgment.

*The law*

[14] In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*<sup>6</sup>, the Supreme Court of Appeal explained that the rationale for summary judgment is not to deprive a defendant of a triable issue or a sustainable defence of a day in court. The procedure is aimed at cases where no bona fide defence is shown, in which event summary judgment “holds no terrors” and is not properly described as drastic. Even so, courts must remain cautious not to deny a litigant the opportunity to present a defence at trial where a triable issue is disclosed, or where the defendant is prepared to support their position by furnishing adequate security for any judgment the plaintiff may obtain.

[15] The latter method is set out in Rule 32(3)(a) that states:

"(3) The defendant may—

(a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given;

[...]

(7) If the defendant finds security or satisfies the court as provided in sub-rule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made."

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<sup>6</sup> [2009] ZASCA 23; 2009 (5) SA 1 (SCA) ; [2009] 3 All SA 407 (SCA) par 32.

[16] Before the amendment of the rule, it provided that the plaintiff give security to the Registrar's satisfaction. In *Cinemark (Pty) Ltd v Alfetta Tune-up Centre*,<sup>7</sup> the court stated:

"I came to the conclusion that the plaintiff's contention was correct and that the Registrar cannot in a case such as the present which involves simply a money claim, allow security to be given in a lesser amount than that claim. The words "for any judgment including costs which may be given", to my mind, limit the Registrar's discretion and do not give him carte blanche because the actual amount claimed in the summons is an amount for which judgment "may be given" and which is included in "any judgment". If he approves of security for any lesser amount than that sum he has simply not given effect to the Rule."

[17] From this judgment, it is clear that the security must be at least for the amount that may be awarded at judgment (plus costs), and the form of security was at the Registrar's discretion. In other words, it must include at least the amount claimed, which is objective, plus judgment costs, which will be uncertain but within the Registrar's discretion. The current rule places that function upon the court. What is now required is the court's satisfaction, and the court has a discretion as to what is adequate.

[18] The Rule 32(3)(a) requirement that the court be satisfied does not require absolute proof of the exact amount for which judgment may be granted in future, nor does it contemplate a detailed taxation of projected future costs and interest. The court cannot realistically predict every future variable bearing on capital, interest, appeal processes, and taxed costs. The security must at minimum cover the amount claimed, and the court must then determine whether it is reasonably sufficient in amount and form to protect the plaintiffs against the prejudice inherent in allowing the defendant to defend the action.

[19] The additional affidavit from the plaintiff does not advance the matter, because the affidavit in support of summary judgment already sets out the amounts claimed,

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<sup>7</sup> 1979 (4) SA 802 (W) at 804

so the court knows that any security must at least cover that amount. Those papers also explain the facts relied on, including the size and complexity of the case and the likelihood that, unless the parties settle, it will proceed and incur further legal costs. How long that will take, and therefore the exact amount of future interest and costs, can only be estimated and cannot be predicted with certainty at this stage. That is where the court must exercise its discretion under Rule 32(3)(a). In doing so, the court also bears in mind that the defendant is a substantial commercial bank, and there is no real doubt that it can honour the guarantee and cover any reasonable shortfall if costs and interest end up exceeding that amount. This does not lay down any general rule that well-resourced litigants need not show that security is adequate; it simply reflects that, on these facts, the court is satisfied that, even if the ultimate costs and interest are higher than now expected, the defendant will still be able to pay.

[20] In conclusion, the guarantee tendered by the defendants exceeds the capital portion of the amounts claimed in the action and pursued in the summary judgment application, and, in that sense, is adequate. It also secures interest and taxed costs. In these circumstances, an amount of R57 million constitutes a serious security measure rather than a stratagem to delay the inevitable. The plaintiff's contention that the amount may prove insufficient if the litigation endures for years does not, on the facts of this case, justify a conclusion that the security is not adequate to the satisfaction of the court.

[21] As to form, the guarantee is a clear and unconditional undertaking by a reputable financial institution to satisfy any judgment, including costs, up to the stated maximum. Rule 32 does not prescribe any particular species of instrument or insist that security must be provided by a stranger to the transaction. What matters is whether the instrument embodies an enforceable obligation which adequately secures the plaintiffs' position for purposes of Rule 32, and on that score, this guarantee is sufficient. I take these points into account not because they were raised in the proposed further affidavit, which is not admitted, but because they are submissions that could properly have been advanced in heads of argument without the need for any additional affidavit.

*Costs*

[22] In my view, the just order is that the costs of the summary judgment application should be costs in the cause. Although I have concluded that the defendant is entitled to leave to defend because the security furnished is adequate, the plaintiffs' objections to certain terms of the guarantee were not frivolous. This is particularly so given the amount claimed and the complexity of the litigation.

*Order*

[23] The following order is made:

1. Summary judgment is refused.
2. Costs to be costs in the cause.

  
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**WJ du Plessis**  
Judge of the High Court, Gauteng Division,  
Johannesburg

Date of hearing:	17 March 2026
Date of judgment:	26 May 2026
For the plaintiff/applicant:	F Strydom with R Putzier, instructed by Finnegan & Burger Inc
For the defendant/respondent:	A R Bhana SC with E Webber, instructed by Edward Nathan Sonnenbergs Inc