

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2024-006331

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: ~~YES~~/NO


GARVEY AJ

24 AUGUST 2026

In the application between:

SCHINDLERS ATTORNEYS

APPLICANT

and

TALITA CECILIA MYBURGH

FIRST RESPONDENT

MARC ROLAND MARAIS

SECOND RESPONDENT

In re:

TALITA CECILIA MYBURGH

APPLICANT

and

MARC ROLAND MARAIS

FIRST RESPONDENT

SCHINDLERS ATTORNEYS

SECOND RESPONDENT

This judgment is handed down by the Judge whose name is reflected herein, and is submitted electronically to the parties or their legal representatives by email. It is further uploaded to the electronic file of this matter on CaseLines. The date of hand-down is deemed to be 24 August 2026.

ORDER

1. The late delivery of the first respondent's answering affidavit and of the applicant's replying affidavit in this application is condoned.
2. The first respondent is directed to furnish security for the applicant's costs in the main application under case number 2024-006331, in the amount of R 200 000, within 10 days of the date of this order, in the form and manner directed by the Registrar.
3. The main application remains stayed pending compliance with paragraph 2 of this order.
4. Should the first respondent fail to comply with paragraph 2 of this order, the main application shall, without further order, stand dismissed as against the applicant, with costs, including reserved costs, on scale B.
5. The first respondent is ordered to pay the applicant's costs of this application on scale B.

JUDGMENT

GARVEY AJ

Introduction

- [1] The applicant herein, Schindlers Attorneys, is the second respondent in the main application. The main application was brought under this case number by Ms Talita Cecilia Myburgh, who is the first respondent herein. Schindlers Attorneys applies under rule 47(4) of the Uniform Rules of Court for the dismissal of the main application as against it, Ms Myburgh having furnished no

part of the R 200 000 security for its costs as ordered by Crutchfield J on 12 September 2024.

- [2] Ms Myburgh, who appears in person, concedes the default and gives no undertaking to comply by any date. She says the main application is meritorious, her want of funds is the respondents' doing, and she needs time to sell antiques and a Clarice Cliff pottery collection at a specialist auction. She asks for dismissal of this application, alternatively an extension. No relief is sought against the second respondent, Mr Marc Roland Marais, who took no part herein.

Background

- [3] In January 2024 Ms Myburgh sued Mr Marais and the applicant jointly and severally, on motion, for maintenance and various living expenses, including arrears of R 606 000, founded on a cohabitation and maintenance agreement concluded, she says, with Mr Marais. The applicant is no party to that agreement. She holds it liable for repudiating a professional mandate, which it denies. I express no view on those merits.
- [4] A rule 47(1) demand of 16 February 2024, based on Ms Myburgh's own account of her distressed finances and the contention that her claim is vexatious, put up no security and no contesting affidavit. On 12 September 2024, on notice to her but in her absence, Crutchfield J directed payment of security of an amount of R 200 000 within 10 days, stayed the main application pending payment, granted leave to seek dismissal on these papers on continued default, and ordered costs. That order stands and binds her.
- [5] The Registrar determined the amount on 25 February 2025. The time for compliance expired, at the latest, on 27 March 2025, and nothing has been paid. This application followed on 5 June 2025 and was heard on 8 June 2026, the delay owed to a late answering affidavit, a condonation application and heads of argument produced only under compulsion.

- [6] Ms Myburgh's answering affidavit was late on an extended timetable. The applicant's replying affidavit was late by three days and fully explained. Neither delay caused prejudice, and the interests of justice (see *Van Wyk v Unitas Hospital* 2008 (2) SA 472 (CC) at para 20) favour deciding the matter on the full record. Both late deliveries are condoned.

The legal framework

- [7] Rule 47(4) empowers the court, "*if security be not given within a reasonable time*", to "*dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet*". The power is discretionary, and dismissal is but one of a range of responses. It is an extreme measure, adopted sparingly and only where no lesser remedy will adequately protect the secured party (see *Wallace NO v Commercial Union Insurance Co of SA Ltd* 1999 (3) SA 804 (C) at 809I–810B), the discretion being exercised with regard to equity and fairness to both parties.
- [8] Two constitutional themes pull against each other. The first is access to courts, where dismissal closes the court's doors without adjudication of the merits, so the potential injustice to a claimant barred from a legitimate claim must be balanced against that to a defendant left with an irrecoverable bill of costs (*Giddey NO v JC Barnard and Partners* 2007 (5) SA 525 (CC) at para 8). Second is the authority of the courts, where orders bind until set aside, and the rule of law requires that the dignity and authority of the courts be upheld (*Pheko v Ekurhuleni Metropolitan Municipality (No 2)* 2015 (5) SA 600 (CC) at para 1).

Discussion

- [9] The default is conceded, serious and long-standing. By the hearing, 21 months had passed since the order, and 14 days since the final date for compliance. There was not a rand put up, no tender made, no date proffered.
- [10] The explanation is impecuniosity, blamed on financial abuse by Mr Marais, facilitated by the applicant's alleged breach of mandate. Her heads sought leave to liquidate assets by 30 March 2026. That date passed with nothing paid.

No auction date, consignment, valuation or part payment was shown. The request for time is open-ended.

- [11] Much of her answer and argument attacked the merits of the main application and the respondents' attorneys, culminating in a prayer for costs *de bonis propriis* and referral to the Legal Practice Council. These miss the mark. The order stands, its correctness is not before me, and conviction that it should not have been granted is no licence to ignore it. Both invitations are declined.
- [12] The applicant has established the footing for rule 47(4) relief, and its prejudice is real. Staged enforcement, at its own cost, against an opponent who on her own version cannot meet a costs order, under a claim pending indefinitely. Her inability underscores the very risk the security was ordered to meet.
- [13] Three considerations dissuade me from finally closing the court's doors quite yet. Ms Myburgh, although claiming to be a lay litigant, holds legal qualifications and told me she served a term of articles. The papers filed by her were of a high standard. Because her claims concern the maintenance and accommodation of her minor children, a court should be slow to non-suit her for a procedural default. Moreover, given her antiques trade, her assertion of realisable assets sufficient to cover the amount is not implausible. The stay has meanwhile shielded the applicant from the costs of the merits. Security is protective, not punitive.
- [14] Against this stand the long-conceded default, her own deadline unmet, her disregard of time limits throughout, and the applicant's indefinite unsecured exposure. The just and equitable order, the order "*meet*" within rule 47(4), affords a final, fixed and short opportunity to comply, on pain of automatic dismissal. The door stays open a little longer for one who says she can pay if given time, while this court's order is not further flouted. Ten days is ample, as the amount has been fixed since 25 February 2025.

[15] The striking out of parts of the answering affidavit, pressed in the applicant's heads under rule 6(15) but sought in no notice, needs no order, as it is irrelevant matter to this application, and I have simply disregarded same.

Costs

[16] The applicant has been substantially successful and costs follow the result, on scale B as sought. Should the security not be furnished, the dismissal must also carry the costs of the main application as against the applicant, including all reserved costs. In the result, the following order is made:

1. The late delivery of the first respondent's answering affidavit and of the applicant's replying affidavit in this application is condoned.
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CB GARVEY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of hearing:
Date of judgment:

8 June 2026
24 August 2026

Counsel for the applicant:	Adv L Matsiela
Instructed by:	Eversheds Sutherland Inc.

First respondent:	In person
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Second respondent:	No appearance
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