REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2025/026903**

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

_____ _____
DATE SIGNATURE

In the matter between:

SHAP PROPERTIES (PTY) LTD
(Registration No: 1970/007089/07) Applicant

and

CRAGE ANTHONY BROMFIELD First Respondent
(ID No: 7[…])
PAULETTE BLAKE Second Respondent

REGISTRAR OF DEEDS, PRETORIA Third Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an urgent application in which the applicant, Shap Properties (Pty) Ltd, seeks an interim interdict restraining the respondents from passing or procuring the transfer of an immovable property described as Erf 5[…], Portion 0, Witkoppen Extension 3, Gauteng, situate at […] P[…] Avenue, W[…], Sandton, ("the Property"). The relief is sought pending the final determination of a substantive application already instituted in terms of Rules 46 and 46A of the Uniform Rules of Court for an order declaring the Property specially executable, and/or the finalisation of any appeal against the dismissal of a prior anti-dissipation order by Manoim J.

[2] The first respondent did not oppose the application. The second respondent, Paulette Blake, a British citizen resident in the United Kingdom, opposes the application as she claims to have purchased the property from the first respondent. The third respondent is the Registrar of Deeds, Pretoria, who abides the decision of this Court.

Background Facts

a. The Lease Agreement and the Deed of Suretyship

[3] On or about 8 December 2020, and at Cape Town, alternatively on or about 1 October 2020 and at Sandton, the applicant concluded a written Agreement of Lease with GTFOH (Pty) Ltd trading as Sticky BBQ ("Sticky BBQ") in respect of commercial premises situated at Shop […], D[…] L[…] H[…], 8[…] L[…] Street, Cape Town.

[4] On or about 1 October 2020 and at Sandton, the first respondent, Crage Anthony Bromfield, bound himself as surety and co-principal debtor for the due and proper fulfilment of all obligations of Sticky BBQ towards the applicant in terms of a written Deed of Suretyship.

[5] During or about September 2020, Sticky BBQ fell into arrears in terms of the Lease Agreement, thereby triggering the first respondent's liability as surety.

b. Judgment and Eviction

[6] Consequent upon Sticky BBQ's persistent breach, the applicant issued summons out of the Cape Town Magistrates' Court under case number 2987/2022. Judgment was duly granted in favour of the applicant on 8 April 2024 in the amount of R655 298.72, together with interest at 2% above the prime lending rate, alternatively 7.5% per annum a tempore morae, and costs on an attorney and client scale ("the Monetary Judgment").

[7] The applicant also obtained an eviction order with costs on an attorney and client scale, and thereafter taxed its legal fees in the eviction proceedings in the amount of R84 159.23 on 30 October 2024 ("the Taxed Costs"). As at the date that the founding affidavit was deposed to, the total outstanding debt amounted to R870 795.28, comprising R772 742.00 in respect of the Monetary Judgment (with accrued interest) and R98 053.28 in respect of the Taxed Costs.

c. Failed Execution against movables and attempt to execute against the Property

[8] The first respondent failed to satisfy the Monetary Judgment and Taxed Costs. The applicant's attorneys issued a Warrant of Execution for service at the Property. The sheriff attended and attempted to attach movable property, but this was met by an interpleader affidavit from third-party tenants who alleged that they had leased the Property from the second respondent. A lease agreement was produced confirming that the Property had been let by the second respondent to third-party tenants from 15 October 2024 for a period of five years. This immediately raised the concern that the first respondent had divested himself of the Property and its movable contents to avoid it being declared executable pursuant to the judgment.

[9] The sheriff ultimately issued a *nulla bona* return in respect of the movable assets. During December 2024, the first respondent telephonically contacted the applicant's attorneys, acknowledged his indebtedness, and expressed an intention to settle. However, he took no concrete steps to do so, and the debt remains unpaid.

[10] The second respondent thereafter asserted through correspondence that she is the owner of the Property by virtue of an offer to purchase concluded with the first respondent in June 2024. A signed offer to purchase and proof of payment of the full purchase price of £100 000.00 were produced. A deeds office search confirmed, however, that the Property remains registered in the name of the first respondent and that no transfer has as yet been registered.

d. The First Urgent Application: The Anti-Dissipation Order

[11] Given the risk of imminent alienation, the applicant launched urgent proceedings *ex parte* on 11 March 2025. The application came before Manoim J, who granted an interim anti-dissipation order in the form of a Rule Nisi, interdicting the first and second respondents and the Registrar of Deeds from passing or procuring any transfer of the Property, pending the final determination of an application to declare the Property

specially executable, and calling upon the respondents to show cause on 17 April 2025 why the order should not be made final.

[12] The first respondent did not oppose the Rule Nisi. The second respondent, however, opposed confirmation of the rule. The return day was extended on several occasions - to 5 August 2025, 8 September 2025, 15 October 2025, and ultimately to 4 May 2026.

[13] On 20 April 2026, the applicant launched its substantive application in terms of Rules 46 and 46A, seeking an order declaring the Property specially executable. The opposed application to confirm the Rule Nisi was ultimately heard on 7 May 2026, and the interim anti-dissipation order was discharged in an ex tempore judgment given on that date. The Court found that the applicant had failed to establish the requisite intention on the part of the first respondent to dissipate assets to defeat creditors' claims, that is an indispensable element of an anti-dissipation (*Knox D'Arcy*) interdict.

[14] The applicant formally requested written reasons on 1 June 2026 and has expressed a clear intention to appeal the discharge order once the written judgment is made available.

[15] The typed order and written reasons for the judgment of 7 May 2026 had not been furnished to the parties as at the date of the launch of the present application.

The Present Application

[16] The discharge of the anti-dissipation order on 7 May 2026 removed the caveat registered against the Property at the Deeds Registry, thereby exposing the Property to immediate transfer to the second respondent.

[17] On 8 May 2026, the applicant's attorneys requested an undertaking from the second respondent's attorneys that no transfer would proceed pending the finalisation of the Rule 46A application. This request was refused on 18 May 2026. The second respondent confirmed in her answering affidavit that once a typed order is lodged with the Deeds Office, she intends to proceed with transfer immediately.

[18] The applicant accordingly launched the present urgent application on 22 May 2026, seeking a fresh interim interdict, materially distinct from the earlier anti-dissipation relief, restraining the transfer of the Property pending the final determination of the Rule 46A application and/or the finalisation of any appeal against the order of 7 May 2026.

The issues to be decided

[19] Three principal issues arise in the matter before me:

a. Whether the matter is urgent or whether urgency was self-created.

b. *Whether the matter before me is res judicata in that essentially the same cause of action against the same parties has already been decided (adjudicated) against the applicant by this Court on 7 May 2026; alternatively whether the principles of issue estoppel apply.*

c. *Whether the requirements for an interim interdict have been satisfied.*

The *Applicant's Case*

[20] The applicant's case, as set out in the founding affidavit of Rachel Sharples, the replying affidavit of Kelly Bleksley, and the heads of argument and oral submissions of counsel, Mr S Mathiba, is in essence as follows:

a. On Urgency: The urgency arises from the objective, imminent risk of transfer now that the caveat has been dissolved and the second respondent has refused to give an undertaking. The applicant cannot obtain substantial redress in due course because by the time an ordinary hearing could be held, the Property will have been transferred, rendering the Rule 46A application and any appeal academic. The urgency is not self-created; the historical delays are explained by the procedural requirement to first exhaust execution against movables before instituting Rule 46A proceedings, and by the supervening external event of the discharge of anti-dissipation order.

b. *On Res judicata*: The present application is not *res judicata*. The prior application was an anti-dissipation (Knox D'Arcy) interdict, requiring proof of a deliberate intention to dissipate assets. The present application is an ordinary interim interdict, requiring only the *Setlogelo* interim interdict requirements, namely a *prima facie* right, irreparable harm, absence of alternative remedy, and a favourable balance of convenience, none of which requiring any proof of intent. The *eadem causa petendi* (the same cause of action) element required to establish res judicata is not met and the defence accordingly fails.

c. *On the Merits*: The applicant satisfies all the *Setlogelo* requirements: (a) it holds a valid, unsatisfied judgment and has pending Rule 46A proceedings; (b) the

harm is irreparable as the Property is its only identifiable executable asset within the Republic, the first respondent is abroad, Sticky BBQ has been deregistered, and the second respondent will transfer the Property the moment she is able to; (c) there is no adequate alternative remedy; and (d) the balance of convenience overwhelmingly favours the applicant, as the second respondent currently enjoys beneficial occupation of the Property, whereas the applicant faces permanent and irreversible loss of its only avenue of recovery. The Court's section 173 inherent jurisdiction also empowers it to preserve the subject matter of its own pending proceedings.

The Second Respondent's Case

[21] The second respondent entered into a sale agreement with the first respondent on 3 June 2024 for the purchase of the Property at a price of £100 000.00, which she has paid in full. She has been unable to take transfer of the Property since March 2025, has incurred legal costs of R200 346.41, and contends through counsel, Mr JW Temlett, as follows:

[22] *On Urgency*: The chronology demonstrates sustained and inexplicable inactivity. The bill of costs was only taxed 17 months after the costs order. The Rule 46A application was launched a full 13 to 14 months after the applicant had knowledge that it was the only appropriate remedy. The applicant sheltered under the interim anti-dissipation order while failing to prosecute the proceedings that justified it. Any urgency was thus self- created and is the direct consequence of the applicant's own dilatoriness and constitutes an abuse of the urgent court.

[23] On *Res judicata*: The matter is res judicata and/or barred by issue estoppel: The same parties are involved; the prior order was a final judgment on the merits; and the same fundamental issue, whether the applicant is entitled to prevent the transfer of the Property to protect its judgment, has already been adjudicated and resolved against it. The applicant's attempt to re-label the application as an ordinary interdict rather than an anti-dissipation order merely semantic sophistry.

[24] *On the Merits*: The applicant has failed to satisfy the interdict requirements: Its *prima facie* right to execute does not extend to this specific Property; its Rule 46A application is in any event fatally defective for want of a process-in-aid pleading; the alleged irreparable harm is self-inflicted; adequate alternative remedies exist (suing in the United Kingdom or reinstating the registration of Sticky BBQ); and the balance of convenience favours the second respondent, who is an innocent *bona fide* purchaser

currently deprived of formal ownership of property she has paid for in full and has been unable to take transfer of for over a year.

Discussion and analysis of the issues

a. Urgency

[25] The threshold question is whether this matter ought to be entertained on an urgent basis pursuant to Rule 6(12). The primary test, as articulated in *Mogalakwena Municipality v Provincial Executive, Limpopo*,[1] is whether the applicant will be afforded substantial redress at a hearing in due course. Only once it is established that the applicant cannot be afforded such redress do other factors, including self-created urgency, come into play.

[26] I accept that the second respondent's criticism of the applicant's historical delays is not without substance. The 17-month delay in taxing the bill of costs and the 13 to 14-month delay in launching the Rule 46A application are not adequately explained. A prudent judgment creditor would ordinarily have prosecuted the Rule 46A application with greater alacrity.

[27] However, urgency must be assessed as at the date of the launch of the present application, having regard to the then-prevailing circumstances, and not by exclusive reference to historical delay. As at 22 May 2026, the position was this: The anti-dissipation order had been discharged; the caveat was in the process of dissolution; an undertaking had been sought and refused; and the second respondent had expressly confirmed that she will proceed with transfer the moment the typed order is available.

[28] The second respondent's own version, paradoxically, provides the most compelling confirmation of urgency: Transfer is imminent; she will proceed immediately upon the lodgement of the typed order; and she has expressly declined to provide any undertaking. The applicant accordingly cannot be afforded substantial redress in due course, because by the time an ordinary hearing could be concluded, the Property will have been transferred, rendering the Rule 46A application and any appeal academic and nugatory.

[29] The discharge of the prior interim protection was a supervening external event, not a circumstance of the applicant's own creation. The refusal of the undertaking on 18 May

[1] [2014] 4 All SA 67 (GP) at para 64

2026 precipitated the launch of this application four days later. That response cannot be characterised as dilatory or as abuse of the urgent roll. This is not a case where a party has manufactured urgency through total inaction.[2]

[30] I am accordingly satisfied that the matter is sufficiently urgent to warrant hearing in terms of Rule 6(12) and that the applicant will not obtain substantial redress in due course.

b. Res judicata and Issue Estoppel

[31] The respondent has raised a plea of *res judicata* alternatively issue estoppel. Although the two doctrines are closely related, they are not co-extensive.

[32] The doctrine of *res judicata*, derived from Roman-Dutch law, requires identity of parties (*eadem persona*), identity of cause of action (*eadem causa petendi*) and identity of the relief claimed (*eadem res*), coupled with a final judgment by a court of competent jurisdiction.

[33] Where these requirements are satisfied, the previous judgment constitutes an absolute bar to the subsequent proceedings. The doctrine is founded upon considerations of public policy which require finality in litigation, protection of litigants from repeated suits, and the avoidance of conflicting judicial determinations.[3]

[34] South African law has, however, developed a more flexible doctrine of issue estoppel. The origin of the doctrine lies in the recognition that strict adherence to the traditional requirements of *res judicata* may in certain circumstances permit the re-litigation of issues that have already been fully and finally determined between the parties merely because the subsequent proceedings are founded upon a different cause of action or seek different relief. In such circumstances, a court may preclude a party from re-opening a particular issue of fact or law that was necessarily decided in earlier litigation, notwithstanding the absence of complete identity of cause of action or relief.[4]

[35] The leading authority is *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk*,[5] where the Supreme Court of Appeal recognised that the common law requirements of res judicata had been relaxed in appropriate circumstances and that a litigant may be

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[2] Compare *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W).
[3] *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 562A-C; *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) at 835F–H.
[4] *Boshoff v Union Government* 1932 TPD 345 at 350–351; *National Sorghum Breweries Ltd (t/a Vivo African Breweries) v International Liquor Distributors (Pty) Ltd* 2001 (2) SA 232 (SCA) para 2.
[5] *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* 1995 (1) SA 653 (A) at 669C-J.

estopped from disputing an issue that has already been finally determined between the same parties. The Court nevertheless cautioned that the doctrine must not be applied mechanically and that considerations of equity and fairness remain central to its application.

[36] The modern formulation of the doctrine was articulated by the Supreme Court of Appeal in *Smith v Porritt*,[6] where it was held that issue estoppel constitutes an extension of the principles underlying res judicata and may be invoked where a particular issue has been finally determined in earlier proceedings between the parties, even though the subsequent litigation involves a different cause of action or different relief. The Court emphasised, however, that the doctrine is not inflexible and that its application depends upon whether it would be fair and equitable in the circumstances. The enquiry therefore extends beyond the mere identification of a previously determined issue and requires consideration of whether the party against whom the estoppel is raised had a full and fair opportunity to contest that issue in the earlier proceedings and whether the application of the doctrine would occasion injustice.

[37] The distinction between the two doctrines is therefore that *res judicata* bars the subsequent claim in its entirety because the same dispute has already been adjudicated, whereas issue estoppel bars only the re-litigation of a specific issue that has already been finally determined. The former depends upon the traditional requirements of identity of parties, cause of action and relief. The latter relaxes the latter two requirements but retains the overarching requirement that the issue sought to be re-opened must have been finally determined in previous litigation between the parties.[7] It has also been said that issue estoppel operates where a specific issue of fact or law, forming an essential element of a prior final judgment, is re-litigated between the same parties.[8]

[38] In determining whether issue estoppel should be applied, courts have repeatedly stressed that the doctrine serves the same underlying objectives as *res judicata*, namely legal certainty, finality in litigation and the prevention of inconsistent judgments, but that these considerations must be balanced against the constitutional imperative that litigants should not be unfairly denied access to the courts.[9]

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[6] *Smith v Porritt and Others* 2008 (6) SA 303 (SCA) paras 10-11.
[7] *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite* 2000 CC 2013 (6) SA 499 (SCA) paras 2-3; *Prinsloo NO v Goldex 15 (Pty) Ltd and Another* 2014 (5) SA 297 (SCA) paras 10-15.
[8] *Aon South Africa (Pty) Ltd v Van den Heever NO and Others* 2018 (6) SA 38 (SCA) at para [23].
[9] *Smith v Porritt and Others* 2008 (6) SA 303 (SCA) para 10; Molaudzi v S 2015 (8) BCLR 904 (CC); 2015 (2) SACR 341 (CC) paras 27-34.

Accordingly, even where the technical requirements of issue estoppel appear to be satisfied, a court retains a discretion to refuse its application where considerations of fairness, equity or public policy militate against it.

i. Res judicata

[39] It is common cause that the parties are the same and the subject matter concerns the same Property. The issue in determining whether *res judicata* applies is whether the *causa petendi* and the relief are the same.

[40] They are not. The prior application was an anti-dissipation (Knox D'Arcy) interdict, requiring the applicant to establish a deliberate intention on the part of the first respondent to dissipate assets in bad faith to defeat a creditor's claim. That is a jurisprudentially distinct and particularly onerous element that is absent from the requirements for an ordinary interim interdict.

[41] On 7 May 2026, the Court discharged the prior order specifically because the applicant failed to prove this distinct additional element. Its dismissal turned, on the second respondent's own formulation, on the applicant's failure to establish an intention on the part of the first respondent to defeat the claims of creditors. That issue was material to anti-dissipation relief, because such relief requires proof that the respondent is dissipating, or is likely to dissipate, assets with the object of frustrating execution.

[42] It did not determine, and was not required to determine, whether the applicant satisfied the requirements for an ordinary interim interdict under the *Setlogelo* test.

[43] The present application is framed differently. The applicant now seeks an interim interdict restraining transfer of the immovable property pending the determination of the Rule 46A application, and, on its case, pending steps directed at an appeal against the discharge of the earlier order. An ordinary interim interdict requires a *prima facie* right, a reasonable apprehension of irreparable harm, the balance of convenience favouring interim protection, and the absence of a satisfactory alternative remedy. It does not require proof of an intention to frustrate execution.

[44] That distinction is material. I am thus not persuaded that the plea of *res judicata* is good in law.

[45] This conclusion is consistent with the approach in *Tapuch v Aswegen and Others*,[10] which expressly recognises that a litigant whose interim order has been discharged "*is urged to apply for a new interim order pending the appeal.*" The present application is precisely the remedy this contemplates, namely to bring a fresh application, rather than seeking revival of a discharged order.

[46] The facts in that matter are instructive. The applicant, Tapuch, had obtained an interim *Rule Nisi* from Legodi J directing the removal of cattle from a farm. On the return day, Mabuse J discharged the *Rule Nisi* on jurisdictional grounds. The respondents thereafter moved cattle back onto the farm. The applicant then approached the urgent court seeking, as primary relief, an order reviving the discharged *Rule Nisi* of Legodi J pending the finalisation of an appeal against the discharge order.

[47] The Court in *Tapuch* held unequivocally that a discharged interim order cannot be revived - whether by virtue of the noting of an appeal, by application, or by operation of section 18(2) of the Superior Courts Act 10 of 2013.

[48] Kubushi J stated the governing principle in the following terms at paragraph [20]:

"The authorities are clear, a discharged interim order, cannot be revived as there is actually nothing to revive. A litigant in such a situation, that is, where an interim order is discharged, and who desires further protection by way of an interdict pending determination of an appeal, is urged to apply for a new interim order pending the appeal."

[49] The Court further held at paragraph [21] that:
"It is quite clear that once an interim interdict is discharged same is gone and cannot be revived, except by agreement or through making a fresh application."

[50] The legal foundation for this principle was located by Kubushi J in *Erasmus: Superior Court Practice*, [11]quoted at paragraph [18]:

"The noting of an appeal against the refusal of a final order where interim interdictory relief was granted (but the final relief refused) does not revive the interim order unless the parties have specifically agreed to the continued existence of the interdict pending

[10] (19980/2016) [2016] ZAGPPHC 572 at para 20
[11] (Vol 2, 2ed, A2-66–A2-67)

an appeal. A party who desires further protection by way of interdict pending the determination of the appeal could also make application for the renewal of the interdict. Where an interim order is not confirmed, irrespective of the wording used, the application is effectively dismissed. There is accordingly no order that can be revived by the noting of the appeal and there is nothing that can be suspended."

[51] In addition, the Court in *Tapuch* relied upon *Southernwind Shipyard (Pty) Ltd v Jacobs and Others:*[12]

"What was strange for the Court in respect of the interim order that was granted on 26 September 2008 was that it sought to revive the interim interdict, which on proper consideration of the authorities cited above, such an order could not be revived. The true position, therefore, is that an Applicant, if it seeks further protection has to bring a fresh application which sets out the basis upon which the court should grant a temporary interdict."

[52] At paragraph [36]-[37], Kubushi J articulated the two options available to a litigant in the position of the present applicant:

"From what is stated above, it is evident that in circumstances where an interim order has been discharged, a litigant has two options. The first option is to seek an agreement to have the interdict issued earlier to continue to exist. The second option is to bring another application for an interdict which ought to be considered on its own merits, that is, independent of the earlier issued interdict. It is common cause that, in this instance, there is no agreement between the parties for the continuance of the interim order... It follows that the applicant should bring an application for a fresh interdict which must be considered by the court afresh."

[53] The present matter falls squarely within the second of those two options. There is no agreement between the parties for the continuance of the prior anti-dissipation order- to the contrary, the second respondent has expressly refused to furnish any undertaking preserving the *status quo*. The applicant has accordingly done precisely what the authorities require: it has brought a fresh application, on its own independent factual and legal basis, to be considered on its own merits.

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[12] *Southernwind Shipyard (Pty) Ltd v Jacobs and Others* (C 700/2008) [2008] ZALC 142; [2009] 4 BLLR 390 (LC) ; (2009) 30 ILJ 1369 (LC) (7 November 2008)] 4 BLLR 390 (LC) at paragraph [23]

[54] The *Tapuch* authority, properly understood, does not militate against the grant of the relief now sought - it positively confirms that the present proceedings are the correct and appropriate mechanism by which the applicant may seek fresh interim protection.

ii. Issue estoppel

[55] Issue estoppel operates only in respect of an issue that was finally decided in earlier proceedings and which is again decisive of the later proceedings. The earlier finding that the applicant failed to establish a dissipation intention cannot, without more, preclude the applicant from seeking ordinary interim relief if such intention is not an element of the relief now sought. The previous finding may be relevant to the court's assessment of the true nature of the present application, the balance of convenience, urgency, and whether the proceedings amount to an abuse of process. But it does not, standing alone, establish issue estoppel.

[56] It follows that the second respondent's reliance on res judicata and issue estoppel must be rejected as a preliminary bar. That conclusion does not mean that the present application must succeed. It means only that the application must be determined on the requirements for the interim interdict actually sought, together with any separate considerations of urgency, delay, balance of convenience and abuse of process.

[57] The issue estoppel argument faces the same difficulty; the specific issue now sought to be raised, whether an ordinary interim interdict is warranted on the *Setlogelo* requirements, was neither an essential element of, nor determined by, the prior judgment. The plea of issue estoppel accordingly also fails.

The Requirements for an Interim Interdict

[58] I turn to consider the *Setlogelo* requirements as elaborated in *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton, and Another* [13]and applied in *Fedsure Life Assurance Co Ltd v Worldwide African Investment Holdings (Pty) Ltd* .[14]

a. Prima Facie Right

[59] A *prima facie right* need not be clearly and certainly established; it is sufficient that it be prima facie established, even if open to some doubt. The applicant holds a valid,

[13] 1973 (3) SA 685 (A) at 691C-G
[14] 2003 (3) SA 268 (W) at 277I-278B.

unsatisfied judgment for R655 298.72, a taxed bill of costs, and a pending Rule 46A application that has not been dismissed. The applicant has an unimpeachable right to pursue enforcement of its judgment. I am satisfied that a prima facie right is established.

[60] The second respondent's assertion that the Rule 46A application is "*fatally defective*" is a bare allegation not susceptible to determination at this interlocutory stage. It cannot ground a finding that the applicant lacks even a *prima facie* right.

b. Well-Grounded Apprehension of Irreparable Harm

[61] The apprehension of irreparable harm is clearly established. The Property is the only known executable asset of the first respondent within the Republic. The first respondent is ordinarily resident in the United Kingdom with no known local assets, employment, or attachable income. Sticky BBQ, the co-principal debtor, has been finally deregistered by the CIPC. Execution against movable property at the Property has been frustrated by the interpleader affidavit.

[62] If transfer is permitted to proceed, the Property will permanently pass out of the first respondent's estate within the Republic. The pending Rule 46A application and any intended appeal will be rendered meaningless and academic. The second respondent herself has confirmed that transfer will proceed immediately upon the typed order being lodged. The harm is thus not speculative; it is certain, imminent, and irreversible.

c. No Adequate Alternative Remedy

[63] The alternative remedies suggested by the second respondent, suing the first respondent in the United Kingdom and reinstating Sticky BBQ under section 83 of the Companies Act 71 of 2008, are not adequate alternatives to the specific relief sought. The Rule 46A application targets the particular *res* that is the subject of this dispute and constitutes the applicant's most direct and legally established route to satisfaction of its judgment. Requiring the applicant to initiate foreign proceedings against a debtor who has demonstrated a complete unwillingness to meet his obligations, or to pursue the convoluted route of company reinstatement, when a pending South African court process may be brought to determination, would not constitute substantial or commensurate redress.

d. Balance of Convenience

[64] The balance of convenience clearly favours the grant of the interdict. Refusal of the interdict and consequent transfer of the Property will permanently and irreversibly extinguish the applicant's only avenue of execution within this jurisdiction. Looking at the second respondent's prejudice, it must be noted that she currently enjoys beneficial occupation of the Property through her tenants under a five-year lease. A further temporary delay in formal registration of transfer does not deprive her of occupational enjoyment, rental income, or practical benefit of the Property.

[65] I am nevertheless mindful of the second respondent's real prejudices; she has paid the full purchase price of £100 000.00 and has incurred substantial legal costs of R200 346.41 in circumstances not of her making.

[66] However, the nature and severity of the applicant and the second respondent's respective prejudices are qualitatively different; the prejudice to the second respondent from continued delay in registration is inconvenient and costly- that of the applicant from refusal of the interdict is permanent and irremediable. The balance of convenience accordingly favours the applicant.

[67] In saying this I must add that the second respondent paid the full purchase price before transfer at risk, a factor that I find suspicious, especially as the both the first and second respondents reside in the United Kingdom. I say this mindful that this court has already found in an *ex-tempore* judgment that the property was not sold to the second respondent with the intention of rendering his immovable asset in South Africa beyond execution. But the fact that the purchase price was paid in full prior to transfer may warrant an inference that the sale may not have been an arm's length sale that may be a factor to be taken into account in determining whether leave to appeal should be granted.

[68] This, however, is not an issue before me and need not be decided; on the contrary, it is an issue relevant to intention that is the sole domain of the court that refused to confirm the anti-dissipation order and before whom, I am told, an application for leave to appeal will be brought.

[69] On this basis, and subject to section 173 of the Constitution, I would be inclined to grant interim relief to the applicant.

Section 173 of the Constitution and Inherent Jurisdiction

[70] Even were I to entertain any residual doubt about the *Setlogelo* requirements, this Court is independently empowered by virtue of its inherent jurisdiction, confirmed and

entrenched by section 173 of the Constitution, to grant interim relief to preserve the subject matter of its pending proceedings and to prevent those proceedings from being rendered ineffective by an intervening alienation. A court cannot allow its pending processes to be frustrated by the alienation of the very res which is the subject of those processes, before they are determined.[15]

[71] It is worth emphasising, in the light of *Tapuch v Aswegen and Others*,[16] that this Court's power to grant the present relief is in no sense undermined by the prior discharge. In *Tapuch*, Kubushi J made plain that where a litigant has noted an appeal against a discharge order, the appropriate form of alternative relief is specifically an interim interdict pending the outcome of the appeal or the application for leave to appeal:

"It is my view that in the circumstances of the matter before me, since there is a pending application for leave to appeal or an appeal noted by the applicant, the alternative relief sought in the notice of motion ought to be for an interim interdict pending the outcome of the application for leave to appeal or the appeal. It is trite that interim interdicts are generally and in their nature granted pendente lite."

[72] In the present matter, the applicant has discharged its obligation in precisely these terms; it does not seek to revive the discharged anti-dissipation order; it seeks a fresh interim interdict, to be considered independently and on its own merits, pending the finalisation of both the Rule 46A application and the intended appeal. That is the mechanism endorsed and urged by *Tapuch*, and it is the mechanism which this Court is empowered to give effect to. The present application is accordingly procedurally correct and legally sound in every respect.

Costs

[73] The applicant seeks costs on scale C, including the costs of counsel. The second respondent seeks costs on an attorney and client scale against the applicant.

[74] A punitive costs order against the applicant is not warranted. The application was brought in good faith, on a genuine and legally cognisable basis. While the applicant's delays in prosecuting the Rule 46A application are noted and criticised, they do not rise to the level of conduct warranting punitive costs.

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[15] *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite* CC 2013 (6) SA 499 (SCA) at para 48.
[16] supra

[75] A costs order on scale C in favour of the applicant is appropriate, having regard to the nature and complexity of the application and the issues involved.

Order

[76] In the result, I make the following order:

1. The application is dealt with as one of urgency in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court, and any non-compliance with the Rules of Court is condoned.

2. Leave to institute proceedings against the first and second respondents by way of edictal citation and substituted service is confirmed as previously authorised by Manoim J on 11 March 2025; to the extent necessary, such service is authorised by way of email to:

    a. First Respondent: c[…] and m[…]

    b. Second Respondent: p[…]

3. The First Respondent and Second Respondent are interdicted and restrained from taking any steps to pass transfer of, or to procure the transfer of, ERF 5[…], PORTION 0, WITKOPPEN EXTENSION 3, GAUTENG, situate at […] P[…] AVENUE, W[…], SANDTON, Registration Division JR, Province of Gauteng, measuring 1 325 (one thousand three hundred and twenty-five) square metres, held by Deed of Transfer No T[…] ("the Property"), pending the final determination of the Rule 46A application instituted by the applicant under this case number and/or the finalisation of any appeal against the order of this Court granted on 7 May 2026.

4. The First Respondent is ordered to stay any pending transfer of the Property, pending the relief in paragraph 3 above.

5. The Third Respondent (Registrar of Deeds, Pretoria) is interdicted from registering or giving effect to any transfer of the Property by the First and/or Second Respondents, pending the relief in paragraph 3 above, and is directed to place and/or maintain a caveat against the Property to give effect to this order.

6. The First Respondent and Second Respondent are interdicted and restrained from signing any transfer documents or otherwise taking any steps to procure the transfer of the Property, pending the relief in paragraph 3 above.

7. No order as to costs is made against the Third Respondent.

8. The Second Respondent is ordered to pay the costs of this application, including the costs of two counsel where employed, on Scale C, such costs to include all reserved costs.

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT, JOHANNESBURG

Date of Hearing: 2 June 2026
Date of Judgment: 15 June 2026

Appearances

For the Applicant: S Mathiba
Instructed by Ben Groot Attorneys Inc. t/a GVS Law
For the Second Respondent: JW Temlett
Instructed by Hay & Scott Attorneys (c/o Ramsey Webber Inc.)
Third Respondent: No appearance (abides the decision of this Court).
First Respondent: No appearance (did not oppose).