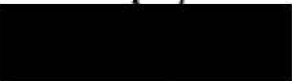




**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)**

CASE NO: 483/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	
_____	11 /06/2025
SIGNATURE	DATE

In the matter between:

MSOBO COAL (PTY) LTD

APPLICANT

And

JACOBUS HOSEA JORDAAN

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be at 10:00 on 11 June 2026.

JUDGMENT

Phahlamohlaka J

Introduction

[1] This is an application by Msobo Coal (Pty) Ltd ("the applicant") for an order directing the respondent, Mr. Jacobus Hosea Jordaan, to furnish security for costs in the sum of R500,000.00, or such sum as determined by the Registrar, in terms of Rule 47 of the Uniform Rules of Court.

[2] The applicant further seeks a stay of the main action pending the furnishing of such security, and, in the event of non-compliance, leave to apply for dismissal of the main action.

Background

[3] The respondent, a former CEO and director of the applicant, instituted action against the applicant for payment of profit shares allegedly due for the financial years 2015, 2017, 2018, and 2019. The applicant opposes the claim, alleging that the respondent's conduct as CEO and director was unlawful, dishonest, and in breach of his duties, and that the claim is vexatious, reckless, and an abuse of the court's process.

[4] The applicant further contends that the respondent is unable to satisfy any adverse costs order due to preservation and restraint orders granted under the Prevention of Organised Crime Act (POCA), which have resulted in the appointment of a curator bonis over the respondent's assets.

Issues for Determination

[5] The issues to be determined are:

- 5.1 Whether the application for security for costs is premature.

- 5.2 Whether the applicant has established exceptional circumstances justifying an order for security for costs, namely that the respondent's action is vexatious, reckless, or an abuse of process.
- 5.3 Whether the applicant is entitled to a stay of the main action pending the furnishing of security.

The legal position

[6] The legal position regarding the furnishing of security for costs is comprehensively addressed in Rule 47 of the Uniform Rules of Court and the common law.

[7] In *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd*¹ the Supreme Court of Appeal remarked as follows:

“Absent s13, there can no longer be any legitimate basis for differentiating between an *incola* company and an *incola* natural person. And as our superior courts have a residual discretion in a matter such as this arising from their inherent power to regulate their own proceedings, it must follow that the former can at common law be compelled to furnish security for costs. Accordingly, even though there may be poor prospects of recovering costs, a court, in its discretion should probably order the furnishing of security for such cause by an *incola* company if it is satisfied that the contemplated main action or application is vexatious or reckless or otherwise amounts to an abuse.”

[8] The Supreme Court of Appeal in *Boost Sports Africa* therefore clarified that there is no longer a distinction between *incola* natural persons and companies.

¹ 2015 (5) SA 38 (SCA) at para [16]

Security can be ordered against either, provided the action is vexatious, reckless, or an abuse of process.

Analysis

[9] The applicant contended that the respondent is legally impecunious due to the POCA orders and cannot satisfy adverse costs orders and that the curator *bonis* refuses to pay litigation costs or adverse costs orders. The applicant further argued that the respondent has a history of launching unmeritorious and harassing litigation, including through entities he controls.

[10] further, it is the applicants' case that the respondent's claim for profit share is unsustainable, as it arises from his former office, which he abused, and is tainted by findings of dishonesty and breach of duty, and therefore the applicant is exposed to the risk of unrecoverable costs and seeks security to prevent prejudice.

[11] The respondents contended that the application is premature as the amount of security has not been agreed or fixed by the Registrar. The respondent further submitted that it is an *incola* and, as such, is not ordinarily required to furnish security for costs.

[12] The respondent argued that the preservation and restraint orders are interim and may be set aside; the application should await their reconsideration. The respondent further asserts that the applicant has delayed in bringing the application and relies on irrelevant allegations from other litigation. The respondent denies any breach of duty or unlawful conduct and asserts that his claim is bona fide and not vexatious or abusive.

[13] The applicant must show that the action is vexatious, reckless, or an abuse of process. It is not in dispute that the respondent is subject to preservation and restraint orders, rendering him unable to satisfy adverse costs orders. It is also common cause that the curator *bonis* refuses to pay litigation costs or adverse costs orders. It is further common cause that the respondent has relied on third-party funding to pay previous costs orders.

[14] The respondent has not disputed that his claim for profit share is based on his former office, from which he was dismissed for serious misconduct after disciplinary proceedings.

[15] In my view, the respondent's inability to satisfy adverse costs orders, combined with the pattern of litigation and the nature of the claim, constitutes exceptional circumstances.

[16] While there was some delay in bringing the application, the applicant has explained that the trigger for the application was the respondent's confirmed inability to pay costs following the grant of the POCA orders and the curator's refusal to pay. It is my considered view that the the delay is not fatal in the circumstances.

Conclusion

[17] In the circumstances and considering the respondent's difficulties as well as the plethora of litigations by the respondent, it is just and equitable to stay the main action pending the furnishing of security, as the applicant would otherwise be exposed to unrecoverable costs.

Order

[18] In the result I make the following order:

1. The respondent is directed to furnish security for the applicant's costs in the form of a suitable bank guarantee in the sum of R200,000.00 (two hundred thousand rand), or such sum as may be determined by the Registrar, within ten (10) days of the determination of the amount of security.
2. The main action is stayed pending the furnishing of such security, failing which the applicant is granted leave to approach the Court on the same papers, supplemented where necessary, to apply for the dismissal of the main action.
3. The respondent is ordered to pay the costs of this application to be taxed on Scale C.



K F Phahlamohlaka
Judge of the High Court

Appearances

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Date judgment reserved: 12 February 2026