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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 19506/2017

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

04/09/2026
DATE

SIGNATURE

In the matter between:

SIMAAN, ANDREW WILLIAM

First Applicant

**JANE'S HAVEN CHILDREN'S HOME (also known as
JANE'S HAVEN CHILDREN'S VILLAGE)**

Second Applicant

WEBBER WENTZEL ATTORNEYS

Third Applicant

PHALA, TSHEGOFATSO CLAUDETTE

Fourth Applicant

PULLINGER, ALEXANDER WILLIAM

Fifth Applicant

VAN INGEN, CHIARA

Sixth Applicant

VAN RENSBURG, CAITLYN

Seventh Applicant

and

KITELE, HANNAH	First Respondent
KITELE, PATRICK	Second Respondent
SMITH, JOSEPHINE (also known as JOSEPHINE KANGORI)	Third Respondent
ST JANE'S DE CHANTAL HOME	Fourth Respondent
PELSER, NICHOLAS N.O. (in his capacity as Deputy Sheriff, Halfway House)	Fifth Respondent

Delivered: This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 4 September 2026

J U D G M E N T

TEFFO J

Introduction

[1] I heard six applications which were enrolled for hearing together in a special motion pursuant to the directives of the case manager, Kubushi J, and the Deputy Judge President. The first application was brought by the applicants under the above case number (“the main application”). The other five were brought by the first, third and fourth respondents.¹

[2] In the main application, the applicants seek in Part B of the notice of motion as they propose to amend it, (a) security for their costs in fifteen actions and applications instituted against them by one or more of the first to fourth respondents, on the ground that those proceedings are vexatious, with a stay pending the furnishing of security; (b) an order under section 2(1)(b) of

¹ Kubushi J's directive of 20 August 2024 para 2, CL 0B-2-OB-2 and DJP's directive of 9 July 2025 CL 00002-8729-00002-8730.

the Vexatious Proceedings Act² (“the Act”) declaring the first, second and third respondents vexatious litigants and restraining them from instituting proceedings without the leave of this court; and (c) costs on a punitive scale. Part A was disposed of in case management. The litigation between the parties has produced forty separate actions and applications, which the applicants have scheduled chronologically in annexure HOA4 to their supplementary heads (“The List”). I adopt its numbering: the main application is Matter 18, and the respondents’ five applications are Matters 23, 24, 30, 32 and 34.³

The parties and their representation

[3] Mr Simaan, the first applicant, is the registered owner of 3[...] S[...] Way, Kelvin. The second applicant, Jane’s Haven Children’s Home NPC (“Jane’s Haven”), owns the adjoining 3[...] S[...] Way. 3[...] S[...] Way, Kelvin and the adjoining 3[...] S[...] Way will collectively be referred to as “the properties”. Webber Wentzel, the third applicant, acted for the first and second applicants in the eviction proceedings described below. The fourth, sixth and seventh applicants were in the employ of Webber Wentzel at the time, and the fifth applicant is counsel who was briefed in the eviction proceedings. The applicants are now represented by Savage Jooste & Adams Inc (“SJA”), whose authority was confirmed by order of Kubushi J on 5 March 2020. Mrs Kitele, the first respondent, was engaged to manage the children’s home which Jane’s Haven operated on the properties, and lived there with her

² Act 3 of 1956

³AH=applicants’ heads of argument, 13 January 2023. ASH= applicants’ supplementary heads of argument, 10 October 2025. FA, SFA, FSA=founding, supplementary and further supplementary founding affidavits in the main application. AH para 1.1 and fn 1, 00002-4166 to 4167; SH para 1.4 and fn 2, 00029-19; HOA1 paras 6 to 12, 00029-163 to 166; List, 00029-172 to 185.

husband, the second respondent. Ms Smith, the third respondent, also took up residence there. The fourth respondent, St Jane's De Chantal Home ("St Jane"), was registered by the first to the third respondents and operated from the properties. The fifth respondent is the Deputy Sheriff who executed the eviction order.⁴

[4] In all these proceedings the first, second and third respondents appeared in person. Mrs Kitele and Ms Smith also purported to appear for St Jane. A juristic person is not entitled as of right to lay representation, but the rule may be relaxed in the interests of justice.⁵ The applicants did not object to the representation of St Jane's by Mrs Kitele and Ms Smith and throughout these proceedings and it was permitted.⁶ When I heard the special motion, there was no appearance of the first to the fourth respondents. The fifth respondent although represented by Mr Van Wyk from Malatji and Company elected to abide the court's decision. Mr Van Wyk only appeared on a watching brief.

Background

[5] In February 2010 Mr Simaan and Jane's Haven instituted proceedings in the Gauteng Local Division under case number 4730/2010 to evict Mr and Mrs Kitele and all persons occupying the premises under them from the properties. An eviction order was granted. The court held that the respondents' claim to the properties, founded on an alleged oral donation, was invalid because no written donation could be produced. Leave to appeal

⁴FA paras 36 to 43, 00002-26 to 28; SH para 1.6, 00029-19; order at 00002-3173.

⁵*Manong & Associates (Pty) Ltd v Minister of Public Works* 2010 (2) SA 167 (SCA)

⁶SH paras 7.1 to 7.4.3, 00029-24 to 25; PN paras 2 and 3 and fn 1, 00029-7; Dir= Directive paras 6 and 11, 0B-4 to 0B-5.

was refused by the High Court, by the Supreme Court of Appeal on 9 May 2012 and by the Constitutional Court on 19 June 2012. The Constitutional Court also dismissed an application to rescind its own order on 5 December 2013. The High Court also dismissed an application to rescind the eviction order on 11 November 2013 and leave to appeal that dismissal was refused on 5 December 2013. The eviction order was executed on 9 and 10 December 2013.⁷

[6] Thereafter forty matters followed. All but three of these matters, matters 11, 18 and 25, were instituted by one or more of the first to fourth respondents. The damages they have quantified across those matters total R179 791 413.38. Despite the finality of the eviction order, every one of these matters concern the ownership or possession of the properties, the lawfulness of the eviction, or the conduct of those who obtained and executed the order and of the lawyers who have since acted for them.⁸

Procedural history and case management

[7] The main application was issued on 17 March 2017. The respondents delivered their notice of intention to oppose on 24 March 2017, and, at the applicants' request, the Deputy Judge President appointed Kubushi J as case manager. On 23 June 2017 Kubushi J directed that no new applications should be launched, that no matters between the parties should be advanced, and that no matters should be set down other than those already set down. The directive of Kubushi J was reaffirmed on 24 June 2019. On 5 March 2020

⁷FA paras 43 to 68, 00002-28 to 34; annexures FA1 and FA4 to FA8, 00002-127,167 to 168 and 173.

⁸SH paras 182.3, 182.7 and 182.8, 00029-140 to 142 (annexure FSA2, 00002-490-5129); the individual claims at List items 3, 6, 7, 14, 35 and 36, 00029-172 to 183, sum to that figure; AH para 4.3, 00002-4177.

Kubushi J ordered, among other things, that SJA was duly authorised to represent the applicants; that the respondents deliver their answering affidavit by 17 April 2020, failing which they would be barred; that all matters relevant to the main application be enrolled on the same day; and that matter 8 be transferred from the Local Division to this Division (which was done: matter 25). The respondents delivered no answering affidavit.⁹

[8] Instead, the first, third and fourth respondents delivered what they call a counterapplication on 6 July 2020 (Matter 23), followed by Matter 24 on 25 February 2021, an urgent application on 3 November 2022 (Matter 29), Matter 30 under a fresh case number on 11 November 2022, Matter 32 dated 30 November 2022, and Matter 34 under another fresh case number on 23 March 2023. Each of these matters was met with Rule 30 and 30A notices invoking the directives, and each enrolment was removed from the roll, by the respondents at the last moment or by the judge before whom it came. On 20 August 2024, the respondents having declined to attend the case management meeting, Kubushi J directed that a preferential date be sought for the simultaneous hearing of the main application and of Matters 23, 24, 32 and 34, gave the applicants leave to answer those applications, to supplement and to amend, gave the respondents leave to reply and to answer, and fixed a timetable for heads. The applicants complied with Kubushi J's directives while the respondents did not. The respondents answered neither the further supplementary founding affidavit nor the application for leave to amend. They only responded by filing a Rule 30 and

⁹List item 18, 00029-176; AH paras 18.1 to 18.2, 18.2.7, 19.2 to 19.6, 00002-4199 to 4204 (00002-1491; 00002-3165; 00002-3169 para 2; 00002-3171; 00002-3173; 00006-2360); SH paras 5.2, 10 and 133, 00029-23, 27 and 111.

30A notice of 7 November 2024, which were never prosecuted. The Deputy Judge President's directive of 9 July 2025 added Matter 30 and the amendment application to the hearing. A further Rule 30 and 30A notice of 24 July 2025, listing 47 complaints and threatening an application against the set-down, was likewise never pursued by any of the respondents.¹⁰

[9] The founding, supplementary and further supplementary affidavits in the main application therefore stand unanswered. The respondents contend that the main application is nonetheless opposed by reason of their counterapplication. I have had regard to the affidavits in Matters 23 and 24 for whatever they contain by way of answer. The facts on which the applicants rely are undisputed, and it is on those facts that the matter must be decided.

Leave to amend the notice of motion

[10] With the case manager's leave the applicants gave notice of intention to amend the notice of motion in the main application adding to the matters in which security is sought, matters omitted from the original notice of motion in error, or instituted after it was issued, and correcting a reference to section 2(1)(a) of the Act, which should have been to section 2(1)(b). The original notice of motion sought security in Matters 2, 6, 7, 10 and 14 only. The first, third and fourth respondents objected, and the applicants applied under Rule 28(4) on 21 November 2024. No answering affidavit was delivered. The objection was that the amendment introduces relief in respect of matters which arose after the main application was issued. That is no bar. An

¹⁰List items 23, 24, 29, 30, 32 and 34, 00029-178 to 182; AH paras 20.1 to 20.17, 00002-4205 to 4209; SH paras 130.1 to 130.6, 186.6 to 186.8 and 186.13 to 186.18, 00029-106 to 108 and 145 to 149 (00002A-3-7; 00002-832-8729; 00002-834-8734); Dir paras 1 to 11, 0B-2 to 0B-5.

amendment will be allowed unless sought *mala fide* or productive of prejudice that cannot be cured by costs or a postponement, the object being to ventilate the real issues,¹¹ and a cause of action arising after institution may be introduced where refusal would merely produce the same parties on the same issue in fresh proceedings.¹² The additional matters are fully dealt with in the further supplementary founding affidavit, which the respondents chose not to answer. No prejudice has been identified; and to refuse the amendment would simply compel a further application in litigation already suffering from a surfeit of them. In the circumstances, leave to amend is granted.¹³

Applicable law

[11] Rule 47 regulates the procedure for obtaining security for costs, not the grounds; for those, recourse is had to the common law.¹⁴ A court has an inherent power to prevent the abuse of its process by frivolous or vexatious litigation and may order security on that ground.¹⁵ A proceeding is vexatious when it is frivolous or improper, instituted without sufficient ground and serving solely to annoy the defendant,¹⁶ or when it stands outside the region of probability altogether and is incapable of succeeding¹⁷; and proceedings may be vexatious, whatever the litigant's belief in them, when they put the

¹¹ *Four Tower Investments (Pty) Ltd v André's Motors (Pty) Ltd* 2005 (3) SA 39 (N) at 43G-H and 44I-J; *Myers v Abramson* 1951 (3) SA 438 (C) at 448D-H

¹² *Solomon NO v Spur Cool Corporation (Pty) Ltd* 2002 (5) SA 214 (C) at 224, paras [29] to [30]

¹³ Dir para 7, 0B-4; notice at 00002-8707 to 8712; objection 00002-8713 to 8716; Rule 28(4) application 00002-8694.

¹⁴ *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* 2015 (5) SA 38 (SCA) at 43C-E.

¹⁵ *Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 271; *Corderoy v Union Government* 1918 AD 512 at 517).

¹⁶ *Fisheries Development Corporation of SA Ltd v Jorgensen* 1979 (3) SA 1331 (W) at 1339E-G

¹⁷ *Fitchet v Fitchet* 1987 (1) SA 450 (E) at 455A-C

other side to unnecessary trouble and expense which it ought not to bear¹⁸. The enquiry does not call for a detailed investigation of the merits¹⁹; security is less drastic than a stay, since the proceedings continue with the safeguard of security²⁰; the litigant's ability to meet an adverse costs order is an obvious factor²¹; and so is his traceability, for a party who demands a hearing must be reachable.²²

[12] Section 2(1)(b) of the Act empowers the court, on the application of a person against whom legal proceedings have been instituted or are contemplated, and if it "is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons", and "after hearing that person or giving him an opportunity of being heard", to order "that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court", such leave not to be granted unless the court is satisfied that the proceedings are not an abuse and that there is *prima facie* ground for them. The provision is a justifiable limitation of the right of access to courts: it screens rather than bars, and it protects both the victims of the vexatious litigant, repeatedly subjected to the costs, harassment and embarrassment of unmeritorious litigation, and the public interest in the functioning of the courts unimpeded by the clog of groundless proceedings.²³ The applicant must establish, first, that

¹⁸ *In re Alluvial Creek Ltd* 1929 CPD 532

¹⁹ *Boost Sports supra*, applying *Zietsman v Electronic Media Network Ltd* 2008 (4) SA 1 (SCA) para 21

²⁰ *Boost Sports supra* at 51E-G

²¹ *Fitchet* at 454G-I

²² *Lekalakala v Transnet SOC Ltd* 2025 JDR 1533 (GJ) paras 9 and 12.

²³ *Beinash v Ernst & Young* 1999 (2) SA 116 (CC) para 15.

the respondent has in the past persistently and without reasonable cause instituted legal proceedings against her or others and, secondly, that further litigation has been brought or is reasonably contemplated.²⁴ The Act is directed at future proceedings; those already instituted are dealt with under the common law and the court's inherent power.²⁵ Nothing in the section requires that the proceedings relied on have been finalised.²⁶

[13] Both the content of the proceedings and the manner of their prosecution are relevant. Exorbitant and irrational quantification of claims, a consistent failure to disclose a cause of action, the joinder of persons with no interest in the matter (including judges who have ruled against the litigant), and the repetitive institution of proceedings on a cause already dismissed are recognised hallmarks²⁷; so are denigrating attacks on the courts and on practitioners made in the course of the litigation²⁸. The litigant described in *re Anastassiades*²⁹, dozens of pending actions, unintelligible pleadings, fantastic claims, no means to pay costs, a fresh summons after every successful exception, is the paradigm which led to the Act.³⁰

The matters in which security is sought

[14] In each of the fifteen matters mentioned in the list, one or more of the applicants is a defendant or respondent and one or more of the first to fourth respondents is *dominus litis*.

²⁴ MEC, *Department of Co-operative Governance and Traditional Affairs v Maphanga* 2021 (4) SA 131 (SCA) para 12.

²⁵ *ABSA Bank Ltd v Dlamini* 2008 (2) SA 262 (T) para 32.

²⁶ Text of s 2(1)(b) quoted at IH para 2.10, 00002-4170; IH paras 2.11 to 2.16, 00002-4170 to 4173; SH paras 109.1 to 109.2, 00029-91 to 92.

²⁷ *Minister of Police v Chauke* 2023 JDR 3216 (GP).

²⁸ *Pieters NO v Pienaar* [2025] 3 All SA 224 (WCC) paras 49 to 51

²⁹ 1955 (2) SA 220 (W) at 221E-H

³⁰ SH paras 15.6 to 15.7, 00029-33 to 35; IH paras 2.12 to 2.13, 00002-4171 to 4172.

[15] In *Matter 1* (55315/2011, 27 September 2011), St Jane sought orders that state functionaries investigate the whereabouts of children allegedly removed from its care. The only prayer against Mr Simaan, that the NDPP prosecute him if the children could not be traced, was postponed *sine die* by Khumalo J in 2016. Subsequently, in 2019 St Jane issued a fresh notice of motion under the same case number, citing only the NDPP and the National Commissioner of Police, seeking an order that Mr Simaan be investigated and prosecuted for kidnapping, abduction, child trafficking and fraud. The matter was enrolled without notice to Mr Simaan. Relief compelling a prosecution, sought on allegations of that gravity without citing the person against whom the order is sought and moved under the guise of an interlocutory step, is an abuse. It is in any event interdictory relief for which no absence of an alternative remedy (a criminal charge) is alleged.³¹

[16] In matter 2 (67234/2011, 23 November 2011) St Jane seeks the transfer of the properties to it, and an interdict against their alienation, on the footing that they were bought with funds raised for it and were donated to it. The eviction court held that reliance on a donation fails for want of writing. Further that section 5 of the General Law Amendment Act³² and section 2(1) of the Alienation of Land Act³³ require executory donations and alienations of land to be in writing. No written agreement is alleged. Only Mr Simaan is cited in the matter, though Jane's Haven owns the other property; and an entitlement to funds would give no claim to land bought with them. In over ten years the matter has not progressed beyond a Rule 30 notice, and an urgent application

³¹List item 1, 00029-172; SFA paras 145 to 154, 00002-5043 to 5051; 00013-1-1; 00013-17-40; 00013-19-49; 00013-55-172).

³² Act 50 of 1956.

³³ Act 68 of 1981

under it was dismissed on 19 December 2013 as “a dishonest abuse of the court process”, with costs on the attorney and own client scale payable personally by Ms Smith.³⁴

[17] Matter 3 (15660/2012, 16 March 2012) is an application for R14 088 000 in damages for defamation, injurious falsehood and intimidation. Unliquidated damages cannot be claimed in motion proceedings³⁵; the founding affidavit does not in any event contain the averments to sustain such a claim; and nothing has happened since Mr Simaan’s Rule 30 and Rule 23 notices in 2012.³⁶

[18] In matter 6 (75314/2013, 11 December 2013) St Jane claims R33 197 824.59, alternatively the transfer of six immovable properties, for breach of an alleged oral donation of land. This claim is bad in law for the reasons already given, as the eviction court held. Mr Simaan excepted to the claim on 30 April 2014. The exception has never been argued. St Jane has instead tried to enrol the action for trial before it was ripe and has brought interlocutory applications under this case number (Matters 13, 19 and 21) to interdict the transfer of other properties on the same alleged donation, to set aside the exception as an irregular step, to set aside the main application, and to bar Mr Simaan from being legally represented.³⁷

[19] In matter 7 (2912/2014 issued on 19 January 2014) the first, third and fourth respondents, with others, sue Webber Wentzel, three of its employees

³⁴List item 2, 00029-172; annexure FA23, 00002-221; FA para 82.1, 00003-27.

³⁵*Economic Freedom Fighters v Manuel* 2021 (3) SA 425 (SCA) paras [92] to [93]

³⁶List item 3, 00029-172.

³⁷List items 6, 13, 19 and 21, 00029-173 to 177; AH paras 7.1 to 8.8, 00002-4181 to 4184; SH paras 34 to 36, 54, 65 and 69, 00029-47 to 49, 60, 67 and 70 (00004-183-1017).

and the Deputy Sheriff for R1 198 397.20 arising from the execution of the eviction order. The particulars are silent on the court order under which the eviction took place. The defendants have excepted to the particulars of claim on the basis that it does not disclose a cause of action. St Jane purports to sue in its own name for thirty-three named children and adults, including general damages for their emotional suffering, which it cannot do. The action has generated notices and interlocutory applications but no progress.³⁸

[20] In matter 8 (14254/2014) the first, second and third respondents seek the rescission of orders made in and after the eviction proceedings, a permanent stay of execution and restoration of possession. This case number was not issued by the Registrar. The orders attacked include Satchwell J's refusal of the rescission of the eviction order and the leave to appeal; an "amended" notice of motion, delivered without compliance with Rule 28, adds rescission of the eviction order itself, after the Constitutional Court had refused leave to appeal and had refused to rescind its own order. Success on the original notice of motion would leave the eviction order intact, and the attack on the order of 1 April 2014 is *lis pendens* under case 4730/2010. The application has been transferred to this Division at the applicants' instance, and it has not been prosecuted. It has instead produced a counterapplication of more than sixty prayers (Matter 27).³⁹

[21] In matter 9 (26433/2014, 4 July 2014) St Jane's seeks to have Mr Simaan and two others declared in contempt of an order said to have been

³⁸List item 7, 00029-173; IH paras 9.1 to 9.4, 00002-4184 to 4185 (annexures FA45 and FA46, 00002-326 and 359).

³⁹List items 8 and 27, 00029-173 and 179 to 180; IH paras 14.1 to 14.3, 00002-4192; SH paras 40 to 42, 133 and 136, 00029-51 to 53 and 111 to 112 (annexures FA33 and FA34, 00006-38-312 and 313; 00002-7-169; 00002-173).

granted by Baqwa J on 29 January 2014. Baqwa J's registrar, having consulted the roll, the recordings and the judge, confirmed that no such order was granted. No preceding application or proof of service has ever been produced; the file cannot be found; and a writ issued on the purported order has been declared void. The contempt order obtained in Mr Simaan's absence on 4 July 2014 has been stayed pending his rescission application (Matter 11), which St Jane has sought to strike out rather than oppose (Matters 20, 22 and 38). An application founded on an order which, on the uncontested evidence, does not exist is vexatious in the fullest sense.⁴⁰

[22] In matter 10 (51679/2014, 14 July 2014) St Jane seeks to compel Webber Wentzel and Ms Phala to produce powers of attorney, to compel Mr Simaan (not cited) to confirm his mandate in person before the Registrar, and to interdict the attorneys from acting for him. Rule 7 is the remedy for a challenge to authority. It leaves it to the court, not the challenger, to be satisfied, and gives no right to prescribe the mode of proof or to bar attorneys from acting. The application was enrolled on a day's notice or less on 1 and 13 August 2014 and abandoned each time, whereupon Raulinga J barred its re-enrolment until the wasted costs, on the attorney and client scale, were paid. The challenge to the authority of the applicants' attorneys has been repeated in almost every subsequent matter, notwithstanding Kubushi J's order of 5 March 2020.⁴¹

⁴⁰List item 9, 00029-174; annexures FA25, FA29 and FA37, 00002-224, 248 and 298);

⁴¹List item 10, 00029-174; AH paras 11.1 to 11.10 and 17.2.6 to 17.2.7, 00002-4186 to 4189 and 4198 to 4199 (annexures FA42 and FA44, 00002-321 and 00004-325); SH paras 47 to 49 and 118.6, 00029-56 to 58 and 99.

[23] In matter 14 (20924/2015, 20 March 2015) Mrs Kitele claims R5 347 013.59 from Ms Phala and Adv Pullinger for malicious prosecution arising from her eviction and her incarceration for contempt, alleging that they acted without a mandate and that the eviction order was fraudulently obtained. Mr Simaan confirms the mandate. The eviction and committal were carried out under valid orders. The defendants filed an exception, and Mrs Kitele has responded with a Rule 30 notice and an application (Matter 16) to set aside the exception.⁴²

[24] In matter 15 (62167/2015, 4 August 2015) St Jane's obtained on an *ex parte* basis and without citing the owners, a rule *nisi* interdicting the auction of the properties pending matters 2, 6, 9 and 10. Mr Simaan and Jane's Haven intervened. The interdict stands or falls with the proceedings it protects; since those are vexatious, so is it.⁴³

[25] In matter 17 (9211/2017, 8 February 2017) St Jane seeks blanket leave, in any proceedings concerning the properties, present or future, to subpoena any deponent to give oral evidence and to invoke Rule 35. Rule 38 confines subpoenas to trials. Discovery in motion proceedings is exceptional⁴⁴; neither can be granted *in vacuo* for proceedings not yet in existence. The application was delivered without annexures and treated as *pro non scripto*.⁴⁵

⁴²List items 14 and 16, 00029-175; AH paras 12.1 to 12.7, 00002-4189 to 4191 (annexures FA57 and FA58, 00002-619 and 632); SH paras 56 to 58 and 61 to 62, 00029-61 to 64.

⁴³List item 15, 00029-175; AH paras 13.1 to 13.3, 00002-4191 to 4192; SH paras 59 to 60, 00029-62 to 63.

⁴⁴ *FirstRand Bank Ltd t/a Wesbank v Manhattan Operations (Pty) Ltd* 2013 (5) SA 238 (GSJ) para [17]

⁴⁵List item 17, 00029-175 to 176; SA para 9, 00002-1583; SH para 63, 00029-65 to 66.

[26] In matter 31 (049840/2022, 23 November 2022) the first, third and fourth respondents seek to remove Mr Simaan as a director of Jane's Haven, to install themselves in his stead, to have him declared delinquent, and compensation under the Companies Act 71 of 2008. None of them is a shareholder, a director or otherwise a person with standing under sections 157, 162, 163 or 165. No demand under section 165 preceded the application. Section 66(2)(b), on which they rely, applies to public companies. The founding affidavit persists in calling the eviction unlawful, and the notice of motion gives 3[...] S[...] Way from which they were evicted in 2013 as their address.⁴⁶

[27] In matter 33 (018061/2023, 21 February 2023) the respondents seek Mr Simaan's imprisonment for failing to obey a subpoena, invoking section 35(4) of the Superior Courts Act⁴⁷. That subsection creates a criminal offence, not a civil remedy. Section 35(2), which permits a warrant, requires proof that the witness' reasonable expenses were tendered, which is neither alleged nor the case — a requirement the respondents knew of, since their founding affidavit refers to it. The application also seeks orders in terms of prayers in other proceedings, which are *lis pendens*.⁴⁸

[28] Matter 36 (042153/2023, 4 May 2023) concerns an action for R75 360 178.00 against Mr Simaan, two other directors of Jane's Haven and Jane's Haven itself, for the alleged failure to provide housing, education, healthcare, food and clothing to the respondents and to children and mothers said to be in

⁴⁶List item 31, 00029-181; SH paras 144 to 148, 00029-115 to 119 (00019-1-1; 00019-1-5; 00019-2-18 para 32).

⁴⁷Act 10 of 2013.

⁴⁸List item 33, 00029-181; SH paras 152 to 153, 00029-121 to 124 (00021-1-1; 00021-16 para 24).

their care. No standing to sue for others is pleaded. The particulars do not disclose whether the claim is contractual or delictual and lack the averments for either. The damages are not set out as Rule 18 requires; and the eviction is again pleaded as unlawful and fraudulent.

[29] Matter 38 (050744/2023, 25 May 2023) is an urgent application without a hearing date, in terms of which the first, third and fourth respondents sought to set aside matter 11; contempt orders against Mr Simaan and Mr Lee under the stayed order of 4 July 2014 and under an order in matter 15 to which they are not parties; a stay of the main application; and an order barring Mr Simaan and his lawyers from instituting or advancing any proceedings in the Republic. The notice of motion was amended without notice on 27 December 2023. Neukircher J struck the matter from the roll for lack of urgency on 26 December 2023 and referred the parties to the Deputy Judge President. Leave to appeal was sought and refused.⁴⁹

[30] Two further considerations apply to all fifteen. First, none has been prosecuted to finality or even to the close of pleadings; the pattern is to launch, to meet opposition with Rule 30 notices and interlocutory applications rather than with replication or argument, and to enrol on short notice and then abandon. Secondly, the respondents have throughout used a Post Net box as their service address and, years after their eviction, still give 3[...] S[...] Way as their physical address. They formally challenged to disclose where they may be found. However, they have not done so. Costs orders have been made against them in the Supreme Court of Appeal, in the Constitutional

⁴⁹List items 38 and 39, 00029-183 to 184; SH paras 169 to 174, 00029-131 to 134 (FSA paras 276 to 293, 00002-5088 to 5093; 00023-2; 00023-19 to 20; 00023-33; 00023-65).

Court and in this Division, several on a punitive scale. As in *Lekalakala*, the applicants' fear that any costs awarded to them will be irrecoverable is not fanciful. Having regard to the pattern in which the respondents have been litigating in all these proceedings, I am persuaded that these are cases where furnishing of security for costs should be ordered to protect the applicants. I therefore order that the respondents should furnish security for costs in each matter in an amount to be fixed by the Registrar, with the consequential stay and the mechanism contemplated by Rule 47(3) and (4) should security not be furnished.⁵⁰

The declaration under the Act

[31] The first requirement is amply established, and not only by the fifteen matters. Matters 4 and 5 (an application under section 19 of Act 70 of 2002 for archived telephone records for use in civil litigation, and a disguised appeal against the eviction order); matters 12, 13, 16 and 19 to 22 (interlocutory applications repeating the challenges to representation and to the main application); matter 27 (a "counterapplication" of over sixty prayers in answer to the applicants' application to transfer matter 8); matter 29 (an urgent application on 24 hours' notice to suspend case management); matter 35 (an action for R50 600 000 against the applicants' attorneys and counsel for participating in case management); matters 37 and 40 (applications to set aside Strydom AJ's judgment and the directives); and an abortive application to the Supreme Court of Appeal, rejected by its Registrar, complete the picture. Every hallmark identified in *Chauke* is present: claims in tens of

⁵⁰AH paras 15.1 to 15.3, 16.7 to 16.10 and 17.2.1 to 17.3, 00002-4193 to 4199; SH paras 58.2, 145.2, 152.3, 182.4, 190.2 to 190.6, 191.5 and 195.3, 00029-62, 116, 122, 141, 153 to 155 and 158.

millions of rand by the operators of a non-profit children's home; a consistent failure to plead a cause of action; the joinder of every attorney, advocate, candidate attorney, secretary and registrar within reach, and an attempt to join the case manager herself; and the repeated re-litigation of the ownership of the properties and the lawfulness of the eviction after their final determination.⁵¹

[32] The respondents' conduct towards the courts is of the same character. Mrs Kitele and Ms Smith told Satchwell J in open court that they did not recognise her authority and would not obey her orders. They re-occupied the properties repeatedly after their eviction, on one occasion by threatening a security guard with a knife held to his neck. They relied on a fabricated court order and issued a writ on it. Mrs Kitele laid a complaint against Hellens AJ with the Judicial Service Commission, which was summarily dismissed. They have accused the applicants' attorneys of forging Kubushi J's order of 5 March 2020; accused an acting judge of a secret meeting with the applicants to craft a judgment in their favour; threatened to report judges to the Judicial Service Commission; demanded proof of an acting judge's appointment and of her authorship of her own judgment; and laid a complaint against counsel with the Legal Practice Council, which found no unprofessional conduct.⁵²

[33] The second requirement is not in doubt. Since the main application was served in 2017, and in the teeth of directives prohibiting the institution or advancement of any matter, the respondents have instituted matters 19 to 24,

⁵¹SH paras 28 to 33, 52 to 55, 61 to 62, 65 to 72, 136, 140, 156.3, 161, 167, 176 to 182.8, 00029-44 to 47, 59 to 60, 63 to 64, 67 to 71, 112 to 114, 125, 127, 130 to 131, 135 to 142; List items 34, 35 and 40, 00029-182 to 185.

⁵²FA paras 69 to 174, 00002-34 to 63); SH paras 130.7 to 130.11, 178.1 to 178.3, 189.6 to 189.8 and 192.2 to 193.4, 00029-108 to 110, 136 to 137, 152 and 155 to 157.

27 and 29 to 40 and have attempted to approach the Supreme Court of Appeal. By August 2025 the number of pending matters had doubled. Future litigation is not merely anticipated; on this record it is a certainty.⁵³

[34] As to the individual respondents: Mrs Kitele and Ms Smith are applicants or plaintiffs in their own names in Matters 5, 7, 8, 14, 16, 23, 24, 27 and 29 to 40 and, as the persons who assert authority to act for St Jane, are the moving spirits behind every matter brought in its name. Mr Kitele was a party to the appeals and to the rescission application against the eviction order. He is an applicant in matter 8 and in the sixty-prayer counterapplication in matter 27 and was held in contempt with the others on 1 April 2014. Having regard to all the matters referred in casu, it is my view that each of the first, second and third respondents has persistently and without reasonable ground instituted legal proceedings within the meaning of section 2(1)(b), and that an order under that section is necessary to protect both the applicants and the administration of justice. The order will extend to proceedings instituted in the name of St Jane, through which much of the litigation has been conducted.⁵⁴

The respondents' applications

[35] Matter 23 (6 July 2020) is the counterapplication. The notice of motion in this application runs into nineteen pages and consists of some sixty prayers. It seeks, among other things, security for costs against the applicants in the main application and in all pending matters; the “depauperisation” of Mr Simaan and Jane’s Haven; the dismissal of the main application for non-

⁵³SH paras 17.1, 181, 182.7 and 182.9, 00029-35, 138 to 139 and 141 to 142.

⁵⁴List, “Applicant/s” columns, 00029-172 to 185; AH paras 3.5 to 3.7 and 17.2.5, 00002-4175 to 4176 and 4198; SH paras 7.2, 131.2, 182.1 and fns 130 and 214, 00029-24, 104, 110, 140 and 143; HOA1 para 11, 00029-166.

compliance with Rules 6, 7, 11, 14, 16, 21(4), 27, 30, 37A, 40, 47(1) and 62(5); declarations that the applicants' attorneys are unauthorised and their powers of attorney are unlawful; declarations that the eviction was unlawful and that possession be restored; findings of perjury, fraud and contempt against unidentified persons; declarations that the main application was never under case management and that Kubushi J's directives are void; and costs. I have considered each prayer with the assistance of the applicants' unanswered analysis. None is sustainable. In summary: (a) unrepresented litigants cannot recover legal costs and so have no basis to demand security. A party who is *dominus litis* cannot claim security in his own matters, and no case is made that the main application is vexatious; (b) Rule 40 has never applied to these proceedings, so the "depauperisation" and related prayers fall away; (c) SJA's authority was determined by the order of 5 March 2020 and Rule 16 notices have been delivered in every pending matter; (d) Part A of the notice of motion in the main application was the Rule 47(1) notice, and the matters were enrolled together, not consolidated, so Rules 47(1) and 11 afford no complaint; (e) the lawfulness of the eviction and the right to possession are *res judicata* and the relief duplicates matters 8, 14, 15 and 20; (f) findings of perjury, fraud and contempt cannot be made in motion proceedings against unidentified persons, and no one is in contempt of an order to which he is not a party or which directed him to do nothing; (g) the court's power under section 173 of the Constitution to regulate its own process includes the appointment of a case manager, the Deputy Judge President confirmed Kubushi J's appointment, and Rule 37A concerns trials; (h) section 2 of the Act does not require the proceedings relied on to have

been finalised. The application is an attempt to avoid a hearing of the main application by burying it in procedural objections. It falls to fail.⁵⁵

[36] Matter 24 (25 February 2021), was brought under Rules 30, 42 and 47(3). The respondents sought declarations that the main application is not under case management and that Rule 37A applies; the rescission of all of Kubushi J's directives; a declaration that representations made in court by the applicants constitute perjury; orders that SJA may not seek security in matters in which it is not on record and that the applicants are under bar in matters 6 and 7; and orders in terms of matter 23. Each prayer either duplicates matter 23 and is *lis pendens* or fails for the reasons already given. Statements from the bar are not made under oath and cannot be perjury. Mr Simaan's exception in matter 6 was delivered within five days of the notice of bar. Its history is itself a study in abuse. It was enrolled and then withdrawn or removed six times between March 2021 and August 2023. An application for leave to appeal against De Vos AJ's removal of it, to the hearing of which the respondents then objected, which they did not attend, and which was refused on 4 December 2023 with a finding that the challenge was irregular and vexatious; a "notice to produce" demanding proof of De Vos AJ's appointment and of her authorship of her judgment; and a notice of application for leave to appeal to the Supreme Court of Appeal, never prosecuted. There is no merit in this application. It is bound to fail.⁵⁶

⁵⁵List item 23, 00029-178; AH para 20.1, 00002-4205 (00002-216-2023); SH paras 73 to 127, 00029-72 to 103 (answering affidavit from 00002-769-8323); AH para 18.2.7, 00002-4201.

⁵⁶List item 24, 00029-178 to 179; AH para 20.9, 00002-4207; SH paras 128 to 132 and 190.2, 00029-104 to 111 and 153 (00004-72-435; 00004-185-1017; judgment of De Vos AJ, 00002-4862 para [36]).

[37] In matter 32 (30 November 2022) the respondents seek default or summary judgment in matters 23 and 24; payment under an *allocatur* which is itself the subject of a pending rescission application, and which taxed, for an unrepresented litigant, fees reserved to legal practitioners; the setting aside of the applicants' Rule 30 and 30A notices; and declaratory relief of no discernible purpose. Default or summary judgment is not competent in motion proceedings; the balance is *lis pendens* or misconceived. This application also fails.⁵⁷

[38] In matter 30 (046528/2022, 11 November 2022) St Jane, Ms Smith and Mrs Kitele sought to interdict SJA from acting in the matters in which security is sought, declaratory relief about case management, orders in terms of matters 23 and 24, and an investigation of the attorneys by the Legal Practice Council. The notice of motion has twice been amended without compliance with Rule 28 to cite further practitioners, without any application for joinder. When it came before Strydom AJ, she ordered on 5 February 2024 that no party may continue with any litigation without the authority of the case manager or the Deputy Judge President, rejected the suggestion that SJA rather than Kubushi J had authored the directives, found that the respondents had made patently false submissions about earlier hearings and had deliberately understated the nature of their application, and awarded punitive costs. Their application for leave to appeal, alleging that the judgment had been supplied to the Acting Judge by the applicants at a secret meeting, was withdrawn; their urgent application to have the judgment declared null and

⁵⁷List item 32, 00029-181; FA pp 00002-108 para 320; Annexure FA 72 pp 00002-1050; FA pp 00002-109 para 328; FA pp 00002 para 329; pp00002-3709-3712; pp 00002-2409-2411; SH paras 149 to 151, 00029-119 to 121 (00002-236-2409).

void (matter 40) was struck from the roll by Ally AJ, who sent the parties to the Deputy Judge President for case management, a meeting the respondents did not attend. There is no basis for interdicting attorneys whose authority has been judicially confirmed. The application can, therefore, not succeed.⁵⁸

[39] In matter 34 (026803/2023, 23 March 2023) the respondents sought in Part A of the notice of motion to stay the case management directives pending thirteen other matters. In Part B they sought to have the case management process declared unlawful, unconstitutional and invalid, and set aside. Twenty-three respondents are cited in the application. These include the applicants' attorneys, counsel, candidate attorneys, secretaries and the Registrar, and by a Rule 15 notice the respondents sought to join Kubushi J in the application. Part B is in substance an application to review proceedings of this court, which is not competent. This is evident from the Rule 30A application to compel a record under Rule 53 which proceeded from the same misconception. Part A is unsupported by any particularity in the founding affidavit. In any event, the respondents' complaints about case management have now been ventilated with the main application, which is what they said they wanted. Under the circumstances the application falls to be dismissed.⁵⁹

Costs

[40] The applicants seek the costs of the main application on the scale as between attorney and own client and of the five applications on the scale as between attorney and client, with the costs of two counsel on scale C. In my

⁵⁸List items 30 and 40, 00029-181 and 184 to 185; SH paras 142 to 143, 176 to 180 and 190.3 to 190.6, 00029-114 to 115, 135 to 138 and 153 to 154 (judgment of Strydom AJ, 00020/1455 paras 14.2 and 35).

⁵⁹List item 34, 00029-182; HOA3, 00029-169 to 170; SH paras 154 to 159, 00029-124 to 126 (FSA paras 242 to 250, 00002-5078 to 5080).

view punitive costs are justified. Litigation in these proceedings continued for fourteen years in disregard of court orders, on foundations fabricated or *res judicata*, latterly against the applicants' lawyers personally, in breach of directives repeatedly explained to the respondents, and accompanied by unfounded accusations of fraud and collusion against practitioners and judges. I must mention that this record exceeds 10 000 pages. I agree with the applicants that two counsel were necessary to deal with the matters. Mr Kitele was not an applicant in the five applications, and costs in them are sought only against the parties to them.⁶⁰

Order

[41] In the result I make the following orders:

A. Under case number 19506/2017

1. The interlocutory application under the above case number, dated 6 July 2020 and uploaded to CaseLines at section 00002, sub-section 216, page 2023, launched by the First, Third and Fourth Respondents, seeking security for costs and other relief, is dismissed.
2. The interlocutory application under the above case number, dated 26 February 2021 and uploaded to CaseLines at section 00002, sub-section 368, page 3180, launched by the First, Third and Fourth Respondents, seeking to set aside case management directives and other relief, is dismissed.
3. The interlocutory application under the above case number, dated 30 November 2022 and uploaded to CaseLines at section 00002, sub-section 396, page 3709, launched by the First, Third and Fourth Respondents, seeking various items of relief, is dismissed.

⁶⁰HOA1 para 12, 00029-166; HOA2 and HOA3 para 2, 00029-167 and 171; SH para 184.1 and fn 214, 00029-143; AH para 21.4, 00002-4210;

4. The First, Third and Fourth Respondents are ordered to pay the costs of the interlocutory applications referenced in paragraphs 1, 2 and 3 above, jointly and severally, the one or more paying the other or others to be thereby absolved, on a scale as between attorney and client including the costs of two counsel, with counsel's fees taxed on scale C.
5. The Applicants' application for leave to amend the Notice of Motion in this matter, dated 21 November 2024 and uploaded to CaseLines at section 00002, sub-section 825, page 8694, is granted.
6. Those of the First to Fourth Respondents listed in paragraphs 6.1 to 6.15 below are ordered to provide security for the legal costs of the Applicants (insofar as they are cited as respondents and/or defendants in the proceedings referred to below) in each of the following proceedings ("the pending proceedings"), in each instance in an amount to be determined by the Registrar of this Court, on the grounds that the pending proceedings are vexatious:
 - 6.1 The Fourth Respondent in case number 55315/2011 (application to investigate whereabouts of children);
 - 6.2 The Fourth Respondent in case number 67234/2011 (urgent application);
 - 6.3 The Fourth Respondent in case number 15660/2012 (action for damages);
 - 6.4 The Fourth Respondent in case number 75314/2013 (action for transfer of immovable property);
 - 6.5 The First, Third and Fourth Respondents in case number 2912/2014 (action for damages arising from eviction by the sheriff);
 - 6.6 The First, Second and Third Respondents in case number 14254/2014 (rescission);
 - 6.7 The Fourth Respondent in case number 26433/2014 (urgent contempt application);
 - 6.8 The Fourth Respondent in case number 51679/2014 (application to stop appointed attorneys from acting);
 - 6.9 The First Respondent in case number 20924/2015 (action for damages arising from eviction and incarceration for contempt);

- 6.10 The Fourth Respondent in case number 62167/2015 (interdict);
 - 6.11 The Fourth Respondent in case number 9211/2017 (application for leave to subpoena);
 - 6.12 The First, Third and Fourth Respondents in case number 049840/2022 (application to remove Mr Simaan as a director);
 - 6.13 The First, Third and Fourth Respondents in case number 018061/2023 (application for declaratory orders regarding contravention of subpoenas);
 - 6.14 The First, Third and Fourth Respondents in case number 042153/2023 (damages action); and
 - 6.15 The First, Third and Fourth Respondents in case number 050744/2023 (application to set aside rescission application).
- 7. Pending the furnishing of security as referred to in paragraph 6 above, the pending proceedings are stayed and, in each of them, those of the First to Fourth Respondents who have been ordered to provide security are restrained and interdicted from proceeding with or acting in any way to advance the pending proceedings.
 - 8. Should the Respondents in question fail to furnish security within 30 (thirty) days from the date on which the amount of such security is determined, this application may be enrolled for the purpose of striking out the pending proceedings (or such of them as the amount of security has been determined in but not furnished) as vexatious.
 - 9. The Registrar is directed to affix a copy of this order to each of the Court files in respect of the pending proceedings.
 - 10. The First, Second and Third Respondents are declared vexatious litigants as envisaged in section 2 of the Vexatious Proceedings Act 3 of 1956.
 - 11. The First, Second and Third Respondents are restrained from instituting any new or further applications or actions of any nature in any Court or inferior court against any person, including new

proceedings in the name of the Fourth Respondent, without the prior leave of this Court in terms of section 2(1)(b) of Act 3 of 1956.

12. The First, Second, Third and Fourth Respondents are ordered to pay the costs of this application jointly and severally, the one or more paying the other or others to be absolved thereby, on the scale as between attorney and own client, including the costs of two counsel, with counsel's fees taxed on scale C.

B. Under case number 046528/2022

1. The application is dismissed.
2. The First, Second and Third Applicants (St Jane's De Chantal Home, Josephine Smith and Hannah Kitele) are ordered to pay the costs of the application jointly and severally, the one or more paying the other or others to be thereby absolved, on the scale as between attorney and client including the costs of two counsel, with counsel's fees taxed on scale C.

C. Under case number 26803/2023

1. The application is dismissed.
2. The First, Second and Third Applicants (St Jane's De Chantal Home, Josephine Smith and Hannah Kitele) are ordered to pay the costs of the application jointly and severally, the one or more paying the other or others to be thereby absolved, on the scale as between attorney and client including the costs of two counsel, with counsel's fees taxed on scale C.

M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the applicants

Adv J F Mullins SC, Adv I Hlalethoa and
Adv T Odendaal

Instructed by

Savage Jooste & Adams Inc, Pretoria

For the first to fourth respondents

No appearance

For the fifth respondent

Van Wyk W P S from Malatji & Co

Date of judgment

4 September 2026