IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 085353/2026

DATE: 23.04.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES : ~~YES~~ / NO
(3) REVISED
18/05/2026 [redacted]

In the matter between:

WILLEM JACOBUS JANSE VAN RENSBURG	Applicant
and	
ABSA BANK LIMITED (Registration number: 1986/074794/06)	First Respondent
INVICTA KONSTRUKSIE CC (Registration number: 1996/004407/23	Second Respondent
PAUL ABRAHAM JANSE VAN RENSBURG (SNR)	Third Respondent
PAUL ABRAHAM JANSE VAN RENSBURG (JNR)	Fourth Respondent
WILLEM JACOBUS JANSE VAN RENSBURG (JNR)	Fifth Respondent

J U D G M E N T

COURT: In this matter, I am going to give an ex-tempore judgment in respect of the urgent application that was heard yesterday. The applicant launched an urgent application against the first respondent, being Absa Bank, and the second to fifth respondents for relief set out in the Notice of motion that reads as follows:

[1] Dispensing with the forms and service provided for in the rules and hearing the application is a matter of urgency and is envisaged by Rule 6(12).

[2] Pending the final determination of the applicant's application to be instituted within 30 days of the order being granted or an order in terms of section 49 of the Close Corporation Act. In the following terms:

[2.1] Resolution passed by the members of Invicta Construction CC on 13 April 2036, supporting to authorise Invicta Construction CC to enter into the CP Development Loan Facility for Absa Bank Limited [BED3002709] in the amount of R70 million is declared to be unlawful, invalid and of no force of effect.

[2.2] The third, fourth and fifth respondents are interdicted and restrained from precuring ...[indistinct] permitting Invicta Construction CC to enter into the CP Development Loan Facility with Absa Bank Limited [DEV3002709] or any loan or facility or financial obligation of a similar nature and purpose unless and until:

[2.2.1] An independent person appointed by agreement between the parties and failing agreement within 5 days of this order by the South African Institute of Chartered Accountants has conducted a solvency and liquidity ...[indistinct] in respect of Invicta Construction CC as contemplated and envisaged by section 4 of Act 71 of 2008 and confirmed in writing that Invicta Construction CC satisfies the test of taking into account the proposed loan facility or financial obligation.

[2.2.2] A members' meeting of Invicta Construction CC has been convened and held with proper notice, at which a resolution to approve the facility has been passed with the written consent of members holding at least 75 percent of the members interests in the Corporation.

[3] The first respondent, Absa Bank Limited, is interdicted and restrained from dispersing, advancing, releasing or any other manner making available to the second respondent (Invicta Construction CC) any funds under or pursuant to the CPF Development Loan Facility [DEV3002709] in the amount of R70

million or any part thereof.

[4] The cost of this application to be costs in the main application, save that in the event of opposition the opposing party shall be liable for cost including cost of counsel on Scale C.

The parties, in particular the applicant, the third, fourth and fifth respondents are family members, all contracting property development through the vehicle of the second respondent being the closed corporation Invicta Construction CC.

The issue that prompted the applicant to launch this application was a resolution that was passed on 30 April 2026 by the third, fourth and fifth respondents as members of the second respondent and who collectively hold 65 percent of the members' interest in the second respondent, authorising the execution of a R70 million loan agreement, with the first respondent Absa in the face of the applicant's unlimited personal security for debts of Invicta to ABSA.

The applicant, having voted against the passing of the resolution, the applicant holds 35 percent of the members interest in the Close Corporation. The first respondent holds 35 percent members' interest in the Close Corporation, the fourth respondent 15 percent and the fifth respondent the other 15 percent in the Close Corporation.

It is to be recorded that in 2025 and by mutual agreement, arising from ongoing differences, the applicant ceased participation in the day-to-day management Invicta Close Corporation. Negotiations were entered into to obtain his 35 percent interest in the agreement of the Close Corporation.

The applicant, sometime, signed an unlimited personal suretyship with Absa, guaranteeing the full repayment of Invicta's debts towards the bank without any cap as co-principal debtor.

From the papers, it is to be gleaned that the initial purpose of the suretyship was to secure Absa's claim in respect of the overdraft facility granted to the Close Corporation. It is against that background that the applicant seeks this Court's intervention.

It is clear from the relief that is sought in this application that the interdict that is sought against the first respondent is final in effect. The first respondent is prohibited from making available any amount of the facility applied for, being an amount of R70 million.

That interdict is not the subject of any other litigation that stands to be entered into in due course. It is, after all, a final interdict, in terms and in effect. In that regard, the applicant is thus obliged to prove compliance with the requirements of a final interdict.

Applicant is obliged to show that he has a clear right, worthy of protection, irreparable harm would follow should the relief not be granted, and that there is no alternative remedy.

The applicant's approach in his heads of argument that the relief that he sought, particularly against the first respondent, is considered to be an interim interdict. It is clear from the wording of the interdict sought recorded earlier, that the applicant's contention is not correct. In no way can it be considered correct that the Court could assume that it is interim relief that is sought. The second part of the relief sought in the notice of motion is permitting the applicant to institute proceedings presumably in terms of the provision of section 49 of the Close Corporation Act. The applicant seeks this Court to assume that the applicant would be entitled to the relief sought in sub section of section 49, namely, that the resolution was passed contrary to the stipulated 75 percent interest or shareholding agreement in terms of the Close Corporation Act.

On a clear reading of section 46 of the Close Corporation Act, it is only on a majority vote that the resolution should be passed. The applicant clearly misinterpreted the provision of section 49. There is no association agreement between the parties, other than the various agreement's how the affairs of the CC were to be conducted, and thus the provisions of the Close Corporation Act apply in this instance.

Section 49 is clearly misconceived again as the effect of the relief, if it is not granted, would leave the applicant out in the cold and face enormous debt towards the first applicant. On that basis, he seeks to address the alleged prejudice he would suffer.

This contention is misconceived. The applicant did not think it fit to place the suretyship agreement before this Court to support his claim that he would be liable as surety for all the debt, including the debt that would become due under the loan facility.

The respondent's contentions were that the resolution was passed in the normal course of business, as the close corporation conducts the business of property development. In particular that of a certain development that is presently underway and the property development done was in various phases. The last phase of which stands to be funded by the new or additional financial obligation that the Close Corporation seeks. It is common cause that 25 percent of the last phase stands to be completed. The completion would depend on the further funding by the first respondent through the facility.

It is also again to be gleaned from the papers that the other phase were conducted in a similar manner which the applicant did not object to. It is contended on behalf of the respondent that the applicant launched this application for a reason other than the alleged exposure to the severe debt to be incurred.

Whether that is correct or not it cannot be ascertained from the papers present before Court. However, the applicant has failed to establish a clear right to the final interdict against Absa, which has filed a notice to abide.

The mere fact that the applicant holds 35 percent of the shareholding in the Close Corporation, which would then be in the minority of the membership shares or the holding percentage. It is clear from the provisions of section 46 that a mere majority was required to pass the resolution. Section 49 does not provide a veto vote to a minority shareholder in the ordinary course of business.

On his own version and on his own explanation, a mere majority would suffice. It appears to be a disgruntled member who was unhappy with the passing of the resolution and now seeks to support his opposition of the passing of the resolution by a way of obtaining an interdict to prevent Absa from providing the particular facility to the Close Corporation.

It is clear from the second portion of the relief that the applicant seeks, as set out in prayer 2 of the Notice of Motion, that he seeks to add a certain qualification before he would support the resolution.

Namely that an external, independent person is to conduct a solvency equality investigation. This qualification is nowhere stipulated. It is merely a 'condition' that the applicant seeks to impose upon the third respondent before he would acceed to the resolution.

It appears from the papers that the facility, if not granted, then the business of the Close Corporation will suffer enormously.

It would then be of no advantage to any of the members of the Close Corporation and the effect would be that the Close Corporation will not be in a position to complete its development. Accordingly, the applicant has failed to prove that he has complied with the required requirements relating to the granting of the final interdict.

Therefore, the application stands to be dismissed. What is to noted, is that applicant has not commenced any proceedings under section 49 and will only do so sometime in the future.

During argument, counsel on behalf of the applicant indicated that the Court could decide whatever period should be allowed for the institution of further proceedings. It is not really relevant for determining whether a proper case has been made for the initial or the purpose of the interdict.

Accordingly, I grant the following order. The application is dismissed with costs. Such costs would be taxable on Scale C.

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………[redacted]

VAN DER WESTHUIZEN J

JUDGE OF THE HIGH COURT

DATE: 18 MAY 2026

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**, the aforegoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

WILLEM JACOBUS JANSE VAN RENSBURG // ABSA BANK LIMITED + OTHERS

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PROBLEMS EXPERIENCED WITH RECORDING

1. **Typed verbatim.**

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DATE COMPLETED	:	08.05.2026
TRANSCRIBER	:	*Annelize van der Spuy*

Spuy

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