



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

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
21/8/2026	
DATE	SIGNATURE

Case No: 129936/2023

In the matter between:

JOOST VAN DEN BOSCH

Applicant

and

RHODA VAN DER WESTHUIZEN

First Respondent

HELENA VAN DER WESTHUIZEN

Second Respondent

GERHARD BOSHOF

Third Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date for the handing down of the judgment shall be deemed to be 21 August 2026

JUDGMENT

M COETZEE, AJ:

- [1] The applicant seeks various final interdicts arising from, what is at its core, an acrimonious neighbour dispute between the owners and/or occupiers of adjoining Portion 182 of Plot 76 and Plot 183, Donkerhoek.
- [2] The respondents have filed an answering affidavit in terms whereof they:
- (a) seek condonation for the late filing of the answering affidavit;
 - (b) raise, as a point *in limine*, the existence of several material disputes of fact; and
 - (c) seek an order that the application be dismissed with costs on the scale as between attorney and client.

The request for condonation

- [3] The test for determining whether condonation should be granted or refused is the interests of justice, which must be determined with reference to all relevant factors. The factors that are taken into account in that enquiry include (a) the length of the delay; (b) the explanation for, or cause for, the delay; (c) the prospects of success for the party seeking condonation; (d) the importance of the issue(s) that the matter raises; (e) the prejudice to the other party or parties; and (f) the effect of the delay on the administration of justice.

- [4] After considering the aforementioned factors, I am convinced that it is in the interest of justice that the late filing of the respondents' answering affidavit in the main application be condoned.

The factual disputes

- [5] In the answering affidavit, the respondents raised the existence of several material disputes of fact, including those relating to:

- (a) The right of the applicant to enter onto Plot 183 without the necessary permission;
- (b) The flow of water onto Plot 183 from Portion 182 of Plot 76 and related issues thereto, such as the natural flow of water question;
- (c) The legality of the applicant's electric fence;
- (d) Harassment issues;
- (e) The electric cable and transformer issue on Plot 183, including the Eskom installation issue; and
- (f) Sabotage of the electrical cable running between the two properties in question.

- [6] In the light of what, *prima facie*, appeared to be factual disputes, the Court, prior to the hearing of the matter, requested both parties to consider whether the matter should be referred to oral evidence.

[7] In response, the applicant (who had since appointed new counsel), filed supplementary heads of argument, in which counsel identified five issues for determination in this matter, namely:

- (a) Whether the respondents sabotaged and/or damaged the electricity cables running across the second respondent's property to the applicant's property, and whether they should be interdicted from doing so in the future ("the first issue").
- (b) Whether the first and second respondents should allow the applicant or his appointed agent and/or Eskom representative unhindered access to the Eskom installations that are situated on the second respondent's property ("the second issue").
- (c) Whether the first respondent damaged the fence and/or boundary between the applicant's property and that of the second respondent, and whether she should be interdicted from doing so in the future ("the third issue").
- (d) Whether the first and/or second respondents blocked the stormwater access from the applicant's property onto the second respondent's property and whether they should be interdicted from doing so in future ("the fourth issue").
- (e) Whether the respondents harassed, threatened and or intimidated the applicant, his family or workers ("the fifth issue").

- [8] Having admitted that the affidavits did give rise to several factual disputes, the applicant submitted that at least the relief pertaining to the third, fourth, and fifth issues could be referred to trial. Alternatively, it was contended that the matter should be referred to trial *in toto*, with the costs of this application to be costs in the action.
- [9] It was further argued that the matter should be referred to trial rather than oral evidence, as the factual disputes are too numerous, interrelated and fundamental to the parties' opposing versions to be dealt with through a limited hearing of oral evidence.
- [10] Although the respondents made an issue in their answering affidavit of material disputes of fact in the papers, and even more so because applicant is requesting final interdicts regarding various alleged illegal and unlawful actions by the respondents, it was submitted during argument that the disputes are of such a nature that they could be satisfactorily determined without the advantage of a trial or referral to oral evidence. Alternatively, it was contended that the application should be refused based on the foreseeability of the factual disputes.

The legal framework

As was stated in *Room Hire CO (Pty) Ltd v Jeppe Street Mansions (Pty Ltd)*¹ “....it is undesirable to attempt to settle disputes of fact solely on probabilities disclosed in contradictory affidavits,...”

[11] In *National Director of Public Prosecutions v Zuma*² the SCA explained:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant’s (Mr Zuma’s) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent’s version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP’s version”

[12] It is common cause that the affidavits give rise to several disputes of fact.

[13] In terms of Rule 6(5)(g) of the Uniform Rules of Court, when disputes of fact arise in motion proceedings and cannot be resolved on affidavits, the Court has a discretion to either dismiss the application, refer the matter for oral evidence, or refer it to trial.

¹ 1949 (3) SA 1155 (T)

² 2009 (2) SA 277 (SCA)

[14] Given the correspondence exchanged between the parties, prior to the launching of this application, the factual disputes in this matter were reasonably foreseeable.

[15] When addressing the foreseeability of factual disputes, the Court, in *Golden Peanut and Tree Nut SA (Pty) Ltd v Vermeulen N.O and Others*³ stated the following:

“Frustration often occurs when motion procedures are elected in the face of severe and clear dispute of facts. Justice is not seen to be done because, among others, the veracity of evidence cannot be adjudicated effectively and evidence cannot be properly weighed. Cases might be tainted with speculation and uncertainty in fact and law.

Dismissal may follow if the dispute of fact should have been foreseen. The rule may, however, yield to the interest of justice and a resulting referral for trial. A proper costs order may repair an imbalance that was caused by slovenly or negligent litigation if the dispute was foreseeable or the process abused.”

[16] Considering the nature of the dispute, I am not inclined to dismiss the application. This is an ongoing dispute between neighbours that needs to be resolved.

[17] I agree with counsel for the applicant that the matter can only be properly resolved through the full ventilation of evidence and cross-examination that a trial process allows.

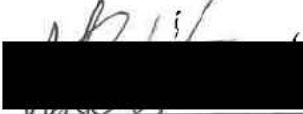
[18] In the exercise of my discretion, I therefore deem it necessary that the matter be referred to trial *in toto*.

³ (4975/2017) [2019] ZAFSHC 183 (7 October 2019)

[19] In the circumstances, I grant an order in the following terms:

ORDER:

1. The late filing of the respondents' answering affidavit is condoned.
2. The application is referred to trial.
3. The notice of motion shall stand as a simple summons, and the answering affidavit as a notice of intention to defend.
4. The applicant shall, as plaintiff in the action, within 20 days of the date of this order deliver his declaration.
5. The Uniform Rules dealing with further pleadings, discovery, and the conduct of trials shall thereafter apply.
6. Costs of this application are to be costs in the action.


MILUSKA COETZEE

ACTING JUDGE OF THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

Hearing date: 10 November 2025

Judgment date: 17 August 2026

Counsel for the Applicant: Adv JF van der Merwe

Applicant's Attorneys: AB Lowe Attorneys

Counsel for the Respondents: Adv GH Swanepoel
Respondents' Attorneys: Kleynhans & Swanepoel Inc