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

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

3 JUNE 2026
DATE

SM MARITZ AJ
SIGNATURE

CASE NO: 2025-077993

In the matter between:

CORNELIUS TOBIAS VERMAAK

First Applicant

**JP RAUTENBACH t/a RAUTENBACH LUNDALL
AND ASSOCIATES**

Second Applicant

and

JOHANNES JACOBUS POTGIETER

First Respondent

DREAM LIFE PROPERTIES

Second Respondent

WEST HENDRIKS

Third Respondent

DIETER JOHAN OOSTHUIZEN

Fourth Respondent

JUDGMENT

MARITZ AJ

A. INTRODUCTION

[1] This matter comes before the Court on the return date of a rule *nisi* granted on 29 May 2025 by Mooki J, extended on 14 October 2025 by Mngqibisa-Thusi J, and further extended on 23 February 2026 by Millar J to 11 May 2026. The First Applicant, Cornelius Tobias Vermaak ("Vermaak"), and the Second Applicant, JP Rautenbach t/a Rautenbach Lundall and Associates ("Rautenbach") (collectively "the Applicants"), seek final interdictory relief against the First Respondent, Johannes Jacobus Potgieter ("Potgieter"), the Second Respondent, Dream Life Properties ("Dream Life"), and the Third Respondent, West Hendriks ("Hendriks"), and the joinder of Dieter Johan Oosthuizen ("Oosthuizen") for purposes of the adjudication of the Part B relief. The application was heard on 14 May 2026 on the opposed motion roll (number 40). It comprises Part A and Part B. Only Part A fell to be adjudicated on the date of hearing. Part B is postponed *sine die* for determination on a date to be determined (the Part B relief being, *inter alia*: declaration of the First and Fourth Respondents as vexatious litigants under section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956, an order requiring prior judicial approval before further proceedings may be instituted, contempt proceedings, and the authority of the Sheriff to sign transfer documentation). The application is opposed by the First and Fourth Respondents. The Second and Third Respondents filed a notice of withdrawal of opposition and of abiding the Court's decision on 14 October 2025.

- [2] On the date of hearing, an order was made extending the rule *nisi* from 11 May 2026 to 14 May 2026, and further extending it pending delivery of the reserved written judgment, during which period the interim relief was to remain in full force and effect.
- [3] On the date of hearing, the Court was required to deal with a preliminary issue before the merits of the application could be addressed. That issue concerned a further supplementary affidavit filed on 7 May 2026 — seven days before the hearing — deposed to by the First Respondent's attorney, Ms Riekie Erasmus ("Erasmus"), in her personal capacity and purportedly on behalf of the First Respondent. On 8 May 2026 the Second Applicant served a Notice in terms of Rule 30 and a Notice in terms of Rule 30A, each challenging the further supplementary affidavit as an irregular step. The Court dealt with the preliminary issue on 14 May 2026 and delivered an *ex tempore* judgment and costs order thereon. That *ex tempore* judgment remains valid and of full force and effect, and is incorporated herein. The costs order granted therein is incorporated in the order below. In summary: the further supplementary affidavit filed on 7 May 2026 was declared *pro non scripto* and struck from the record; the First Respondent and Ms Erasmus, jointly and severally in her personal capacity, the one paying the other to be absolved, were ordered to pay the costs of the Rule 30 and Rule 30A applications and of the notice of motion dated 8 May 2026 on the attorney-and-client scale, including the costs of counsel. The reasons for that ruling are fully set out in the *ex tempore* judgment and are not repeated here, save where necessary for context.

B. FACTUAL BACKGROUND

- [4] The First Applicant, Vermaak, is the holder of a judgment debt obtained against the First Respondent, Potgieter, in the Pretoria High Court on 27 September 2023 under case number 031447/2022, in the sum of R620,000.00. The judgment was obtained jointly against Potgieter and the proposed Fourth Respondent, Dieter Johan Oosthuizen ("Oosthuizen").

Attempts to satisfy the judgment by attachment of movable property by the Sheriff yielded a *nulla bona* return.

- [5] On 16 July 2024, Vermaak and the Second Applicant, Rautenbach, concluded a written cession agreement — Annexure "FA1". In terms of that agreement, Vermaak, as cedent, transferred, ceded and made over to Rautenbach, as cessionary, all his rights, title and interest in the claim against the debtors — being both Potgieter and Oosthuizen — for the purpose of recovering the outstanding debt. The cession encompassed the High Court judgment under case number 031447/2022 (R620,000.00) and the value of the pledged vehicles (R275,600.00). The precise legal content of the cession and its consequences for Vermaak's *locus standi* in these proceedings are addressed comprehensively below.
- [6] Rautenbach, as cessionary, instituted enforcement proceedings in the Cullinan Regional Court under case number RC80/2024, directed jointly against both Potgieter and Oosthuizen as co-respondents in relation to the pledged vehicles. On 3 February 2025 the Cullinan Regional Court granted an order — Annexure "WR5" — directing both Potgieter and Oosthuizen either to present the pledged vehicles to the Applicants or to make payment of the outstanding debt. Both failed to comply. Contempt of court proceedings followed, and on 24 March 2025 Magistrate Mncube granted a contempt order — Annexure "JP1" — directing Potgieter to surrender himself to Zonderwater Prison for a minimum period of three months should he fail to make payment. That contempt order was subsequently stayed on 7 April 2025 in the context of settlement negotiations.
- [7] On 25 March 2025, settlement negotiations took place between Rautenbach and Potgieter at the offices of counsel, resulting in the conclusion of a deed of settlement — Annexure "FA2". The terms of the settlement, and in particular the tripartite structure arising from its operative clause, lie at the heart of the *locus standi* dispute and are addressed in detail below. In summary: Potgieter, as respondent, acknowledged his liability to the Applicant, Rautenbach, for the full judgment debt together with costs and interest under

both RC80/2024 and case number 031447/2022, and consented to transfer the immovable property situated at POX 9[...] Derdepark, Plot 377, Derdepoort 326-JR, Pretoria ("the property") to Cornelius Tobias Vermaak *in lieu* of the amounts so owed, and to sign all documents necessary to effect transfer. On 24 April 2025 the settlement was made an order of the Cullinan Regional Court — Annexure "FA3" ("the Regional Court Order"). The Regional Court Order is extant, binding, and has not been appealed, rescinded, stayed, or set aside.

[8] On 27 May 2025, Vermaak discovered that Potgieter had mandated the Second Respondent, Dream Life Properties, and its agent, the Third Respondent, West Hendriks, to market and sell the property in open defiance of the Regional Court Order (Annexure "FA4"). On the same day, the Second Applicant's office served a letter of demand on Riekie Erasmus Attorneys — who had been present in court on 24 April 2025 when the settlement was made an order of court — advising that all of Potgieter's rights in the Property had been ceded to Vermaak and that Potgieter had no right to sell (Annexure "FA5"). Riekie Erasmus Attorneys replied by email the same day, confirming that the First Respondent intended to proceed with the sale on the basis that the Regional Court Order was not regarded as binding (Annexure "FA6"). Potgieter's agents had already entered the property without Vermaak's consent to take marketing photographs — conduct amounting to trespass — and had arranged for it to be shown to prospective purchasers on 29 May 2025 (Founding Affidavit, paragraph 24). An urgent application was launched on 28 May 2025, and the rule *nisi* was granted by Mooki J on 29 May 2025.

[9] As regards the proposed Fourth Respondent, Oosthuizen's role in the underlying litigation founding the joinder application is set out in the Joinder Founding Affidavit at paragraphs 25.1 to 25.11 and amplified in the Supplementary Founding Affidavit at paragraphs 37 to 181. He was a co-respondent in case RC80/2024 from the outset; he failed to comply with the order of 3 February 2025; he filed an unsigned and uncommissioned affidavit on 10 March 2025 (Annexure "WR8") in purported explanation of his non-compliance; he noted an appeal (case A2025-061324) against the order of 3

February 2025, filing his notice of appeal 44 days outside the prescribed 20-day period; he filed two fatally defective condonation applications (Annexures "WR41" and "WR43") without prosecuting the appeal to finality; he has refused to pay the security for costs required under Magistrate Court Rule 51; he has jointly with Potgieter filed rescission applications enrolled for hearing on 21 July 2026 before Magistrate Singh in the Pretoria Central Regional Court; and he has refused to pay the multiple costs orders granted against him (Joinder Founding Affidavit, paragraph 25.10). Throughout these proceedings, both Potgieter and Oosthuizen have been represented by Riekie Erasmus Attorneys.

C. ISSUES FOR DETERMINATION

[10] The issues for determination are the following:

- 10.1 Whether the rule *nisi* should be confirmed or discharged;
- 10.2 Whether the First Respondent's points *in limine* should be upheld or dismissed;
- 10.3 Whether a final interdict should be granted in favour of the Applicants against the First, Second and Third Respondents;
- 10.4 Whether Dieter Johan Oosthuizen should be joined as a party to the proceedings (Part B); and
- 10.5 Costs.

D. THE LEGAL FRAMEWORK

The Return Date Enquiry

[11] On the return date of a rule *nisi*, the Court does not merely revisit whether the interim order was correctly granted on the material originally before it; it exercises its discretion afresh on the totality of all the evidence now before it: *Knox D'Arcy Ltd v Jamieson and Others* 1996 (4) SA 348 (A) at 361B–E. The enquiry on the return date is therefore whether, on the full record as it now

stands, the Applicants have established an entitlement to final interdictory relief.

Requirements for a Final Interdict

- [12] For the confirmation of a rule *nisi* as a final order, the Applicants must establish: (a) a clear right — as opposed to the *prima facie* right sufficient at the interim stage; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other adequate remedy: *Setlogelo v Setlogelo* 1914 AD 221 at 227; *Hotz and Others v University of Cape Town* 2017 (2) SA 485 (SCA) para 20; *L F Boshoff Investments (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (C) at 267B–C. These requirements are to be assessed holistically: *National Treasury and Others v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) para 25. The elevation from the interim to the final standard requires the Applicants to demonstrate their right with reasonable certainty, though it need not be entirely incontestable: *Culverwell v Beira* 1992 (4) SA 490 (W) at 499B–F.

Disputes of Fact

- [13] In motion proceedings, disputes of fact are resolved on the *Plascon-Evans* approach: the respondent's version, together with the admitted facts, generally prevails unless it is palpably false, inherently improbable, or directly contradicted by objective contemporaneous evidence: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H–635C; *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) paras 55–56. A version that is internally contradictory and mutually destructive does not attract the protection of the *Plascon-Evans* rule and need not be accepted: *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 13.

Binding Effect of Court Orders and Pending Rescission Applications

[14] Section 165(5) of the Constitution provides that an order or decision issued by a court is binding on all persons to whom and organs of state to which it applies until lawfully set aside. The Constitutional Court reaffirmed in *Municipal Manager, OR Tambo District Municipality and Another v Ndabeni* 2023 (4) SA 421 (CC) paras 27–34 that even a flawed or contestable court order must be obeyed until lawfully set aside; a party may not disregard a binding order merely because it disputes its correctness. Disobedience of court orders is inimical to the rule of law: *South African Broadcasting Corporation SOC Ltd v Democratic Alliance* 2016 (2) SA 522 (SCA) para 48. A pending rescission application does not suspend the operation of the order sought to be rescinded: *Fismer v Thornton* 1929 AD 17 at 25; *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 635B–C; *Eke v Parsons* 2015 (11) BCLR 1319 (CC) paras 30–32. A party who wishes to suspend the operation of a court order must apply specifically for a stay and obtain it before declining to comply. No stay of the Regional Court Order of 24 April 2025 has been granted in these or any other proceedings.

The Law of Duress

[15] For duress to vitiate a contract, three requirements must be satisfied: the threat must be unlawful — that is, *contra bonos mores*; the threat must have induced the conclusion of the contract; and the aggrieved party must have had no reasonable alternative but to comply: *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 306A–B; *Broodryk v Smuts NO* 1942 TPD 47 at 52–53. A threat to invoke or enforce a lawful court process — including a threat of imprisonment pursuant to a valid contempt of court order — does not constitute the unlawful threat required to establish duress: *Savvides v Savvides and Another* 1986 (2) SA 325 (W) at 328G–H; *Preller v Jordaan* 1956 (1) SA 483 (A) at 494D. Pressure arising from the legitimate enforcement of legal rights, however severe it may feel to the party under pressure, does not satisfy the unlawfulness requirement.

The Law of Cession and its Consequences

- [16] In South African law, cession is the transfer by agreement of a personal right from the cedent to the cessionary. Upon valid cession, the cedent is entirely and irrevocably divested of the ceded right, which thenceforth vests exclusively in the cessionary: *Grobler v Oosthuizen* 2009 (5) SA 500 (SCA) para 15; *First National Bank of SA Ltd v Lynn NO and Others* 1996 (2) SA 339 (A) at 344G–I; *Sasfin (Pty) Ltd v Beukes* 1989 (1) SA 1 (A) at 11A–B. The cedent thereafter has no right to sue on, enforce, or receive benefits under the ceded claim in that capacity: *Kriel v Terblanche NO and Another* 2002 (6) SA 132 (NC) at 136D–E.
- [17] A cession transfers only those rights that fall within its defined scope. Rights arising from instruments concluded after the date of cession — even if causally linked to it — are not automatically included: *Scott and Others v Liquidators of Hanover Fire and Marine Insurance Co* 1907 TS 764 at 771. The scope of a cession is determined by construing its terms in context: *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* 2009 (4) SA 399 (SCA) para 39.
- [18] South African law recognises the *stipulatio alteri* — a contract between two parties that contains a term expressly conferring a benefit on a third party. The third party acquires an enforceable right against the promissor upon accepting the benefit stipulated in his favour: *Crookes NO and Another v Watson and Others* 1956 (1) SA 277 (A) at 289H–290B; *Swart and Another v Vosloo and Others* 1965 (1) SA 100 (A) at 106H. Upon acceptance, the third party's right is direct, independent, and irrevocable: *Rhooode v De Kock and Another* 1977 (1) SA 804 (A) at 811C–D.
- [19] South African law also recognises the *datio in solutum* — the satisfaction of a debt by delivery of something other than what was originally due, with the consent of the holder of the debt claim. A *datio in solutum* requires the creditor's consent (or, where the debt has been ceded, the cessionary's consent as holder of the claim) and extinguishes the underlying debt upon delivery: *Towermed (Pty) Ltd v Pretoria City Council* 1992 (1) SA 673 (T) at

680B–C; *Bafana Finance Mabopane v Makwakwa and Another* 2006 (4) SA 581 (SCA) paras 14–16.

Joinder — Rule 10 of the Uniform Rules of Court

[20] The substantive power to join a party in Superior Court proceedings derives from Rule 10 of the Uniform Rules of Court. Rule 10(1) permits any person to bring an application on notice to join another person as a party. Rule 10(3) empowers the Court to order the joinder of any person whose joinder is necessary for the proper adjudication of all matters in dispute, with the motion procedure in Rule 6 serving as the procedural vehicle: *Erasmus, Superior Court Practice*, Vol 1 (2nd ed, 2023) at D1-419. The test for joinder is whether the person to be joined has a direct and substantial interest in the subject matter of the litigation and in the order the Court may make: *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 657; *Gordon v Department of Health, KwaZulu-Natal* 2008 (6) SA 522 (SCA) para 9. The interest must be a direct legal interest: *Hermitage Holdings (Pty) Ltd v Standard Bank of South Africa Ltd* 1993 (4) SA 445 (C) at 453G–H. Joinder gives expression to the *audi alteram partem* principle by ensuring the proposed party is before the Court before any order affecting him is made. A vexatious litigant declaration cannot competently be made against a person who is not a party to the proceedings: *Beinash and Another v Ernst & Young and Others* 1999 (2) SA 116 (CC) para 13.

E. THE FIRST RESPONDENT'S POINTS *IN LIMINE*

The First Respondent raised the following points *in limine*:

(a) Urgency

[21] The urgency challenge to the original interim order is overtaken by events. The return date enquiry is not whether urgency existed in May 2025 — that was resolved by Mooki J. The enquiry is whether, on the full record, the rule *nisi* should be confirmed as a final interdict. Urgency at the interim stage is not

a requirement for the granting of final interdictory relief. This point is dismissed.

(b) *Locus Standi* of the First Applicant

The Argument Advanced by the First Respondent

- [22] The First Respondent raises the *locus standi* of the First Applicant, Vermaak, as a point *in limine* in the heads of argument at paragraphs 21 to 23. The argument is that the cession agreement (FA1) divested Vermaak of all rights in and to the claim against Potgieter, vesting those rights exclusively in Rautenbach as cessionary, so that Vermaak, as cedent, has no legal standing to bring or maintain this application. The authorities cited are: *First National Bank of SA Ltd v Lynn NO and Others* 1996 (2) SA 339 (A) at 344G–I; *Kriel v Terblanche NO and Another* 2002 (6) SA 132 (NC) at 136D–E; *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C) at 415H–416A; *Gory v Kolver NO and Others* 2007 (4) SA 97 (CC) para 22; and *Henque Trust v Wesbank* 2015 (6) SA 359 (SCA). The First Respondent submits at paragraph 23(f) that the defect is "*jurisdictional, fatal, and incurable*".
- [23] This argument raises a genuinely important question of law requiring careful and comprehensive analysis, which is set out below.

The Material Provisions of the Cession Agreement — Annexure “FA1”

- [24] The cession agreement was executed on 16 July 2024 between Vermaak (ID: 7[...]) as cedent and Rautenbach t/a Rautenbach Lundall and Associates (CDPC Practice Number: 00128680/23) as cessionary. Its material provisions are the following:
- [25] The preamble records that Vermaak "*has a claim against the debtors known as Dieter Johan Oosthuizen... (1st Debtor) and Johannes Jacobus Potgieter... (2nd Debtor) for monies due and payable*" arising from: (1) the High Court judgment under case number 031447/2022 in the amount of R620,000.00

obtained against both debtors; and (2) the reasonable retail/book value of the pledged vehicles in the amount of R275,600.00.

- [26] The operative cession clause provides: *"The Cedant hereby makes, transfers and makes over to the Cessionary all rights, title and interest the Cedant now has in and to the said claim"* — being the judgment debt and the vehicle security. This is the clause upon which the First Respondent primarily relies.
- [27] Clause 10 of FA1 records: *"The Cedant acknowledges and its authority to cede, grant the cessionary the power to institute any action in the cessionary's name against any of its debtors in order to prosecute the claim ceded to the cessionary."*
- [28] Clause 12 of FA1 provides: *"The Cedant acknowledges and pledges that this cession agreement will be in full force until such time that the Cessionary has collected the liability of the debt from the debtor, or the debtor's liability has otherwise been discharged."* This clause is critical: it confirms that the cession remains operative until the debt is either collected or otherwise discharged. Satisfaction of the debt by means of the transfer of the property — a *datio in solutum* — would constitute *"otherwise discharged"* within the meaning of this clause, at which point the cession is extinguished.
- [29] Clause 13 of FA1 provides: *"Irrespective of whether the debtor has been notified of this cession or not, all sums of money which the Cessionary collects from the debtor or others shall be collected and received by the cessionary to do with and pay to any person/entity as the cessionary sees fit, free from any liability towards any person for whatsoever reason, except for written consent attached hereto (mandate)."* This clause vests in Rautenbach, as cessionary, the express and unfettered contractual authority to direct all recovery from the debtors — whether in money or in any other form — to any person or entity as he sees fit. It is a specific provision of the cession agreement conferring on Rautenbach the right to determine the ultimate beneficiary of recovery.

[30] Clause 14 of FA1 provides: *"The Cessionary shall be entitled at any time to cede and make over to any person, firm or company this cession agreement whether it is donated, sold or set off against any debt of the Cessionary for whatsoever reason."* This clause confers on Rautenbach the express power to assign or cede the entire cession agreement — and with it the rights of recovery thereunder — to any third party.

[31] Clause 15 of FA1 provides: *"The Cessionary may utilise any legal procedure to secure the claim, alternatively, prosecute the claim to its finality which includes any interim measures in any court of law made provision for in any court rule or procedure to give effect to the cession with the aim to collect the claim and/or collection of the principal debt amount."* This clause authorises Rautenbach to employ any legal mechanism — including interim court measures — to collect the debt, which is precisely what these proceedings represent.

The Material Provisions of the Settlement Agreement and the "*In Lieu*" Clause — Annexure "FA2"

[32] The settlement agreement was executed on 25 March 2025, some eight months after the cession. It was concluded between Rautenbach as Applicant (signing on behalf of JP Rautenbach t/a Rautenbach Lundall and Associates) and Potgieter as Respondent. Three provisions require specific attention.

[33] Clause 1 of FA2 provides: *"The Respondent acknowledges his liability towards the Applicant for payment in the amount of the judgment debt plus legal costs and interest under case number HC80/2024 in the Cullinan Regional Court as well as for the judgment debt plus costs and interest under case number 031447/2022 in the Pretoria High Court, as full and final settlement."*

[34] Clause 2 of FA2 provides: *"The Respondent hereby consents to transfer the property situated at POX 9[...] Derdepark, Plot 377, Derdepoort 326-JR, Pretoria, 0186 (the property) to Cornelius Tobias Vermaak in lieu of the*

amounts owed to the Applicant, and to sign any and all documents necessary to effect transfer of the property." This is the operative "*in lieu*" clause. Several features are legally significant. First, the settlement of the debt — acknowledged in clause 1 as owed to the Applicant (Rautenbach) — is effected not by payment of money to Rautenbach but by transfer of an asset, the property: this is a *datio in solutum*. Second, the transfer is directed not to the Applicant (Rautenbach) but to a third party, Cornelius Tobias Vermaak, who is not a signatory to the settlement. Third, the phrase "*in lieu of the amounts owed to the Applicant*" confirms that the debt is owed to Rautenbach, but is being discharged by a transfer to Vermaak. The structure is therefore tripartite: Potgieter (promissor) undertakes to Rautenbach (*stipulans/cessionary*) to transfer the property to Vermaak (the *tertius/designated beneficiary*) in satisfaction of the debt owed to Rautenbach.

[35] Vermaak himself describes the arrangement in precisely these terms at paragraph 16 of the Founding Affidavit: "*In terms of the settlement agreement the First Respondent consented to the property situated at POX 9[...] Derdepark, Plot 377, Derdepoort 326-JR Pretoria 0186 to be transferred to me in lieu of the amounts owed to the Second Applicant.*" The First Applicant thus acknowledges that the amounts were owed to the Second Applicant (Rautenbach), not to himself, and that the transfer was directed to him as the *in lieu* beneficiary. This self-description confirms that the *in lieu* transfer to Vermaak is a disposition directed by Rautenbach as cessionary in the exercise of his rights under the cession, and specifically under clause 13 of FA1.

[36] Clause 8 of FA2 — the anti-novation clause — provides: "*This agreement does not constitute a novation of the Applicant's causes of action, judgments, orders, rights and/or remedies.*" This clause confirms that the settlement does not extinguish the underlying debt obligation or the associated rights of the Applicant until the settlement is actually performed. All of Rautenbach's rights under the cession and the underlying judgments are preserved until the property is actually transferred to Vermaak in terms of the Regional Court Order.

The Four Legal Bases for Vermaak's *Locus Standi*

- [37] Against this background of the specific operative provisions of FA1 and FA2, the *locus standi* argument may be restated precisely: Vermaak ceded "*all rights, title and interest*" in the debt claim to Rautenbach in July 2024; the settlement was concluded by Rautenbach as cessionary in March 2025; yet the settlement directs the benefit of the *datio in solutum* — the property — not to Rautenbach but to Vermaak. The question is whether Vermaak has independent standing to enforce and protect that benefit. The Court finds that he does, on four distinct and independently sufficient grounds.
- [38] First — the scope of the cession. The operative cession clause of FA1 transfers "*all rights, title and interest the Cedant now has in and to the said claim.*" The phrase "*now has*" is in the present tense, referencing the date of the cession, 16 July 2024, at which time Vermaak had only a money debt claim. The settlement and the Regional Court Order both post-date the cession by eight months. The right to receive the property *in lieu* of the debt — created by the settlement and confirmed by the Regional Court Order — is a wholly new right that came into existence only on 25 March 2025 and was not in existence at the time of the cession. It therefore falls outside the scope of the cession: *Scott v Liquidators of Hanover Fire and Marine Insurance Co* at 771; *KPMG v Securefin* para 39. The authorities cited by the First Respondent — *FNB v Lynn NO*; *Kriel v Terblanche* — establish that a cedent loses the right to collect the ceded money debt. They say nothing about rights created by post-cession instruments in which the cedent is a named beneficiary.
- [39] Second — the clause 13 authority of the cessionary to direct the *in lieu* transfer to Vermaak. Clause 13 of FA1 expressly authorises Rautenbach, as cessionary, to receive all recovery from the debtors and "*to do with and pay to any person/entity as the cessionary sees fit.*" The settlement, in directing the property transfer to Vermaak as the *in lieu* beneficiary, is a direct and explicit exercise of this clause 13 authority. Rautenbach, as holder of the debt claim,

was entitled to determine in what form satisfaction was rendered and to whom it would accrue. He determined that it would accrue to Vermaak, in the form of the property — an exercise of authority authorised by the cession agreement itself. Clause 14 of FA1 further reinforces this: Rautenbach was "*entitled at any time to cede and make over to any person... this cession agreement.*" The direction of recovery to Vermaak in the settlement is comfortably within the authority conferred by clauses 13 and 14 of FA1. This is not a re-cession or novation — it is the cessionary exercising his contractual authority to determine the ultimate beneficiary of recovery.

[40] Third — the settlement as a *stipulatio alteri* of which Vermaak is the accepted third party (*tertius*). On a proper legal analysis, the settlement is a contract between Rautenbach as *stipulans* and Potgieter as *promissor* containing a stipulation expressly in favour of Vermaak as *tertius*: the *promissor* undertakes to deliver the property not to the contracting party Rautenbach but to the third party Vermaak — a textbook *stipulatio alteri*. All three requirements are present: there is a contract between Rautenbach and Potgieter (FA2); that contract contains a term specifically intended to benefit Vermaak (the *in lieu* clause of FA2, clause 2); and Vermaak has accepted that benefit — demonstrated by his confirmation of the settlement in his own Founding Affidavit at paragraph 16 and, most powerfully, by the institution of this application to enforce it: *Crookes NO and Another v Watson and Others* 1956 (1) SA 277 (A) at 289H–290B; *Swart and Another v Vosloo and Others* 1965 (1) SA 100 (A) at 106H. Upon acceptance, the *stipulatio alteri* vests in Vermaak a direct, independent, and irrevocable right against Potgieter to receive the property: *Rhooe v De Kock and Another* 1977 (1) SA 804 (A) at 811C–D. This right derives not from the cession but from the settlement itself, in favour of Vermaak as the designated *tertius*.

[41] Fourth — the Regional Court Order as an independent and self-standing source of obligation. Even setting aside the contractual analysis, the settlement was made an order of the Cullinan Regional Court on 24 April 2025 — Annexure "FA3". That court order is an independent juridical act giving rise to rights and obligations that are separate from and additional to

those in the underlying contractual instruments: *Eke v Parsons* 2015 (11) BCLR 1319 (CC) paras 30–32; *Bafana Finance Mabopane v Makwakwa and Another* 2006 (4) SA 581 (SCA) paras 14–16. The Regional Court Order specifically and directly names Vermaak as the beneficiary of the transfer obligation. A person who is the direct and express beneficiary of a court order directing performance to him has unimpeachable standing to enforce that order and to seek relief to protect it from threatened or actual breach. That standing flows from the court order itself — independently of the cession, independently of the settlement, and independently of any contractual analysis — and is a sufficient, self-standing source of Vermaak's standing in these proceedings.

- [42] To hold otherwise would produce a manifestly absurd result: it would mean that Potgieter could breach the Regional Court Order with impunity on the basis that the person named in that order as beneficiary lacks standing to seek its enforcement, even though the order was made in proceedings to which both Applicants were parties. That result would be directly contrary to section 165(5) of the Constitution and to the principle reaffirmed in *Ndabeni* paras 27–34 that court orders must be obeyed until lawfully set aside. The rule of law demands that a person directly named as beneficiary in a court order has standing to enforce it.

Conclusion on *Locus Standi*

- [43] The *locus standi* point, measured against the actual terms of FA1 and FA2 and against the applicable principles of cession law, the law of *stipulatio alteri*, the law of *datio in solutum*, and the effect of a court order as an independent source of obligation, fails comprehensively on four separate and independently sufficient grounds. The legal authorities cited by the First Respondent — *FNB v Lynn NO*; *Kriel v Terblanche* — are correctly stated as general propositions but are inapplicable on the specific facts of this matter, where the benefit enforced by Vermaak is not the ceded debt claim but a distinct right arising from the *in lieu* clause of a post-cession settlement

confirmed by a court order that names him personally as transferee. The point *in limine* on *locus standi* is dismissed.

(c) Non-Joinder

- [44] The First Respondent raises non-joinder in respect of three categories of parties at paragraphs 24.1 to 24.5 of the heads of argument, relying on *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 659 and *Absa Bank Ltd v Naude* NO 2016 (6) SA 540 (SCA) para 10. The three categories are: (i) an unidentified bondholder; (ii) the First Respondent's former wife, alleged to hold a claim of R1,000,000 secured on the property by a bond noted on the title deed pursuant to a divorce order; and (iii) any prospective purchaser or estate agent acting under an existing mandate.
- [45] The applicable test requires that the party whose joinder is sought must have a direct and substantial legal interest in the relief sought and in the order the Court may make: *Amalgamated Engineering Union* at 657; *Gordon v Department of Health* para 9. A mere consequential or financial interest is insufficient: *Hermitage Holdings (Pty) Ltd v Standard Bank of South Africa Ltd* 1993 (4) SA 445 (C) at 453G–H.
- [46] In relation to the bondholder: no bondholder is identified by name, no bond registration number is provided, and no bond documentation or deeds registry extract evidencing a mortgage bond over the property is produced in any of the affidavits before me. The title deed produced by the First Respondent as Annexure "JP3" does not reflect a current mortgage bond registration on its face. The bare assertion of an unidentified bondholder, unsupported by any documentation across multiple rounds of affidavits spanning more than twelve months, is insufficient to establish a non-joinder objection. The Court cannot join a party who has not been identified.
- [47] In relation to the former wife: this allegation has been raised persistently from the original answering affidavit through to the heads of argument at paragraph 24.3. Despite ample opportunity across multiple rounds of affidavits to

produce the divorce order, the bond schedule, or any extract from the title deed reflecting the alleged notation, no such documentation has been produced. The bare assertion remains unsupported. In any event, an order restraining Potgieter from marketing and selling the property does not extinguish, vary, or adversely determine the former wife's rights — it merely preserves the *status quo* pending the final determination of the competing claims.

[48] In relation to the prospective purchaser: this category falls entirely with the striking out of the First Respondent's supplementary affidavit. Without that affidavit, no prospective purchaser with any legal interest in the property is identified in the admissible record. This point falls away.

[49] The non-joinder point is dismissed.

(d) Supplementary Founding Affidavit — Procedural Objection

[50] The First Respondent contends at paragraph 1.3.4 that the Applicants filed the Supplementary Founding Affidavit without leave of court. The answer is short. The order of 29 May 2025 of Mooki J expressly granted leave to both parties to supplement their papers prior to the adjudication of Part B. The Applicants filed the Supplementary Founding Affidavit in terms of that leave on 13 February 2026, and no further application for leave was necessary. The First Respondent himself filed multiple supplementary affidavits availing himself of the same leave; he cannot invoke that leave for his own papers and simultaneously seek to deny its benefit to the Applicants. This objection is dismissed.

F. THE MERITS: CONFIRMATION OF THE RULE *NISI*

The Court considered the requisites for the granting of an final interdict as follows:

(a) Clear Right

- [51] The clearest possible right in the context of a final interdict is one flowing directly from an extant, operative, and unrescinded court order. The Regional Court Order of 24 April 2025 (Annexure "FA3") is precisely such an order: in terms of clause 2, it directly and specifically orders Potgieter to transfer the property to Cornelius Tobias Vermaak. The existence of this order is not disputed. Potgieter does not deny having signed the settlement or that it was made an order of court. For all four of the reasons stated in the *locus standi* analysis above, Vermaak's right arising from the Regional Court Order is clear and direct. The Regional Court Order has not been rescinded, suspended, or set aside. A clear right is established.
- [52] The First Respondent's only challenges to the existence of a clear right rest on duress and the pending rescission applications, both of which are addressed below.

The Duress Defence

- [53] The centrepiece of the First Respondent's substantive opposition is the allegation that the settlement was concluded under duress. This allegation is maintained in the answering affidavit at paragraphs 21.1 to 21.7, repeated in the heads of argument at paragraphs 3 to 11, and reiterated in the supplementary answering affidavit. Potgieter alleges that Rautenbach coerced him into signing the settlement under the threat of incarceration pursuant to the contempt order (Annexure "JP1"), and that Rautenbach refused to permit him to sign the amended version proposed by his attorney (Annexure "JP2").
- [54] The duress allegation is rejected for the following six reasons, each of which is independently sufficient.
- [55] First, and most fundamentally, the threat relied upon — incarceration pursuant to a valid contempt of court order — is not an unlawful threat. It is not a threat made by Rautenbach at all; it is the consequence of Potgieter's own prior non-compliance with a valid court order, imposed by a court. A threat to allow

lawful legal consequences to take effect does not constitute duress vitiating a subsequently concluded agreement: *Savvides v Savvides and Another* 1986 (2) SA 325 (W) at 328G–H; *Preller v Jordaan* 1956 (1) SA 483 (A) at 494D; *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 306A–B; *Broodryk v Smuts NO* 1942 TPD 47 at 52–53. The first and most essential requirement of duress — an unlawful threat — is not met.

[56] Second, Potgieter had full access to legal advice throughout the settlement negotiations. His attorney, Riekie Erasmus Attorneys, was engaged in the negotiations, proposed the alternative amended settlement (Annexure "JP2"), and was available for telephonic consultation during the meeting. After consulting with his attorney, Potgieter elected to sign the unamended settlement. A party who receives full legal advice, considers an alternative, and then freely chooses to sign cannot thereafter rely on duress to escape the consequences of that choice.

[57] Third, Potgieter himself deposed to a sworn supporting affidavit on 25 March 2025 — the same day as the settlement — confirming it as his free and voluntary act (Annexure "WR15"). A contemporaneous sworn statement made on the very day of the allegedly coerced act is directly irreconcilable with the subsequent assertion of coercion. This is objective evidence of the highest order, and Potgieter has not sought to challenge or explain away this contemporaneous affidavit in any of his subsequent papers.

[58] Fourth, the transcript of the settlement negotiations (Annexure "WR16") constitutes objective, contemporaneous evidence of the manner in which the settlement was concluded. It records the Second Applicant's representative explicitly asking Potgieter whether he was signing freely and confirming that he was not being compelled, with Potgieter's recorded response indicating agreement to proceed. Potgieter has neither denied the accuracy of this transcript, nor sought its exclusion, nor applied for its rejection in any of his subsequent affidavits. His complete silence on the objective record of the negotiations is telling. It is difficult to understand why a party who was

genuinely coerced would fail to engage with the very transcript recording the allegedly coercive encounter.

[59] Fifth, the duress allegation was not raised until 4 April 2025 — nine days after the settlement was signed — in an irregular *ex parte* letter from Riekie Erasmus Attorneys to the Cullinan Magistrate (Annexure "WR44"). That letter is itself procedurally improper as an *ex parte* communication to a judicial officer without notice to the opposing party. Had there been genuine and immediate coercion, one would expect the allegation to have been raised formally at once. The delayed emergence of the allegation in an irregular letter, rather than in a formal affidavit, is inconsistent with genuine coercion.

[60] Sixth, the First Respondent's versions in these proceedings are mutually contradictory in multiple material respects. At one point Potgieter claimed to have offshore Bitcoin assets sufficient to satisfy the debt; at another, he said the property was his only substantial asset; at another, he claimed that transferring the property would constitute an act of insolvency — which it could only if the debt was smaller than the value of the property, directly contradicting the claim that a R620,000 debt could not be satisfied by a property worth R2,375,000; at another, he said he intended to sell the property privately and settle the debt from the proceeds; and then he alleged coercion. These versions are mutually destructive and cannot simultaneously be true. Under the *Plascon-Evans* approach and as applied in *Wightman v Headfour* 2008 (3) SA 371 (SCA) para 13, a version that is internally contradictory and mutually destructive does not require acceptance by the Court.

[61] The duress defence is rejected in its entirety. The settlement was validly concluded and the Regional Court Order of 24 April 2025 stands as a binding, operative, and enforceable order.

The Pending Rescission Applications

[62] The First Respondent relies on two pending rescission applications in the Cullinan/Pretoria Central Regional Court to argue that the Regional Court Order is contestable and therefore does not give rise to a clear right. The First Rescission Application was dismissed as fatally defective and non-compliant with Magistrate Court Rule 49 on 19 May 2025, with costs against the Respondents (Supplementary Founding Affidavit, paragraph 143). The Second Rescission Application (case 2025-3368) targets the orders of 7 April 2025 and 24 April 2025 and is enrolled before Magistrate P Singh in the Pretoria Central Regional Court on 21 July 2026.

[63] The proposition that a pending rescission application deprives the impugned order of its binding force is not the law. The Regional Court Order of 24 April 2025 remains fully operative and binding. No stay of its operation has been sought or granted in these or any other proceedings. The First Respondent is bound to comply with the Regional Court Order while pursuing its rescission, not entitled to treat it as suspended merely because he has instituted proceedings challenging it: *Fismer v Thornton* 1929 AD 17 at 25; *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 635B–C; *Eke v Parsons* 2015 (11) BCLR 1319 (CC) paras 30–32. The pending rescission does not displace the clear right.

(b) Injury Actually Committed or Reasonably Apprehended

[64] The injury complained of in this application is not apprehended — it has actually been committed. Potgieter mandated the Second and Third Respondents to market the property for sale (Founding Affidavit, paragraph 20). His agents entered the property without Vermaak's consent to take marketing photographs, constituting trespass (paragraph 24). The property was listed for sale on electronic platforms (Annexure "FA4"), and a showing to prospective purchasers had been arranged for 29 May 2025. All of this occurred with full knowledge of the Regional Court Order — Riekie Erasmus Attorneys had been present in court when it was granted on 24 April 2025 — and in defiance of the Applicants' demand (Annexure "FA5"), which Riekie Erasmus Attorneys explicitly rejected on the same day (Annexure "FA6"). The

breach was deliberate, open, and conducted at the direction of the First Respondent. The injury element is established.

[65] The First Respondent now submits in the supplementary answering affidavit that since the interim interdict has been in place, the property has not been marketed, and he undertakes not to deal with it until the litigation is finally determined. This undertaking does not displace the injury element for two reasons. First, it is an informal undertaking from a party who has demonstrated serial disregard of court orders and undertakings — Riekie Erasmus Attorneys gave an undertaking on 8 April 2025 to sell the property and settle from the proceeds, which was followed immediately by the renewed marketing and trespass that gave rise to this application. Second, Potgieter's own answering affidavit asserted that the Regional Court Order was not binding on him. The objective apprehension of a repetition of the breach, absent the protection of a final court order, is established. The conduct of a party who must be compelled by an interdict to comply with a court order cannot found an argument for the discharge of that interdict on the ground that the interim interdict is effective.

(c) No Adequate or Satisfactory Remedy Available

[66] The First Respondent submits at paragraph 26.5 of the heads of argument that the Applicants have always had available to them a warrant of execution against immovable property or a sequestration application, and that these constitute adequate alternative remedies. The Court disagrees.

[67] A warrant of execution against immovable property requires the property to be preserved and available for judicial sale through the Sheriff. If Potgieter is permitted to complete a private sale and transfer the property, execution against it becomes impossible. The protection of an innocent third-party purchaser's real right upon transfer may ultimately defeat even a subsequent execution attempt: *Legator McKenna Inc and Another v Shea and Others* 2010 (1) SA 35 (SCA) paras 22–25. The interdict preserves the possibility of enforcement by preventing the very event that would make enforcement futile.

[68] As for sequestration: this remedy was previously pursued (case 2024-074393) and then withdrawn. Even on the First Respondent's own account, the withdrawal occurred because of complications surrounding the property's title position. If the property's ownership is subject to competing claims, sequestration would not produce a clean distribution of the proceeds. In any event, if the proceeds of a private sale were dissipated after transfer — a real apprehension given this litigation history — a sequestration order would also produce no recovery.

[69] Most importantly, Potgieter has himself admitted that the property is his only substantial asset (answering affidavit, paragraph 27.1). Once the property is sold and the proceeds are dissipated, all alternative remedies become valueless. The irreversibility of that prejudice is sufficient to displace any argument for an alternative remedy: *National Treasury v OUTA* 2012 (6) SA 223 (CC) para 73. The no adequate alternative remedy requirement is satisfied.

(d) Balance of Convenience

[70] Although balance of convenience is primarily a consideration in interim proceedings, it remains relevant to the exercise of the Court's discretion on the return date: *OUTA* para 25. The rule *nisi* has been operative since 29 May 2025 — nearly twelve months at the time of hearing. During that entire period, the First Respondent has vacated the property and has demonstrated no ongoing prejudice arising directly from the operation of the interdict; it restrains him only from doing what the Regional Court Order already prohibits. By contrast, if the rule is discharged, the property can immediately be sold and transferred to a third party, permanently and irreversibly extinguishing the rights of both Applicants under the Regional Court Order. The balance of convenience decisively favours confirmation.

Confirmation of the Rule Nisi

[71] I am satisfied that the Applicants have established all three requirements for a final interdict. The clear right arises from the Regional Court Order of 24 April 2025. The injury has been actually committed. There is no adequate alternative remedy. The balance of convenience supports confirmation. The rule *nisi* granted on 29 May 2025 and extended on 14 October 2025 and 23 February 2026 is accordingly confirmed as a final order.

G. THE DISCOUNT BOARD MATTER — EVEN IF THE FIRST RESPONDENT'S SUPPLEMENTARY AFFIDAVIT HAD BEEN ADMITTED

[72] The First Respondent's Supplementary Affidavit was struck out, and with it the Discount Board argument. For completeness, and to demonstrate that the striking out does not affect the outcome, the substance of the argument is addressed below.

[73] The First Respondent's Affidavit asserts that Potgieter sold the property to Discount Board Specialists Group on 11 March 2021; that Rautenbach knew of this prior sale when he obtained the Regional Court Order of 24 April 2025; and that Rautenbach failed to disclose it to the Cullinan Regional Court. From these allegations two propositions are advanced: that the Regional Court Order is invalid for non-disclosure, and that the prior Discount sale defeats Vermaak's right to the property.

[74] Neither proposition succeeds even on the hypothesis that the First Respondent's Supplementary Affidavit had been admitted. The title deed produced as Annexure "JP3" reflects the property as registered in Potgieter's name at all material times up to the present. The First Respondent's Supplementary Affidavit itself acknowledges that transfer to Discount was not completed — the Deeds Office amendment remained outstanding (paragraph 6). A sale agreement that has not resulted in registered transfer does not vest the property in the purchaser or defeat a subsequent court order made against the registered owner.

- [75] If Rautenbach withheld material facts from the Cullinan Regional Court when obtaining the order of 24 April 2025, the appropriate remedy is rescission of the Regional Court Order in the Cullinan/Pretoria Central Regional Court proceedings, on the grounds of fraud or material non-disclosure. Those proceedings already exist in the form of the Second Rescission Application, enrolled for 21 July 2026. This Court, on the return date of a rule *nisi*, is not the appropriate forum to investigate and determine a complex allegation of fraud and non-disclosure in Magistrate's Court proceedings — particularly where all the material facts are disputed and where the primary documents would need to be produced and tested.
- [76] Furthermore, the entire factual basis of the First Respondent's Supplementary Affidavit on the Discount matter rests on hearsay: Ms Erasmus characterises what she read in the Caselines file of another case and what she was told in a telephone call. No copy of the Discount sale agreement, no copy of Rautenbach's joinder affidavit in the Discount matter, and no copy of the alleged Johannesburg interdict has been produced. The Court cannot make findings of non-disclosure and bad faith on the basis of an attorney's unverified characterisation of documents not before it.
- [77] The Discount Board argument therefore fails substantively in all respects, even on the hypothesis that the First Respondent's Supplementary Affidavit had been admitted. It provides no basis for the discharge of the rule *nisi*.

H. THE JOINDER APPLICATION — DIETER JOHAN OOSTHUIZEN AS FOURTH RESPONDENT

Introduction and Procedural Background

- [78] The Applicants' joinder application seeks to join Oosthuizen as the Fourth Respondent for the purposes of the Part B relief. The substantive power to join a party in Superior Court proceedings derives from Rule 10 of the Uniform Rules of Court, with the motion procedure in Rule 6 as the procedural vehicle. The joinder Notice of Motion is at CL 23-1 to 23-5, the founding affidavit at CL

23-6 to 23-15, and Annexures "JA1" to "JA3" at CL 23-16 to 23-26. The Applicants' replying affidavit on the joinder application is at CL 29-1 to 29-18, filed on 17 March 2026 within the timetable. The First Respondent's heads of argument at paragraph 1.3.3 dismiss the joinder application in a single, unargued sentence: "*The application for joinder of Oosthuizen is bad in law.*" No argument in support of that bare assertion is developed anywhere in the heads, which are purportedly also filed on behalf of Oosthuizen "*to the extent necessary*" — an unusual position given that Oosthuizen filed his own answering affidavit opposing joinder on separate grounds.

- [79] The procedural history is relevant. The Applicants first attempted to bring Oosthuizen into the proceedings by serving a Notice to Amend the Part B Notice of Motion on 14 January 2026 (Annexure "JA1", CL 23-16 to 23-18). The notice was served one day late due to a miscalculation of the *dies* by 24 hours (Joinder Founding Affidavit, paragraph 20, CL 23-9). The amendment was effected on 28 January 2026 (Annexure "JA2", CL 23-20 to 23-24). The First Respondent objected in terms of Rule 30(2)(b) to the late amendment. In response, the Applicants withdrew the amended Notice of Motion on 13 February 2026 (Annexure "JA3", CL 23-25 to 23-26) and on the same day launched the present separate joinder application — the procedurally orthodox alternative mechanism after the amendment route was foreclosed by the First Respondent's own procedural objection.

The Factual Basis for Joinder — The Applicants' Case

- [80] The basis for Oosthuizen's joinder is established in the Joinder Founding Affidavit at paragraphs 25 to 38 and amplified in the Supplementary Founding Affidavit at paragraphs 37 to 181.
- [81] The following matters are highlighted at paragraphs 25.1 to 25.11. At paragraph 25.1: Oosthuizen has been a party to the proceedings in the Cullinan Regional Court under case number RC80/2024 from inception and is personally bound by all orders made therein. At paragraph 25.4: Oosthuizen refused to comply with the Regional Court order of 3 February 2025

(Annexure "WR5"), which required him to present vehicles or make payment — the direct trigger for the section 72 proceedings and the contempt application, which in turn led to the settlement and the Regional Court Order. At paragraph 25.5: Oosthuizen launched a fatally defective appeal (A2025-061324) against the Regional Court order of 3 February 2025, filing his notice of appeal 44 days outside the prescribed 20-day period: *Motaung v Minister of Police* 2024 ZANWHC 258 para 13. He failed to bring an adequate condonation application and has not prosecuted the appeal to finality. At paragraph 25.6: he refused to tender security for costs as required by Rule 51, notwithstanding multiple demands. At paragraph 25.7: he has refused to bring the appeal to finality. At paragraph 25.8: despite the pendency of the appeal, Oosthuizen filed rescission applications in the Regional Court targeting the very orders that are the subject of that appeal — applications characterised in the Supplementary Founding Affidavit as non-compliant with Magistrate Court Rule 49 and brought for orders that were not granted in default and therefore incapable of rescission under that Rule. At paragraphs 25.9 and 25.10: Oosthuizen has expressed an intention to continue with further proceedings and has refused to pay any of the multiple costs orders made against him and Potgieter. At paragraph 25.11: Oosthuizen, in concert with Potgieter and under the hand of Riekie Erasmus Attorneys, has randomly set down matters that were not ripe for hearing and then failed to attend court, causing the Applicants to incur wasted costs.

[82] At paragraphs 36 and 37 of the Joinder Founding Affidavit, Vermaak states that the questions of law and fact arising from the conduct of both Potgieter and Oosthuizen are identical, the relief sought against them is the same, and that joining Oosthuizen promotes judicial efficiency by consolidating the related relief in one proceeding. At paragraph 38 he concludes that Oosthuizen's joinder is just and fair, that he has a direct and substantial interest in the matter, that the merits relating to both the First and Fourth Respondents are intertwined and not easily separated, and that Oosthuizen must be joined to ventilate all issues relating to the same question of law or fact in one proceeding.

Oosthuizen's Opposition to Joinder

[83] Oosthuizen's opposition rests on the following grounds: procedurally, that the joinder application is an impermissible attempt to amend the Notice of Motion; that he cannot be cited before joinder is formally granted; and that the application is non-compliant with Rule 10. Substantively, he contends that he has no direct or substantial interest in the property dispute; that his litigation in RC80/2024 concerned his own vehicles and is separate from the property dispute; that his litigation was conducted in good faith to protect his own rights; and that the Applicants are engaged in a campaign of harassment against him.

Oosthuizen's Points *in Limine*

- [84] The procedural points *in limine* are dismissed for the following reasons:
- [85] On amendment versus joinder: the joinder application is not an amendment of the Notice of Motion. It is an independent application for joinder under Rule 10, brought by way of the motion procedure under Rule 6. The Applicants explicitly acknowledge at paragraph 14 of the Joinder Founding Affidavit that Oosthuizen will not be a party to the main application until the joinder order is granted, and that the citation of Oosthuizen in the heading of the joinder papers is for the purposes of the joinder application only. Rule 10(1) requires that notice of the joinder application be given to the person whose joinder is sought — which is precisely the mechanism employed. The fact that the Applicants previously attempted a Rule 28 amendment — which they withdrew — does not preclude them from pursuing joinder under Rule 10. The two mechanisms are distinct.
- [86] On citation before formal joinder: for this Court to consider and grant the joinder application, Oosthuizen must be before it. The citation of Oosthuizen in the joinder application heading is the procedural means by which he is brought before the Court for the purposes of the joinder application itself. Far from being irregular, it is the only way in which the Court can hear the

application. Oosthuizen was notified of the application, elected to participate, filed an answering affidavit, and has been heard. The *audi alteram partem* principle has been fully satisfied.

- [87] On Rule 10 non-compliance: the Rule 10 objection is advanced without identifying any specific provision of Rule 10 that has been breached. Rule 10 governs the power and procedure for joinder and does not prohibit a separate joinder application brought after an amendment was withdrawn. The objection is too vague to found a point *in limine* and is dismissed.

Oosthuizen's Substantive Opposition

- [88] Oosthuizen submits that he has no direct or substantial interest in the property dispute. This submission fundamentally mischaracterises the joinder application. The Applicants do not seek to join Oosthuizen to Part A of the proceedings, which concerns the property. They seek his joinder for Part B — specifically so that the Part B relief directed personally and individually against him (the vexatious litigant declaration, the order requiring prior judicial approval of future proceedings, and the security for costs order) may be granted with him as a party before the Court. An order under section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 will directly restrict Oosthuizen's individual legal capacity to litigate freely, will require him to seek and obtain judicial approval before instituting further proceedings against the Applicants, and will require him to pay security for costs. These consequences are directed at Oosthuizen personally — it is difficult to imagine a more direct personal interest: *Amalgamated Engineering Union v Minister of Labour* at 657; *Gordon v Department of Health* para 9. A vexatious litigant order cannot be made against a person who is not a party to the proceedings: *Beinash v Ernst & Young* 1999 (2) SA 116 (CC) para 13.

- [89] Oosthuizen's own answering affidavit confirms his active participation in exactly the litigation matrix that underlies Part B. He acknowledges his co-respondent status in RC80/2024, his noting of the appeal, his filing of rescission applications, and his intention to bring further proceedings. By his

own account, he is not a stranger to the dispute. As Vermaak observes at paragraph 38.4 of the Joinder Founding Affidavit: both the First and Fourth Respondents, in concert, worked to frustrate the Applicants by launching vexatious and fatally defective legal processes repeatedly, each of which produced the same defeated result for both of them on every occasion.

[90] The same questions of law and fact must be determined in Part B in relation to Oosthuizen as in relation to Potgieter: whether there has been persistent institution of proceedings without reasonable grounds; whether the purpose was to harass rather than to vindicate a genuine right; whether the pattern constitutes vexatious litigation under the Act. The evidence relevant to these questions — the history of RC80/2024, the defective appeal, the defective rescission applications, the *de bonis propriis* costs order against Ms Erasmus of 2 June 2025 (Annexure "WR32"), and the contempt and appeal history — is common to both respondents. Determining Part B without Oosthuizen would result in fragmented litigation, inconsistency of outcome, and would expose the Applicants to the very vexatious litigation that Part B is designed to curb: *Maserumule and Another v Motsepe and Others* [2006] ZAGPHC 39.

[91] Oosthuizen's good faith argument is not a defence to joinder. Good faith goes to the merits of the Part B vexatious litigant allegation, which is the very question to be determined once he is joined. Joinder does not determine whether he has acted vexatiously — it ensures he is properly before the Court when that question is adjudicated. As Vermaak correctly observes at paragraph 35 of the Joinder Founding Affidavit, joinder actually protects Oosthuizen's constitutional rights under section 34 by ensuring he is heard before any adverse order is made against him.

[92] The harassment allegation is denied as entirely unsupported by any factual foundation. The Applicants are entitled under Rule 10 to seek Part B relief against Oosthuizen, and pursuing that relief by the prescribed procedural mechanism is not harassment — it is the lawful invocation of the Court's jurisdiction.

[93] The joinder application is granted. Oosthuizen is joined as the Fourth Respondent for the purposes of Part B.

I. COSTS

[94] On the costs of the confirmation of the rule *nisi*, the First Respondent is wholly unsuccessful and is accordingly liable for the costs of this application. The Applicants seek costs on the punitive scale as between attorney and client. Having regard to the following features of this litigation, the Court is satisfied that the punitive scale is appropriate.

[95] The First Respondent defied the Regional Court Order of 24 April 2025 on the express legal advice of his attorney that the order was not binding on him, as recorded in his own answering affidavit at paragraph 24.1. That advice was plainly wrong and, given the elementary principles applicable to court orders, foreseeably so. The resulting urgent application, and all the litigation flowing from it, was the direct and foreseeable consequence of that defiance. The points *in limine* argued in the heads — the *locus standi* point and the non-joinder point — were advanced on bare assertions unsupported by documentation across multiple rounds of affidavits spanning more than twelve months. The *locus standi* point, while raising a question worth engaging with seriously, rests on a fundamental misapplication of cession principles to the specific tripartite structure of this particular settlement agreement. The Respondents' versions have throughout been internally contradictory, mutually destructive, and in material respects directly contradicted by objective contemporaneous documentary evidence. The First Respondent's Supplementary Affidavit — filed one week before the hearing without leave, without condonation, without primary documents, and without affording the Applicants any opportunity to respond — is a further egregious example of the disregard for court orders and procedural rules that has characterised this litigation.

[96] On the joinder application, the Fourth Respondent is wholly unsuccessful. His procedural points *in limine* were vague, unsubstantiated, and inconsistent with

the applicable provisions of Rule 10. His substantive opposition mischaracterised the nature of the joinder application and ignored the direct and personal interest he has in the Part B relief directed against him. He is ordered to pay the costs of the joinder application.

[97] The question of a *de bonis propriis* costs order against Ms Riekie Erasmus personally, and the question of a referral of her conduct to the Legal Practice Council, are reserved for determination at the Part B hearing. The full pattern of her conduct across these proceedings — including the First Respondent's Supplementary Affidavit, the adverse comments of the Appeal Court on 7 May 2026 (CL 34-9), the multiple defective applications, the *de bonis propriis* costs order already granted against her in the Regional Court on 2 June 2025 (Annexure "WR32", CL 25-304+), and the sustained disregard of court-ordered timetables — will be comprehensively before the Court at that stage.

[98] The costs of the appearances on 14 October 2025 before Mngqibisa-Thusi J and on 23 February 2026 before Millar J are included in and form part of the costs order in favour of the Applicants below. The costs in respect of the Second and Third Respondents' period of opposition from 28 May 2025 to 14 October 2025 are reserved for separate determination.

J. ORDER

[99] In the result, the following order is made:

1. The further supplementary affidavit deposed to by Ms Riekie Erasmus and filed on 7 May 2026 on behalf of the First Respondent is declared *pro non scripto* and is struck from the record as constituting an irregular step, and remains of no force or effect in these proceedings. The First Respondent and Ms Riekie Erasmus, in her personal capacity, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of the Rule 30 and Rule 30A applications and of the notice of motion dated 8 May 2026 on the scale as between attorney and client, including costs of Counsel on scale B.

2. The rule *nisi* granted by Mooki J on 29 May 2025, extended by Mngqibisa-Thusi J on 14 October 2025, further extended by Millar J on 23 February 2026, and by this Court on 14 May 2026, is confirmed.
3. The interim relief contained in paragraphs 2.1, 2.2 and 3 of the order dated 29 May 2025 is made a final order of Court in the following terms:
 - 3.1 The First, Second and Third Respondents are finally interdicted and restrained from advertising or offering the property described as POX 9[...] Derdepark, Plot 377, Derdepoort 326 JR Pretoria 0186 for sale to any person.
 - 3.2 The First, Second and Third Respondents are finally interdicted and restrained to allow and/or causing any person to enter, advertise for sale, alternatively, offering for sale or allowing or causing entry to the property described as POX 9[...] Derdepark, Plot 377, Derdepoort 326 JR Pretoria 0186 by any person or entity for any reason without the written consent of the First Applicant.
 - 3.3 The First, Second and Third Respondents is ordered to remove all adverts on any electronic property platform and any social media platform offering the property described as POX 9[...] Derdepark, Plot 377, Derdepoort 326 JR Pretoria 0186 or any abbreviation of the property discretion for sale.
4. The parties are afforded leave to supplement their papers, if needed, prior to the adjudication of Part B.
5. The application for the joinder of Dieter Johan Oosthuizen as the Fourth Respondent in these proceedings is granted in terms of Rule 10 of the Uniform Rules of Court.
 - 5.1 Dieter Johan Oosthuizen is joined as the Fourth Respondent in the main application for the purposes of the adjudication of the Part B relief.

- 5.2 The Applicants are directed to serve the complete record of proceedings filed in the main application on the Fourth Respondent within **15 (fifteen)** court days of this order.
- 5.3 The Fourth Respondent's right to deliver such further affidavit material in relation to Part B as the parties may agree, or as the Court may direct, within agreed or directed time periods, is preserved.
6. Part B of the application is postponed *sine die* for hearing on a date to be arranged with the Registrar.
7. The First Respondent is ordered to pay the costs of the confirmation of the rule *nisi*, including all costs of this application from the granting of the rule *nisi* on 29 May 2025 to the date of this judgment, including the costs of all appearances before Mooki J, Mngqibisa-Thusi J, Millar J, and this Court, and including the costs reserved on 14 October 2025 and 23 February 2026, on the scale as between attorney and client, including the costs of counsel on Scale B.
8. The Fourth Respondent is ordered to pay the costs of the joinder application on the party and party scale, including the costs of counsel on Scale B.
9. The question of a *de bonis propriis* costs order against Ms Riekie Erasmus personally and the question of a referral of her conduct to the Legal Practice Council are reserved for determination at the Part B hearing.
10. Costs in respect of the Second and Third Respondents' period of opposition from 28 May 2025 to 14 October 2025 are reserved for separate determination.

BY ORDER

SM MARITZ AJ
ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

Instructing Attorneys for the Applicants:	Janus Stefanus Kruger Attorneys
Counsel for the Applicants:	Adv EDL Jacobus (Circle Chambers)
Attorneys for the First and Fourth Respondents:	Riekie Erasmus Attorneys
Appearance for First and Fourth Respondent:	Ms Riekie Erasmus
Second and Third Respondents:	Abiding (No appearance)
Date of Hearing:	14 May 2026
Date of Delivery of Judgment:	3 June 2026