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

CASE NO: 184879/2025

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

21 August 2026
DATE

SIGNATURE

In the matter between:

NEILOPAHR CASSIM

Applicant

And

KWIK PROPERTY HOLDINGS (PTY) LTD

First Respondent

(Registration No: 1988/005691/07)

JOHN FREDERICK SCHICKERLING

Second Respondent

ABRAHAM HENN OF LACANTE HENN INCORPORATED

Third Respondent

JUDGMENT

VAN DER WESTHUIZEN AJ

INTRODUCTION

- [1] The applicant, a practising Senior Counsel who appeared in person, seeks an order declaring that two warrants of execution — one dated 8 November 2022 and one allegedly dated 14 February 2023, said to have been issued against her residence, Erf 1[...], 1[...] T[...] Street, Laudium Extension 2, Pretoria — together with “all such other warrants of execution as may be issued and unknown to the applicant”, are wrongful, invalid and of no force and effect, and setting them aside, with costs against the respondents jointly and severally on the scale as between attorney and client, including the costs of Senior Counsel.¹
- [2] The application has its origin in a judgment of this Court (Baqwa J) granted on 29 November 2018 under case number 40867/2014, in terms of which the applicant was ordered to pay the first respondent the sum of R875 410.60, together with costs. It is common cause that the judgment stands, that all appeal remedies have been exhausted, and that the capital sum remains unpaid.²
- [3] The first respondent is the judgment creditor. The second respondent was the first respondent’s business rescue practitioner from September 2017 until the

¹ Notice of Motion, Caselines 001-2 to 001-3; Applicant’s heads of argument, para 1, Caselines 011-2.

² Answering affidavit, paras 2.2, 4.1.1–4.1.2, Caselines 007-6, 007-9; founding affidavit, para 15, Caselines 002-4.

termination of the business rescue proceedings in July 2023. He took no part in these proceedings, filed no notice of intention to oppose and no affidavit. The third respondent is the attorney (and his firm) who has at all material times acted for the first respondent and at whose instance the warrant of execution was sued out. Only the first and third respondents oppose the application. The answering affidavit is deposed to by Mr Abraham Johannes Henn on behalf of both opposing respondents.³

- [4] The matter came before me on the opposed motion roll and was argued on 10 June 2026. The applicant appeared in person; Adv WH Engelbrecht appeared for the first and third respondents. The hearing was recorded, and where I refer in this judgment to oral submissions and to concessions made from the bar, I do so with reference to the record of the proceedings of 10 June 2026.⁴

BACKGROUND

- [5] The parties' relationship has a long and unhappy history. During December 2010 the applicant let commercial premises at 3[...] W[...] N[...] Street, Pretoria West to the first respondent for two years. Upon termination of the lease the first respondent remained in occupation, and on 26 October 2015 the applicant obtained an eviction order against it (per Prinsloo J), with costs.⁵
- [6] The first respondent thereafter pursued an action against the applicant for compensation for improvements to the property under case number 40867/2014. As security for that claim the applicant procured from Nedbank a bill of costs guarantee, No 6[...], dated 26 March 2014, in the amount of R1,4 million in favour of the first respondent. The guarantee is conditional: payment is to be made against presentation of, amongst other things, the original guarantee, a certified copy of the court order and certified copies of the taxed

³ Answering affidavit, paras 1.1–1.6, Caselines 007-5 to 007-6; CIPC certificate, annexure “NC2”, Caselines 003-15.

⁴ Digital sound recording of the proceedings of 10 June 2026, 10h14 to 11h56 (“the record”).

⁵ Founding affidavit, paras 13–14, Caselines 002-4; eviction order, annexure “NC3”, Caselines 003-22.

bills of costs. Clause 5 of the guarantee records that it is personal to the first respondent and “is neither negotiable nor transferable, and must be returned to the bank upon payment, withdrawal or expiry.” The guarantee was extended from time to time, most recently to 30 May 2026.⁶

[7] The first respondent’s improvement lien action succeeded before Baqwa J on 29 November 2018. Following the judgment, three bills of costs were taxed in the first respondent’s favour: the trial bill in the sum of R373 884.37, a bill in respect of the application for leave to appeal in the sum of R22 980.63, and a bill in respect of the petition in the sum of R15 128.50. The applicant, for her part, holds two taxed costs orders against the first respondent, in the sums of R110 207.27 and R23 395.54 (R133 602.79 in total). On the respondents’ calculation the applicant’s net indebtedness, after crediting her costs orders, is R1 153 801.29.⁷

[8] On 8 November 2022 the third respondent, as the first respondent’s attorney, sued out a warrant of execution against the applicant’s movable property. The warrant was issued by the Registrar on 12 December 2022. It directs the Sheriff, Pretoria South West, to attach and take into execution the movable goods of the applicant at 1[...] T[...] Street, Laudium Extension 2, to realise the sum of R875 410.60 (with interest at 0,00% from 29 November 2018) “and the sum of R240,281.56 for the taxed costs and charges of the said Plaintiff which it recovered by a judgment of this Court dated the 29th November 2022”. The Sheriff attended at the property on 14 December 2022 and again on 16 February 2023. On both occasions the premises were locked and appeared

⁶ Annexures “NC4”, “NC5” and “NC6”, Caselines 003-24 to 003-28; founding affidavit, paras 16–21, Caselines 002-4 to 002-5; answering affidavit, para 4.1.3, Caselines 007-9.

⁷ Answering affidavit, paras 19.3–19.4, Caselines 007-27 to 007-28.

vacant and abandoned; nothing was attached, and no further attempts at execution have been made.⁸

[9] On 31 May 2023 the third respondent addressed a letter of demand to Nedbank claiming payment under the guarantee of R1 115 692.16 (the judgment debt plus taxed costs, less the applicant's two costs orders), payment to be made into the third respondent's trust account at ABSA. The letter disclosed, in terms, that neither the third respondent's office nor the first respondent had ever received the original letter of guarantee and that only a copy was held, and it attached an affidavit by the first respondent's director, Mr Mohammed Javed Gani, confirming that position. Nedbank required an indemnity, which Mr Gani signed at the South African Consulate-General in Dubai in August 2023. The applicant, upon learning of the claim, addressed numerous objections to Nedbank insisting on strict compliance with the terms of the guarantee. On 15 November 2023 Nedbank advised that it would not pay out the guarantee unless (i) the original terms and conditions were strictly complied with, or (ii) both parties agreed in writing to vary the terms, or (iii) it was directed to pay by an order of court. On 16 November 2023 the third respondent invited the applicant to consent in writing to a variation dispensing with production of the original. She declined, and maintains her refusal.⁹

[10] Three related proceedings deserve mention. First, the applicant lodged a complaint of fraud against the third respondent with the Legal Practice Council. The complaint was dismissed; the applicant's review of that decision is pending under case number 2024-122713. Secondly, an application by the applicant concerning the second respondent's conduct as business rescue practitioner is the subject of case number 2024-135318, in which leave to

⁸ Warrant of execution, annexure "AH3", Caselines 008-10 (also annexure "F" to "NC8", Caselines 003-60); returns of service, annexure "AH4", Caselines 008-12, and annexure "NC9", Caselines 003-61; answering affidavit, paras 4.1.6–4.1.8, Caselines 007-10 to 007-11.

⁹ Annexure "NC8", Caselines 003-31 to 003-33; annexures "AH5" to "AH8", Caselines 008-13 to 008-46; answering affidavit, paras 4.1.9–4.1.17, Caselines 007-12 to 007-15; replying affidavit, para 13.12, Caselines 009-8.

appeal proceedings are pending. Thirdly — and of some significance to the argument — in March 2026 the first respondent launched an application under case number 2026-026420 in which it seeks an order declaring the original guarantee lost and directing payment to it of the guaranteed amount. The applicant opposes that application. It was referred to from the bar by both sides; it stands over for separate adjudication and nothing in this judgment is intended to pre-empt it.¹⁰

THE HEARING AND THE ISSUES THAT REMAIN

[11] The oral argument usefully narrowed the disputes. The applicant's heads of argument were filed out of time; she conceded the non-compliance and moved for condonation from the bar. The respondents did not oppose condonation, subject to the applicant paying any costs occasioned by the delay. The explanation — human error under the pressure of a heavy practice — is thin, but the delay occasioned no prejudice that a costs order cannot cure, and it is in the interests of justice that the matter be finally determined on full argument. Condonation is granted. Because condonation is an indulgence, the ordinary rule that costs follow the event does not apply to it: a litigant who seeks a condonation of her own default is liable for the costs reasonably occasioned thereby, including those of reasonable opposition. The order will so provide, although in the result the point is largely subsumed in the costs order on the main application.¹¹

[12] The respondents, in turn, abandoned the point in limine of non-joinder of the Sheriff, correctly so in my view. Where the attack is upon the validity of the issue of the writ itself, and no attachment or sale stands to be undone, the

¹⁰ Answering affidavit, paras 16.3–16.5, Caselines 007-25 to 007-26; founding affidavit, paras 24 and 31, Caselines 002-6 to 002-7; record, 10h23 and 11h47.

¹¹ Applicant's heads of argument, para 48, Caselines 011-11; respondents' practice note, para 9.2, Caselines 019-11; Cilliers Law of Costs (LexisNexis, loose-leaf) paras 2.31 and 2.33 and the authorities there collected, including *Maloney's Eye Properties BK v Bloemfontein Board Nominees Bpk* 1995 (3) SA 249 (O) at 257G–H and *Fourie v Saayman* 1950 (3) SA 724 (O).

Sheriff has no direct and substantial interest in the outcome and need not be joined.¹²

[13] Two further concessions by the applicant, made in reply after the tea adjournment, may be recorded at once. When asked where in the papers the warrant of 14 February 2023 was to be found, the applicant accepted that she could not produce it, and accepted that what occurred on 16 February 2023 appears from the return of service (annexure “NC9”) to have been a second attempt to execute the warrant of 8 November 2022, and not the execution of a separate warrant. She accepted, further, that the words “and all such other warrants of execution as may be issued and unknown to the applicant” in prayers 1 and 2 of the notice of motion “must come out”, there being no evidence of any warrant other than that of 8 November 2022.¹³

[14] What remains for decision is accordingly: (a) the applicant’s point in limine that the answering affidavit falls to be struck out; (b) whether any warrant of execution dated 14 February 2023 exists to be set aside; and (c) whether the warrant of 8 November 2022 falls to be declared invalid and set aside on any of the grounds advanced, namely (i) that the first respondent, holding the Nedbank guarantee as security, was not entitled to execute against the applicant’s property; (ii) that the warrant was sued out without authority while the first respondent was in business rescue; (iii) that the warrant contains a false recital and was obtained fraudulently; and (iv) fraud generally in the respondents’ dealings with Nedbank. Costs, including the scale thereof, are in issue.

THE APPROACH TO THE FACTS IN MOTION PROCEEDINGS

¹² Respondents’ heads of argument, paras 13–18, Caselines 011-29 to 011-31; Member of Executive Council Gauteng Department of Community Safety v Universal Knowledge Software (Pty) Limited and Another [2025] ZAGPJHC 1122 at para 33.

¹³ Record, 10h44 (“I’ll have to find it for you, my Lord”) and 11h29 (“those words must come out because there’s no other warrant ... it’s only these two, my Lord”).

[15] The applicant seeks final relief on motion. The familiar rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* applies: final relief may be granted only if the facts stated by the respondents, together with the admitted facts in the applicant's affidavits, justify the order, unless the respondents' denials are so far-fetched or clearly untenable that they fall to be rejected on the papers.¹⁴ The Supreme Court of Appeal put the corollary bluntly in *Lombaard v Droprop CC*:

"Motion proceedings are not designed or intended to resolve disputes of fact. Therefore, if a party has knowledge of a material and bona fide dispute or should reasonably foresee its occurrence and nevertheless proceeds on motion that party will usually find the application dismissed."

[16] ¹⁵ The applicant's case, moreover, is built upon allegations of fraud levelled against an attorney, a business rescue practitioner and a company director. Fraud is not lightly inferred, least of all in motion proceedings, where the person accused cannot be cross-examined.¹⁶ These principles frame everything that follows.

THE APPLICANT'S POINT IN LIMINE: STRIKING OUT OF THE ANSWERING AFFIDAVIT

[17] In her replying affidavit and in argument the applicant contended that the answering affidavit of the first and third respondents falls to be struck out in its entirety because (a) it was not served on the second respondent, a party to the proceedings; and (b) there is no confirmatory affidavit from the first respondent or its director, Mr Gani, with the result — so the argument went — that the application stands effectively unopposed by the first respondent.¹⁷

¹⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E–635C.

¹⁵ *Lombaard v Droprop CC and Others* [2010] ZASCA 86; 2010 (5) SA 1 (SCA) at para 31.

¹⁶ *Loomcraft Fabrics CC v Nedbank Ltd and Another* [1995] ZASCA 127; 1996 (1) SA 812 (A) at 822G.

¹⁷ Replying affidavit, paras 2 and 5–8, Caselines 009-4; applicant's heads of argument, paras 25–29, Caselines 011-7.

[18] Neither leg of the point has merit. As to the first: the second respondent has from the outset elected to abide. He filed no notice of intention to oppose, sought no relief and claims no prejudice. The applicant does not explain what prejudice she — as distinct from the second respondent — suffered by the alleged non-service of the answering affidavit on a co-respondent who takes no part in the proceedings. Striking out an answering affidavit is a drastic remedy directed at scandalous, vexatious or irrelevant matter or at real procedural prejudice; it is not a windfall mechanism by which an applicant may rid herself of an inconvenient opposing version. The affidavit was served on the applicant's attorneys of record in terms of Rule 4A; that is the service that matters for present purposes.¹⁸

[19] As to the second leg: Mr Henn deposed to the answering affidavit in his capacity as director of the third respondent and attorney of record for the first respondent, annexing a resolution of the first respondent authorising him to depose on its behalf, and stating that the facts are within his personal knowledge as the attorney who has had the conduct of the file throughout.¹⁹ It has long been settled that the deponent to an affidavit in motion proceedings need not be authorised by the party concerned; it is the institution and prosecution (or, as here, the opposition) of the proceedings that must be authorised, and a litigant who wishes to challenge that authority must do so through the mechanism of Rule 7(1).²⁰ The applicant delivered no Rule 7(1) notice. The absence of a confirmatory affidavit by Mr Gani goes, at most, to the weight of such factual averments as fall outside Mr Henn's personal knowledge; it does not render the opposition a nullity. The point in limine is dismissed.

THE ALLEGED WARRANT OF 14 FEBRUARY 2023

¹⁸ Filing notice to the answering affidavit, Caselines 007-2 to 007-3.

¹⁹ Answering affidavit, paras 1.1–1.3, Caselines 007-5; annexure "AH1", Caselines 008-1.

²⁰ *Ganes and Another v Telecom Namibia Ltd* [2003] ZASCA 123; 2004 (3) SA 615 (SCA) at para 19.

[20] The applicant's founding affidavit alleges, on the strength of her recollection and of the Sheriff's return, that a second warrant, directed at her immovable property, was issued on 14 February 2023. She concedes she has never seen it and could not obtain a copy from the Sheriff.²¹ The respondents' answer is unequivocal: one warrant, and one only, was ever issued against the applicant, namely the warrant of 8 November 2022 against movables; no application under Rule 46A to have the applicant's residence declared specially executable has ever been brought; and the Sheriff's attendance of 16 February 2023 was simply the second attempt to execute the existing warrant.²²

[21] On the Plascon-Evans approach the respondents' version must be accepted; it is, in any event, the more probable one, and it is corroborated by the return of service itself, which records attempts on 14 December 2022 and 16 February 2023 in respect of a warrant in case number 40867/2014. A court cannot declare invalid, or set aside, a document that does not exist. As recorded above, the applicant in reply effectively accepted as much.²³ Prayers 1 and 2 must accordingly fail insofar as they relate to a warrant of 14 February 2023 and to "all such other warrants ... unknown to the applicant". What remains is the warrant of 8 November 2022.

THE GROUNDS UPON WHICH A WRIT OF EXECUTION MAY BE SET ASIDE

[22] The setting aside of a writ of execution is an exceptional remedy, available on narrow and well-recognised grounds. In *Mashego v Mpumalanga Provincial Legislature and Others* the grounds were catalogued as follows:²⁴

²¹ Founding affidavit, paras 42–47, Caselines 002-9.

²² Answering affidavit, paras 4.1.6–4.1.7, 13.3, 20.1–20.5 and 25.1, Caselines 007-10, 007-23, 007-28 to 007-29 and 007-32.

²³ Annexure "NC9", Caselines 003-61; record, 11h29.

²⁴ *Mashego v Mpumalanga Provincial Legislature and Others* [2016] ZALCJHB 341; (2017) 38 ILJ 382 (LC) at para 26, with reference to Herbstein & Van Winsen, *The Civil Practice of the High Courts of South Africa* 5 ed vol 2 at 1091–1092.

“A writ of execution could be set aside in one of the following circumstances: if the judgment was not definite and certain and the amount payable under the judgment can be ascertained only after deciding a further legal problem, when the debt in respect of which the judgment was obtained has been extinguished prior to the judgment, when the judgment had been extinguished by compensation or novation, when the judgment on which the writ is based is rescinded, when the writ erroneously refers to a certain person as a party or when the writ of execution is no longer justified by the causa or debt.”

[23] To this may be added that a writ will be set aside where it does not conform to the judgment on which it is founded, and that a court retains a discretion, as part of its inherent power to regulate its own process, to set aside a writ whose issue amounts to an abuse. But the same authority makes plain that inconvenience, the availability of some different route of recovery, or the debtor’s unhappiness at not having been consulted, are not grounds:

“... the fact that the Applicant was not consulted about the payment of the debt, the fact that it could be recovered differently or that the attachment of his bank account causes inconvenience and difficulties, cannot be grounds to set aside a validly obtained writ of execution.”

[24] ²⁵ When, in argument, the applicant was invited to identify which of the recognised grounds she relied upon, she was unable to bring her case within any of them; her answer, in substance, was that the first respondent “was not entitled” to execute because the guarantee is the only instrument against which the judgment of Baqwa J may be satisfied.²⁶ That contention, together with the authority and fraud complaints, must now be examined.

THE FIRST GROUND: THE GUARANTEE AS A BAR TO EXECUTION

[25] The applicant’s central submission was that the guarantee is “the only basis” and “the only instruction” for recovery of the judgment debt; that the first respondent was obliged first (and only) to enforce the security; and that a creditor cannot at once claim under the guarantee and levy execution — it

²⁵ Mashego, above, at para 28.

²⁶ Record, 10h41.

must, as she put it in argument, “take the money in terms of the letter of guarantee or forfeit it and take the writ of execution”, but not both.²⁷

[26] The submission cannot be sustained, for several reasons. The first is one of principle. A judgment creditor’s right to execute against the assets of its debtor flows from the judgment itself; it exists independently of, and concurrently with, any security the creditor may hold. Nothing in the guarantee — which was procured by the applicant in favour of the first respondent as security for the improvement lien claim — purports to novate the judgment debt or to limit the first respondent’s ordinary remedies of execution. The guarantee gives the creditor an additional avenue of recovery; it does not extinguish or suspend the primary one. The judgment debt is the causa of the warrant, and that causa persists unsatisfied.

[27] The Supreme Court of Appeal’s decision in *Nkola v Argent Steel Group (Pty) Ltd t/a Phoenix Steel* — to which I referred the applicant during argument and on which she was given the opportunity to address me after the adjournment — is instructive. There a judgment debtor contended that the creditor was obliged first to exhaust identified movable assets before executing against immovable property. The Court held:²⁸

“I consider that the common law and the rules place no obligation on a creditor to execute against movable assets where a judgment debtor has failed to point these out and make them available.”

[28] The principle was applied in *Investec Bank Limited v Fraser NO and Another*: “In terms of the common law and the rules, the execution creditor has no obligation to execute against movable assets where a judgment debtor fails to point these out and to make them available to the sheriff. If a debtor fails to

²⁷ Founding affidavit, paras 41 and 48, Caselines 002-8 to 002-10; applicant’s heads of argument, paras 18, 23–24 and 37, Caselines 011-5 to 011-9; record, 10h56.

²⁸ *Nkola v Argent Steel Group (Pty) Ltd t/a Phoenix Steel* [2018] ZASCA 29; 2019 (2) SA 216 (SCA) at para 11; record, 10h47 to 10h50 and 11h26.

point out movable property to satisfy the judgment debt, he behaves in a tricky manner and deliberately frustrates the creditor's efforts to obtain payment."²⁹ If a creditor is not even obliged to proceed against pointed-out movables in preference to immovables, still less is it obliged to abandon execution altogether in favour of a conditional security which, on the facts, could not be liquidated.

[29] That is the second, and decisive, difficulty for the applicant: on the respondents' version, which I must accept, the guarantee route was — and remains — blocked. Payment under the guarantee requires production of the original instrument. The respondents say they never received the original and do not know its whereabouts; that position was disclosed to Nedbank in the very letter of demand, supported by Mr Gani's affidavit. Nedbank declined to pay except upon strict compliance, written variation by both parties, or an order of court. The applicant refused — and in her replying affidavit expressly persists in refusing — to consent to any variation. The result is that the security which, on the applicant's argument, is the only permissible source of payment, is a source she herself has helped to render inaccessible, while the judgment debt remains unpaid. A debtor who neither pays, nor tenders payment, nor points out executable assets, nor consents to the unlocking of the very security she proffers as the answer, and who then attacks the writ because the creditor should have enforced the security, behaves in precisely the "tricky manner" described in *Nkola* and *Investec*.³⁰

[30] The applicant sought to distinguish *Nkola* in reply by contending that the guarantee itself is the "movable" which she has pointed out and made available.³¹ The distinction does not assist her. The guarantee is not an asset of the debtor attached or attachable in execution; it is a conditional undertaking by a bank in favour of the creditor, incapable of realisation on its

²⁹ *Investec Bank Limited v Fraser NO and Another* [2020] ZAGPJHC 107; 2020 (6) SA 211 (GJ) at para 92.

³⁰ Answering affidavit, paras 4.1.4–4.1.5 and 4.1.9–4.1.17, Caselines 007-10 to 007-15; annexure "AH7" (Nedbank letter of 15 November 2023), Caselines 008-40 to 008-41; replying affidavit, para 13.12, Caselines 009-8.

³¹ Record, 11h26.

own terms without the original document or the applicant's cooperation or an order of court. Pointing to an asset that cannot presently be realised is not making payment available; it is the opposite.

[31] Nor does the first respondent's application of March 2026 under case number 2026-026420 — in which it now seeks, as the applicant herself insisted in her founding papers it should, an order declaring the guarantee lost and directing payment — assist the applicant in this application. A creditor may pursue more than one lawful avenue of recovery in respect of the same debt; what the law forbids is double satisfaction, not parallel pursuit. Should payment be recovered under the guarantee, the warrant will to that extent no longer be supported by its causa and execution upon it would be impermissible; the applicant's remedy would then be to have it superannuated or set aside on that ground. The pendency of that application cannot retrospectively invalidate a warrant lawfully issued in 2022. The first ground therefore fails.³²

THE SECOND GROUND: AUTHORITY AND THE BUSINESS RESCUE

[32] The applicant's second attack was that, since the first respondent was in business rescue from September 2017 to July 2023, only the second respondent, as business rescue practitioner — who under section 140(1)(a) of the Companies Act 71 of 2008 has "full management control of the company in substitution for its board and pre-existing management" — could have authorised the suing out of the warrant in November 2022 and the demand upon Nedbank in May 2023; that there is no affidavit from him; and that the warrant is for that reason alone "fatally flawed".³³

[33] There are four answers to this contention. First, it is not the case the respondents were called upon to meet. The founding affidavit nowhere

³² Founding affidavit, paras 27 and 51, Caselines 002-6 and 002-10; record, 10h23 and 11h47.

³³ Applicant's heads of argument, paras 13, 15 and 36, Caselines 011-4 to 011-8; record, 10h32 and 10h53.

alleges that the warrant was issued without the second respondent's authority; the point surfaced for the first time in the replying affidavit and in the heads of argument. An applicant must make out her case in the founding papers; a respondent is not required to divine, and answer, a case first formulated in reply.³⁴

[34] Secondly, on the respondents' version — again to be accepted on the Plascon-Evans approach — all actions taken, including the communications with Nedbank, were carried out in the third respondent's role as attorneys for the first respondent "and, when applicable, with the Second Respondent's approval as business rescue practitioner". That version is not far-fetched or untenable. It is consistent with the objective record: the third respondent acted openly as the first respondent's attorney of record throughout the litigation before, during and after the business rescue, including at the taxations, without demur from the practitioner.³⁵

[35] Thirdly, the proper procedural route for a challenge to the authority of an attorney to act is Rule 7(1). The applicant, a Senior Counsel, delivered no such notice at any stage. On the authority of *Ganes*, the challenge mounted in affidavit and argument, without more, misfires.³⁶

[36] Fourthly, and in any event: on the morning of the hearing the respondents uploaded a letter from the second respondent recording that throughout the business rescue proceedings until their termination the first respondent was duly represented by Mr Henn, who was duly authorised to act on its behalf. The applicant objected that the copy uploaded bore no signature and that the letter does not in terms state that the practitioner authorised the specific warrant. Both observations are fair, and I have approached the document with

³⁴ Founding affidavit, paras 23–29, Caselines 002-5 to 002-6 (which attack the second respondent's failure to enforce the guarantee, not the authority for the warrant); answering affidavit, para 14, Caselines 007-23; record, 11h38 (Mr Engelbrecht: "that was not the case made out in the founding affidavit").

³⁵ Answering affidavit, paras 6.3 and 1.1–1.3, Caselines 007-17 and 007-5.

³⁶ *Ganes*, above, at para 19.

corresponding caution, treating it as confirmatory at most and as carrying limited independent weight. But the objection ultimately takes the applicant nowhere: the onus is hers to establish, on the accepted version, that authority was absent. She has not done so. A speculative inference of absent authority, drawn from the practitioner's silence, cannot found the exceptional remedy of setting aside a writ — particularly where the practitioner himself, cited as a party and served, has never once complained that his powers were usurped, and where the party ostensibly protected by section 140 (the company in rescue) ratified and embraced the attorney's actions. The second ground fails.³⁷

THE THIRD GROUND: THE ERRONEOUS RECITAL IN THE WARRANT

[37] The warrant recites recovery of “the sum of R240,281.56 for the taxed costs and charges of the said Plaintiff which it recovered by a judgment of this Court dated the 29th November 2022”. It is common cause that no judgment of 29 November 2022 exists. The applicant contends that this recital is deliberately false and stamps the warrant as fraudulent; the respondents answer that “2022” is a patent typographical error for “2018” — the date of the Baqwa J judgment — and that R240 281.56 is the netted balance of the three taxed allocaturs (R373 884.37, R22 980.63 and R15 128.50) less the R133 602.79 in taxed costs credited to the applicant, an exercise undertaken to her benefit.³⁸

[38] During argument the applicant was asked squarely whether she disputes the three taxed allocaturs. She did not do so; her attack remained fixed on the non-existent “judgment” of 29 November 2022.³⁹ The respondents' explanation is not merely plausible; it is the only sensible reading of the document. The warrant is founded on case number 40867/2014; it correctly

³⁷ Record, 11h38 to 11h44 and 11h50; section 021 of the Caselines file (uploaded 10 June 2026).

³⁸ Founding affidavit, paras 36–41, Caselines 002-8; answering affidavit, paras 19.1–19.4 and 27.2, Caselines 007-27 to 007-28 and 007-32; record, 11h35.

³⁹ Record, 11h05.

cites the capital of R875 410.60 and the judgment date of 29 November 2018 in respect of interest; and the taxed-costs figure is arithmetically derived from allocaturs which are annexed to the papers and were not disputed. A misdescribed date in the recital of taxed costs, in a warrant otherwise anchored to an identified and valid judgment, is an irregularity of form, not of substance.

[39] The law's response to such an error is amendment, not annihilation. As it was put in *Ebundu (Pty) Ltd v Blake and Others*, even where a writ is issued for an amount larger than it should have been, the writ will not be set aside in the absence of substantial prejudice to the debtor; the proper course is to amend it.⁴⁰ Here there is no prejudice at all, let alone substantial prejudice: nothing was ever attached under the warrant, the applicant's liability for the taxed costs is not genuinely disputed, and the netting exercise reduced, rather than inflated, the amount recoverable. Mr Engelbrecht accepted in argument that the recital must be corrected and that the appropriate vehicle is an amendment of the writ.⁴¹ In the exercise of my discretion I intend to regularise the position in the order by affording the first respondent leave to amend, which falls within the further and alternative relief prayed and disposes of the irregularity without visiting upon a valid judgment debt the windfall of a nullified execution process. The third ground fails.

THE FOURTH GROUND: FRAUD

[40] The founding papers are strewn with allegations of the gravest kind: that the warrant "constitutes a fraud on the part of all the respondents"; that the third respondent "attempted to fraudulently receive" the guaranteed funds; that Mr Gani deposed to a "perjured affidavit"; and that the respondents' "modus

⁴⁰ *Ebundu (Pty) Ltd v Blake and Others* [2024] ZAMPMBHC 11; 2024 (5) SA 197 (MM) at para 30. I note that the proposition is there recorded as a contention of the respondent, but it reflects the settled position; a writ that is amenable to correction to conform to the judgment is amended, not set aside, absent prejudice.

⁴¹ Record, 11h35 ("the proper course is an amendment to the writ ... it is clear from the context that it is just a typographical error").

operandi” is to await the applicant’s death so as to execute against her deceased estate.⁴² Each allegation is vehemently denied. On the Plascon-Evans approach that is the end of the matter; but since the allegations were pressed in argument, and since they are made by one officer of this Court against another, I do not leave them there.

[41] The objective record refutes, rather than supports, the inference of fraud. A party bent on defrauding a bank does not disclose to that bank, in the founding paragraph of its claim, the very fact — the absence of the original guarantee — that entitles the bank to refuse payment; yet that is precisely what the third respondent’s letter of 31 May 2023 did. Thereafter the respondents followed, step by step, the replacement procedure that Nedbank itself prescribed for a lost guarantee, culminating in the indemnity signed by Mr Gani at Nedbank’s instance. When Nedbank, moved by the applicant’s objections, declined payment except on stated conditions, the respondents sought the applicant’s consent to the least expensive of those conditions, and, failing it, have now approached the court — the third of Nedbank’s conditions and the very course the applicant’s own founding affidavit proposed. Transparency, adherence to the bank’s prescribed process and ultimate recourse to court are the antithesis of fraud.⁴³

[42] The complaint that payment was demanded into the third respondent’s trust account in the face of clause 5 of the guarantee likewise does not carry the freight of fraud. The letter of demand states in its first paragraph that the third respondent acts “on behalf of our client, Kwik Property Holdings (Pty) Ltd”; the claim was the client’s claim, and the direction of payment into the attorney’s trust account — a daily incident of practice — involved no cession, negotiation or transfer of the guarantee to the attorney. Whether Nedbank could

⁴² Founding affidavit, paras 19, 29–35 and 41, Caselines 002-5 to 002-8.

⁴³ Annexure “NC8”, paras 6–7, Caselines 003-31; annexures “AH5”–“AH8”, Caselines 008-13 to 008-46; founding affidavit, para 27, Caselines 002-6; respondents’ heads of argument, paras 34–38, Caselines 011-37 to 011-38.

competently pay without production of the original, and to whom, are questions of compliance with the guarantee's terms which Nedbank itself policed by refusing payment, and which will be ventilated in case 2026-026420. Non-compliance with the terms of a demand under a guarantee, if that is what it was, is not fraud; fraud requires a representation known to be false, made with intent to deceive. Nothing approaching that has been established. It bears mention that the applicant's complaint to the Legal Practice Council on this very score was dismissed, although her review of that decision remains pending and I attach no decisive weight to it.⁴⁴

- [43] The fraud ground therefore fails on the facts as they must be accepted, and would in any event have foundered on the applicant's election to seek final relief on motion in the teeth of foreseeable and material disputes of fact concerning knowledge, intent and credibility — disputes which no court can responsibly resolve on paper.⁴⁵

THE SECOND RESPONDENT

- [44] The applicant submitted that, the second respondent not having opposed, she is "entitled to the relief sought against him" as of right.⁴⁶ The submission misconceives the position. Default of opposition does not entitle an applicant to incompetent relief; the court must still be satisfied that a case is made out. The warrant has been found to be valid, save for a recital amenable to amendment. There is accordingly no basis for declaratory or setting-aside relief against the second respondent any more than against the others. Nor, conversely, is any costs order made in respect of the second respondent: costs orders are as a general rule made against parties who oppose

⁴⁴ Annexure "NC8", para 1, Caselines 003-31; answering affidavit, paras 12.2–12.6, 16.3–16.5 and 23.3, Caselines 007-21 to 007-22, 007-25 and 007-31; record, 11h44.

⁴⁵ Lombaard, above, at paras 23 and 31; Loomcraft, above, at 822G.

⁴⁶ Applicant's heads of argument, paras 3–4 and 27, Caselines 011-3 and 011-7.

proceedings, and the second respondent, having abided, neither incurred nor caused any costs.⁴⁷

COSTS

[45] An award of costs is in the discretion of the Court, to be exercised judicially upon a consideration of the facts of each case; in essence it is a matter of fairness to both sides. The general rule is that costs follow the event, and I see no reason to depart from it: the first and third respondents have been substantially successful and are entitled to their costs. The remaining question is the scale. In their heads of argument the first and third respondents pressed for attorney and client costs, characterising the application as vexatious and an abuse; in the draft order handed up, and in answer to my question at the hearing, Mr Engelbrecht confined the respondents' claim to party and party costs with counsel's fees on Scale B.⁴⁸

[46] There is force in the criticism of the applicant's conduct of this litigation. Sustained allegations of fraud, perjury and conspiracy were advanced against fellow practitioners on motion, without the evidential foundation such allegations demand, and they have been found wanting. An unfounded allegation of fraud is a serious matter, and courts have not hesitated to mark their displeasure with punitive costs where litigants — particularly those versed in the law — abuse process: "[a] court cannot and should not countenance a flagrant abuse of its processes."⁴⁹ Against that stand three considerations: the respondents themselves ultimately asked only for Scale B; the warrant did contain an error which the applicant was entitled to have corrected, even if her chosen remedy overreached; and the applicant's belief in her construction of the guarantee, though wrong, was not shown to be advanced in bad faith. Weighing these, I consider that a punitive order is not

⁴⁷ Cilliers Law of Costs (LexisNexis, loose-leaf) paras 2.07 and 2.07A.

⁴⁸ Cilliers Law of Costs (LexisNexis, loose-leaf) paras 2.03, 2.08 and 2.27; respondents' heads of argument, paras 47–49, Caselines 011-40; respondents' draft order, Caselines 018-3; record, 11h50.

⁴⁹ Govindsamy and Another v Kganakga and Others [2025] ZAGPJHC 807 at para 32.

warranted. The employment of counsel was clearly reasonable, and having regard to the factors in Rule 67A(3) read with Rule 69(7) — the complexity of the matter, the seriousness of the allegations levelled, and the value of the underlying judgment debt — Scale B, as sought, is the appropriate scale for counsel's fees. This was in any event the scale contended for by the successful parties, and a court will not readily go beyond the costs relief a party has itself claimed.

ORDER:

In the result the following order is made:

1. The late filing of the applicant's heads of argument is condoned.
2. The applicant's application to strike out the first and third respondents' answering affidavit is dismissed.
3. The application is dismissed.
4. The first respondent is granted leave, if so advised, to amend the warrant of execution dated 8 November 2022 issued under case number 40867/2014 by substituting the date "29th November 2018" for the date "29th November 2022" where the latter appears in the recital of the taxed costs, prior to any further execution thereunder.
5. The applicant is ordered to pay the first and third respondents' costs of the application, including the costs of counsel on Scale B.

A VAN DER WESTHUIZEN
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 10 June 2026
Date of judgment: 21 August 2026

For the applicant: In person (Adv N Cassim SC)
Instructed by: Mbazima Dickson Inc Attorneys, Pretoria

For the first and third respondents: Adv WH Engelbrecht
Instructed by: Lacante Henn Inc, Pretoria

No appearance for the second respondent.