
ORDER

1. The late delivery of the respondent's answering affidavit in this application is condoned.
2. The application by the applicant for an order that the respondent furnish security for his costs in the main application under this case number, and for an order staying the main application, is dismissed.
3. The prayer that the applicant's founding affidavit in this application serve as his answering affidavit in the main application is refused.
4. The applicant must deliver his answering affidavit, if any, in the main application within 15 days of the date of this order.
5. The applicant must pay the respondent's costs of this application on the scale as between attorney and client, such costs to include the costs of two counsel where so employed.

JUDGMENT

GARVEY AJ

Introduction

- [1] The applicant, Mr G[...] C[...], asks that the respondent, Ms V[...] C[...], his former wife, be ordered to furnish security for his costs in a pending application in this court (*"the main application"*). He asks for security of R 950 000, alternatively an amount to be fixed by the Registrar, and for the main application to be stayed until the security is given. The application is brought under rule 47(3) of the Uniform Rules of Court. It is opposed.

- [2] The respondent is the applicant in the main application. Mr C[...] is the first respondent in it. To avoid confusion, I refer to the parties as they are cited in this application. Mr C[...] is the applicant, and Ms C[...] is the respondent.
- [3] The applicant asks for two further orders. First, that his time to deliver an answering affidavit in the main application be extended under rule 27(3) until 15 days after the respondent furnishes security. Second, that if the stay is refused, his founding affidavit in this application "*shall serve as his Answering Affidavit in the Main Application*". He asks for costs on the attorney and client scale, including the costs of two counsel on scale C.
- [4] The respondent asks that the application be dismissed with costs on the attorney and client scale, including the costs of two counsel. She says the application is not a genuine attempt to secure a costs award. She says it is the latest step in a strategy, announced by the applicant himself years ago, to exhaust her financially and to prevent the determination of her claims under an order of this court.
- [5] For the reasons that follow, I agree. The application fails on every ground advanced. It is, moreover, itself an abuse of the process of this court. That conclusion determines the costs order.

Only one application is before the court

- [6] P[...] Security Group (Pty) Ltd (P[...]), the second respondent in the main application, delivered its own rule 47 application against the respondent on 1 September 2025. It seeks security of R 500 000. The two security applications travelled together on the papers, and the respondent answered both in a single affidavit.
- [7] They are, however, separate applications, and they were separately enrolled. On 3 June 2026 the Honourable Acting Deputy Judge President, Modiba ADJP, issued a directive under this case number. The directive records that the applicant's security application is enrolled for 8 June 2026, that P[...]’s security application is enrolled for 5 October 2026, that "[t]he Court is seized,

on that date, only with the First Respondent's application", and that there is to be no consolidation or simultaneous hearing of the two applications.

- [8] The matter came before me on 8 June 2026 accordingly. As directed, the hearing proceeded solely in respect of the applicant's application for security. This judgment decides only that application. P[...]s application stands enrolled for 5 October 2026, as directed, and nothing said here decides any issue in it.

Background

- [9] The parties married in 1996, out of community of property. The respondent worked in the family security business, the P[...] group, from 1993. From June 2003 she held half the shares in G[...] Properties (JHB) (Pty) Ltd ("*G[...] Properties*"), the holding company of P[...]. In February 2020 the parties transferred the shares they still held in P[...] itself to G[...] Properties. The respondent's employment was terminated in November 2020. The marriage then ended in divorce.
- [10] On 6 October 2021 Marston AJ, by agreement between the parties, made a settlement agreement an order of court ("*the divorce order*"). Three of its terms matter here.
- [11] First, clause 1.8 records a "*present agreed indebtedness*" to the respondent of R 12 665 593 "*in respect of the Applicant's shareholding in G[...] Properties JHB (Pty) Ltd and in the P[...] groups of companies*". That sum was paid. It was, in the words of the clause, an agreed indebtedness "*save for the determination referred to hereinafter*".
- [12] Second, clause 2.9 creates that determination. Each party was to appoint an independent accountant to value the loan accounts and shares in the P[...] group. If the accountants disagreed, the dispute was to be referred to mediation or arbitration before one of three named retired judges. Clause 2.9.2.3 provides that, if the determined amount exceeds R 12 665 593, the balance must be paid to the respondent.

- [13] Third, clauses 1.10 to 1.12 disposed of earlier litigation between the parties. The applicant was to release the respondent from any obligation to pay the costs of a review application she had brought in 2021 against him, two co-directors and P[...], and to procure that the others waived their costs claims as well. Clause 2.10 obliges the applicant to maintain the parties' daughter, including all costs associated with her education in the United Kingdom.

The telephone transcript

- [14] The respondent annexed to her founding affidavit in the main application a transcript of a telephone call between the parties before the settlement. The applicant does not dispute that the call took place or that the words attributed to him were spoken. Two passages matter. In the first, in answer to the respondent's remark that the parties could go and spend another million rand on legal fees and get nowhere, the applicant said:

"Now to answer that statement of yours, about we can waste another million, I have got it to waste, you have not, I will deplete whatever money you have got, if I have to fight you for the next six years."

- [15] The respondent's immediate answer, on the transcript, was: *"No, please do not start . . . negotiation by threatening me"*. In the second passage the applicant said:

"Because eventually you will run out of money . . . And then I will just carry on until you say, well this, this and this and we will come to some form of a settlement and you will not have any pension money left, I am telling you, V[...]."

- [16] In his founding affidavit in this application the applicant says the transcript is quoted *"selectively, out of context and in attempt to deceive"*, and that he *"did not intend to financially ruin the Respondent, she intended to ruin me"*. The passage he himself puts up as giving *"a more balanced view"* includes, in full, the first threat quoted above. I return to the significance of these passages below.

The arbitration and the dividend

[17] The valuation dispute under clause 2.9 went to arbitration before the retired Judge Joffe. His appointment was confirmed on 5 April 2022. A preliminary point about the arbitrator's jurisdiction was argued on 19 July 2023 and decided against the respondent, with costs, in an award published in September 2023. No evidence on the merits has ever been led.

[18] The hearing of 19 July 2023 matters for another reason. During argument the applicant's then counsel told the arbitrator, on instructions, that a dividend of R 10 741 834 had been paid by P[...] to G[...] Properties before 6 October 2021, that is, before the divorce order, and that it had not previously been disclosed:

"That dividend, I'm instructed Judge, was paid pre-the sixth of October 2021. So, he only . . . so between the time that he did his initial report, which was not disclosed, and the report to the arbitration, that dividend was done. For 10.7 million rand."

[19] The dividend also appears in the report of the applicant's own valuation expert. The respondent's case is that she knew nothing of it when she settled, that she held a half interest in G[...] Properties when it was paid, and that its effect was to move value out of the company being valued for her payout. Whether that case is good is not before me. What matters for present purposes is that the dividend is not her invention. It is recorded in the applicant's expert's report and was confirmed by his own counsel.

[20] The arbitration then stalled. The applicant's attorneys withdrew in November 2023. New attorneys took over early in 2024. In March 2024 the respondent's attorney asked that the arbitration be stayed pending a High Court application about the alleged fraud. No objection was raised. In July 2024 the applicant's new attorneys declined to answer questions directed at a joint meeting of the experts, writing that "[w]e will not be responding to your questions - we have no duty to do so". In September 2024 the arbitrator recorded that it appeared *"that the arbitration before me will not continue"* and asked whether he could dispose of his files.

- [21] In March 2025 the respondent's attorneys asked for a further pre-arbitration meeting to get the arbitration moving. In early April 2025 she caused subpoenas to be issued against P[...], two banks and the auditors for the financial records underlying the valuation. At the pre-arbitration meeting on 8 April 2025 the applicant's legal team raised, for the first time, section 23 of the Arbitration Act 42 of 1965. They contended that, because no award had been made within four months, the arbitrator's mandate had lapsed. On 22 April 2025 the applicant's attorney wrote that the arbitration was terminated at the applicant's instance. On 23 April 2025 the arbitrator declined to decide the dispute on correspondence and left the parties *"to take such steps as they may be advised . . . to protect their rights"*.

The main application

- [22] On 17 July 2025 the respondent launched the main application against the applicant, P[...], Standard Bank, Nedbank and Stein Auditors. Part A claims payment of R 5 370 917, being half of the dividend, from the applicant and P[...], production of the subpoenaed documents, and the exchange of expert reports and a joint minute. Part B claims payment of whatever balance that process shows to be due to her above the R 12 665 593 already paid.
- [23] On 8 December 2025 the respondent delivered a notice of motion, supported by a supplementary affidavit, for leave to amend the main notice of motion. The proposed amendment adds alternative relief. An extension, under section 23 of the Arbitration Act, of the time for making an award in the arbitration, alternatively a declaration that section 23 is no impediment to its completion. Her stated purpose is that, if her claims cannot be decided on motion, they be decided in the arbitration.

This application

- [24] The applicant did not deliver an answering affidavit in the main application. Instead, on 6 August 2025, he delivered a notice under rule 47(1) demanding security of R 950 000 within 10 days. The grounds were that the respondent is a *peregrinus* who owns no unmortgaged immovable property in the Republic, and that the main application is vexatious, reckless and an abuse of the

process of court. The respondent disputed her liability to give security on 20 August 2025. This application followed on 26 August 2025.

- [25] The respondent's answering affidavit was delivered on 21 October 2025, about 14 court days late. The applicant delivered a replying affidavit on 4 November 2025. Heads of argument were exchanged. This application was heard on 8 June 2026. The applicant's answering affidavit in the main application remains outstanding, now some 10 months after his opposition was noted.

The issues

- [26] Four issues arise:

[26.1] condonation of the late answering affidavit;

[26.2] whether security should be ordered on the ground that the respondent is a *peregrinus*;

[26.3] whether security should be ordered on the ground that the main application is vexatious, reckless or an abuse of the process of court; and

[26.4] costs, including the scale.

Condonation

- [27] The answering affidavit was 14 court days late. The respondent explains that two interlocutory postponement applications arrived in the last week of September 2025, and that her senior counsel was seriously ill. She says the delay caused no prejudice. The applicant opposed condonation in his replying affidavit, criticising the explanation as bald. His heads of argument did not press the point.

- [28] The explanation could have carried more detail, but the delay was short. No hearing date was lost. No real prejudice is identified, and the applicant, whose own answering affidavit in the main application has been outstanding since August 2025, is not well placed to demand strict compliance with the rules from his opponent. Condonation in the circumstances is granted.

The legal framework

- [29] Rule 47 deals with procedure only. It regulates how security is demanded, fixed and enforced. It does not say when a litigant is entitled to security. That question is answered by the common law. (See *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* 2015 (5) SA 38 (SCA) at para 5). The onus is on the party seeking security to persuade the court that security should be ordered. (See *Boost Sports Africa supra* at para 14).
- [30] Where the claimant is a *peregrinus*, that is a person neither domiciled nor resident within the Republic, the court may order security. But there is no right to security as of course. The court has a discretion. It must be exercised on the particular circumstances of the case and on considerations of equity and fairness to both parties. (See *Magida v Minister of Police* 1987 (1) SA 1 (A) at 14D-F).
- [31] Where the claimant is an *incola*, inability to satisfy a costs order is not, on its own, a ground for security. Something more is required. (See *Ramsamy NO v Maarmann NO* 2002 (6) SA 159 (C) at 172I-173A). In *Boost Sports Africa supra* the Supreme Court of Appeal held that there is no basis for distinguishing between an *incola* company and an *incola* natural person, and stated at paragraph 16:

"Accordingly, even though there may be poor prospects of recovering costs, a court, in its discretion should only order the furnishing of security for such costs by an incola company if it is satisfied that the contemplated main action (or application) is vexatious or reckless or otherwise amounts to an abuse."

- [32] "Vexatious" has a settled meaning:

"In its legal sense 'vexatious' means 'frivolous, improper: instituted without sufficient ground, to serve solely as an annoyance to the defendant' . . . 'abuse' connotes a mis-use, an improper use, a use mala fide, a use for an ulterior motive."

(See *Fisheries Development Corporation of SA Ltd v Jorgensen* 1979 (3) SA 1331 (W) at 1339E-F, quoted with approval in *Boost Sports Africa supra* at para 17).

- [33] An action is vexatious and an abuse of process if it is obviously unsustainable, and this *"must appear as a certainty, and not merely on a preponderance of probability"*. (See *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 565D-E). In a security application the merits threshold is somewhat less stringent than in an application to stop the litigation outright. (See *Fitchet v Fitchet* 1987 (1) SA 450 (E) at 454E-G; *Boost Sports Africa supra* at para 18). But the court does not attempt to resolve the dispute between the parties. That would frustrate the purpose for which security is sought. (See *Zietsman v Electronic Media Network Ltd* 2008 (4) SA 1 (SCA) at para 21).
- [34] Abuse of process, in general terms, *"takes place where the procedures permitted by the rules of the court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective"*. (See *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734F-G). When a court finds an attempt to use, for ulterior purposes, machinery devised for the better administration of justice, it is the duty of the court to prevent the abuse. (See *Hudson v Hudson* 1927 AD 259 at 268). The power to order security against an *incola* flows from this inherent jurisdiction, and it is exercised sparingly. (See *Ecker v Dean* 1938 AD 102 at 111; *Western Assurance Co v Caldwell's Trustee* 1918 AD 262 at 274).
- [35] Finally, an order for security engages section 34 of the Constitution. It can shut a claimant out of court. The court must therefore balance the potential injustice to a claimant who is prevented from pursuing a legitimate claim against the potential injustice to a defendant who succeeds but cannot recover costs. (See *Giddey NO v J C Barnard and Partners* 2007 (5) SA 525 (CC) at para 8). Ability to pay is a relevant factor, but it is not the central

consideration. (See *Cape Cash and Carry (Pty) Ltd v Xtreme Works (Pty) Ltd* 2025 (4) SA 156 (WCC) at paras 17-18, on which the applicant's counsel relied).

Is the respondent a peregrinus?

- [36] Domicile or residence of a permanent or settled nature is sufficient to make a litigant an *incola*. Either will do. (See *Protea Assurance Co Ltd v Januszkiewicz* 1989 (4) SA 292 (W) at 294F).
- [37] The applicant says the respondent is a *peregrinus*. She lives in Clevedon, England, with her husband, a British citizen. She works in the Bristol area as a bookkeeper. She and her husband own a United Kingdom company. A deeds office search shows no immovable property registered in her name in the Republic. In reply the applicant calculated that, between June 2023 and September 2025, she was within South Africa for 57 out of 808 days, constituting 7% of the time.
- [38] The respondent says she is not. She is a South African citizen and holds only a South African passport. She lives in the United Kingdom on a spousal visa which expires on 22 March 2028. If it is not renewed, she must return. British citizenship, if it ever comes, is years away. She has returned to South Africa six times in just over two years, with a seventh visit booked. Her mother and 15 other close family members live here. She uses South African doctors, banks and a South African cellphone number, and receives her revenue correspondence here. In her words: "*I still consider South Africa as home and not the UK. If anything, I am a peregrinus in the UK.*"
- [39] There is force on both sides. Settled physical residence abroad points to *peregrinus* status. A conditional and temporary right of residence, retained citizenship and deep personal ties point the other way. I find it unnecessary to decide the question. I will assume, in the applicant's favour and without deciding, that the respondent is a *peregrinus*. Even on that assumption, the application fails.

No case for security, even on the assumption

[40] The *peregrinus* practice is protective. Its aim is to ensure that a successful *incola* is not left holding a costs order that cannot be enforced because the claimant and her assets are beyond reach. The enquiry is practical, posing the question of whether there is a real risk that a costs order will be unenforceable. The absence of registered immovable property is not, by itself, the test.

[41] The applicant's own evidence answers that enquiry against him. His founding affidavit states:

"I have no idea of the Respondent's financial means, but what I am certain of is that it is clear that the Respondent does not own any property within the Republic of South Africa and has divested whatever assets she may have had from the Republic."

[42] The passage refutes itself. A deponent who has "*no idea*" of his opponent's means cannot, in the same sentence, be "*certain*" that she has divested her assets. No fact is offered in support of the divestment allegation. It is speculation, sworn as certainty.

[43] Against this stands the respondent's evidence of assets within the Republic. A 34% shareholding in Vianca Developments (Pty) Ltd, which owns, unmortgaged, the Benoni property at which she stays when in the Republic, a living annuity with Stanlib, an Investec investment, and Stanlib unit trusts. She received approximately R 12 600 000 under the divorce order and R 6 700 000 from the sale of the former matrimonial home. She offered to place the supporting documents before the court in chambers, while declining to hand them to the applicant in the light of his conduct towards her. I declined the offer.

[44] The applicant attacks this evidence as undocumented, and there is some substance in the criticism. The shareholding is a minority one. The investment values are not disclosed. But the criticism forgets where the onus lies. It was for the applicant to show a real risk that a costs order of about R

950 000 would go unsatisfied. He showed only that the respondent owns no immovable property in her own name. For the rest, he concedes that he knows nothing. That is not a discharge of the onus. It is an invitation to guess.

[45] Two further considerations put the matter beyond doubt.

[46] The first is timing. The respondent has lived in the United Kingdom, to the applicant's knowledge, since January 2023. The divorce order itself obliges him to fund their daughter's education there. Through more than two years of arbitration, including a contested preliminary point, an award, and prolonged correspondence, he never asked her for security. The demand came on 6 August 2025, three weeks after the respondent issued the main application in this court. It does not respond to any change in her circumstances. It responds to her claim.

[47] The second is the applicant's own recorded words. A discretion exercised on considerations of equity and fairness to both parties cannot ignore that the applicant told the respondent that he had money "*to waste*", that she had not, and that he would deplete whatever money she had if he had to fight her for six years. Security for costs is a shield against an unrecoverable costs order. It is not a weapon by which the wealthier party makes good a threat of attrition. The equities lie wholly against the applicant.

[48] Even if the respondent is a *peregrinus*, therefore, I would refuse security in the exercise of the discretion. The first ground fails.

Is the main application vexatious, reckless or an abuse?

[49] The applicant's second ground is that the main application is vexatious, reckless and an abuse of the process of court. Three complaints are advanced.

[50] The first concerns standing. The respondent ceased to be a registered shareholder of P[...] in February 2020, when the parties' shares in it were

transferred to G[...] Properties, as her own affidavit in the 2021 review proceedings records. The dividend was paid by P[...] to G[...] Properties. A shareholder of a holding company, the argument runs, has no direct claim to a subsidiary's dividend, and G[...] Properties is not a party to the main application. Her claim to half the dividend is said to be an absurdity.

- [51] The second is procedural. Prayer 2 of Part A asks the court to enforce subpoenas issued in the arbitration. The arbitration, on the applicant's case, has terminated, and, he contends, a subpoena mechanism cannot be transplanted into motion proceedings to achieve discovery.
- [52] The third is that the relief, including a statement and debatement, is incompetent on motion because material disputes of fact are foreseeable.
- [53] These are defences. Some of them appear substantial. The corporate-structure point, in particular, may present the respondent with a real difficulty in the main application, as may the objections to the subpoena relief. But the question on this application is not whether the applicant has arguable defences, or even strong ones. It is whether the main application is obviously unsustainable, as a certainty, that proceedings so hopeless or so improper that they can only have been brought to vex. That is a high threshold. It is not met.
- [54] The main application is anchored in an order of this court. The divorce order has never been appealed, varied or set aside. It records that the R 12 665 593 was paid save for the determination referred to in it, and it promises the respondent a determination of the true value of her shareholding, with payment of any excess. That determination has never taken place. The arbitration in which it was to occur ended, at the applicant's own instance, without any hearing on the merits. A litigant who then approaches the court that made the order, asking for the promised determination and for half of a documented dividend disclosed by her opponent's own counsel, is not litigating frivolously or solely to annoy.

- [55] Whether the dividend claim survives the corporate-structure defence, whether the subpoena prayers are competent, and whether the valuation dispute belongs on motion, in an action, or back in the arbitration, are questions for the court that hears the main application. A security application is not the place to decide them.
- [56] The applicant also relied on the removal of the main application from the unopposed roll on 20 October 2025, with costs on the attorney and client scale. That order punished a procedural misstep, and it stands. It says nothing about whether the main application itself is sustainable, nor does the applicant's assertion that the respondent has "*a history of bringing court processes, only to abandon them*". Not one such process is identified. The only candidate mentioned anywhere in his papers is the 2021 review application, being litigation that was settled in the divorce order, in which the applicant released the respondent from its costs. A costs release he gave in 2021 cannot be raised in 2025 as evidence of a litigation history.
- [57] Moreover, the applicant asks the court to find, as a certainty, that the respondent's claims are hopeless, while declining to deliver an answering affidavit dealing with them. He seeks findings on the merits without committing himself to a version on the merits. The second ground fails.

This application is itself an abuse of the court's process

- [58] It remains to deal with the respondent's contention that this application is itself an abuse of the process of court. In my view that contention is plainly right. It is the cumulative effect of the features of the application, in the circumstances and context of this matter, that compels the conclusion.
- [59] First, the threat and its execution. The applicant is on record telling the respondent, when the litigation between them began, that he had money to waste and she had not, that he would deplete whatever money she had, if he had to fight her for six years, and that eventually she would have no pension money left. He does not deny the words. This application demands R 950 000 from the respondent as the price of continuing her claim, with an

indefinite stay if she cannot pay. It is the recorded threat, translated into a court process.

[60] Second, the architecture of the relief. Security is coupled with a stay of the main application. The stay is coupled with an extension of the applicant's time to answer until after payment. Failing a stay, the applicant asks that his founding affidavit in this application, which does not answer the merits of the main application, serve as his answering affidavit. The design is transparent. If the application succeeds, the main application stops until the respondent pays. If it fails, the applicant claims to have answered without ever engaging the merits. Either way, the determination promised by the divorce order is deferred. Rule 47 exists to protect litigants, not to arrest litigation.

[61] Third, the quantum. The demand is for R 950 000. The draft bill of costs said to support it totals R 941 144.50. More seriously, the bill is not confined to the costs of defending the main application. It includes the costs of this security application itself, of a striking-out application the applicant says he intends to bring, and of a contemplated application to refer the main application to oral evidence. Each item is staffed with senior and junior counsel, with senior counsel's full set of fees counted twice. Security was demanded, in advance, for interlocutory applications of the applicant's own contemplation. The respondent describes the figure as "*a 'thumb suck' calculated to terrorise me*". The description is blunt, but it is closer to the mark than the bill. It may be added that the applicant claimed the costs of two counsel on scale C throughout, while briefing one junior counsel.

[62] Fourth, the evidence. The financial case rests on the self-refuting paragraph quoted above, where the applicant professed ignorance of the respondent's means, sworn in the same breath as certainty that she has divested her assets. The litigation-history allegation is made without a single instance. These are not the hallmarks of a genuine apprehension about the recovery of costs. They are the hallmarks of a case constructed to fit a predetermined end.

[63] Fifth, the timing already described, demonstrating no demand for security through more than two years of arbitration, and a demand within three weeks of the respondent invoking the jurisdiction of this court under the divorce order.

[64] An abuse of process takes place where procedures permitted by the rules to facilitate the pursuit of the truth are used for a purpose extraneous to that objective. That is this case. The purpose of this application was not to protect the applicant against an unrecoverable costs order. Its purpose was to halt the respondent's claim, escalate her costs and wear her down, being the strategy the applicant announced in the recorded call. I find that the application is a clear abuse of the process of this court. It is the duty of the court to prevent such abuse and, where it has already occurred, to mark it.

The remaining prayers

[65] The stay falls with the claim for security. The prayer that the applicant's founding affidavit in this application stand as his answering affidavit in the main application is refused. That affidavit does not answer the founding papers in the main application, and the order sought would leave the respondent's case effectively unanswered while appearing to close the papers. I will therefore allow the applicant a fixed period within which to deliver an answering affidavit, if he so chooses.

Costs

[66] Costs follow the result. The respondent asks for costs on the attorney and client scale, including the costs of two counsel. The applicant sought the same scale against her.

[67] An award of attorney and client costs is exceptional. It requires special considerations, and Courts grant such an award to mark their disapproval of vexatious conduct and of conduct that amounts to an abuse of the process of court. It may also be granted where proceedings are vexatious in their effect, because they put the other side to trouble and expense which it ought not to bear, even where the intent was not vexatious.

[68] I have found that this application is a clear abuse of the court's process. It was brought in execution of a recorded threat of financial attrition. It was supported by speculation sworn as certainty. It was inflated in amount, and it was coupled with machinery designed to stall the main application indefinitely while the applicant withheld his answer. On either approach, improper purpose, or vexatious effect, the threshold for a punitive order is met. The respondent should not be left out of pocket for having had to resist it.

[69] The costs of two counsel are also justified. The respondent briefed senior and junior counsel. The record is voluminous, the history of the litigation is intricate, and the stakes, being the respondent's access to court on a claim under an order of this court, are high. The applicant himself prayed for the costs of two counsel.

Order

[70] The following order is made:

1. The late delivery of the respondent's answering affidavit in this application is condoned.
2. The application by the applicant for an order that the respondent furnish security for his costs in the main application under this case number, and for an order staying the main application, is dismissed.
3. The prayer that the applicant's founding affidavit in this application serve as his answering affidavit in the main application is refused.
4. The applicant must deliver his answering affidavit, if any, in the main application within 15 days of the date of this order.
5. The applicant must pay the respondent's costs of this application on the scale as between attorney and client, such costs to include the costs of two counsel where so employed.

**C B GARVEY
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Date of hearing:	8 June 2026
Date of judgment:	10 September 2026
For the Applicant:	Adv D Mahon SC Adv MM Van Staden
Instructed by	Van Zyl Johnson Attorneys Inc.
For the Respondents:	Adv N Redman SC Adv S Martin
Instructed by	Ramsay Webber Inc.