IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

30 October 2025 [redacted]

Case No: **2024-094886**

In the matter between:

ETTIENNE EHLERS	First Applicant
YOLANDE EHLERS	Second Applicant
LEATILE CONSTRUCTION AND PROJECTS CC	Third Applicant

and

SAN MARIE WILLEMSE	First Respondent

Case No: **2023-013850**

In the matter between:

ETTIENNE EHLERS	First Applicant

YOLANDE EHLERS Second Applicant

LEATILE CONSTRUCTION AND PROJECTS CC Third Applicant

and

CHRISTO BEKKER INC ATTORNEYS Second Respondent

JUDGMENT

H.R. GROENEWALD, AJ

Background:

[1] The applicants seek an order setting aside the warrants of execution issued under the two case numbers appearing above, alternatively staying execution pending the final determination of the underlying actions between the parties. They invoke Uniform Rule 45A. The respondents oppose the application.

[2] A preliminary issue concerns the applicants' request for leave to introduce a further affidavit and a transcript of evidence given by Mr Christo Bekker (Bekker) in separate proceedings. The affidavit was delivered approximately two weeks before the hearing. The respondents oppose its admission. Although argument on this issue and the merits overlapped, they require separate determination.

[3] The parties have a protracted and acrimonious litigation history. The applicants were unsuccessful in an application for joinder and in opposing an application for an interdict. Costs orders followed, pursuant to which the respondents caused warrants of execution to be issued. The applicants seek to defer enforcement of those costs orders until the underlying litigation has been determined.

[4] The applicants do not challenge the validity of the costs orders, nor do they propose to seek their rescission or reversal. Their case is that execution would cause irreversible prejudice, that the respondents are adequately protected by an interdict relating to immovable property, and that Bekker's alleged conduct provides grounds for staying execution.

[5] The respondents' objection concerning the non-joinder of the sheriff was not pursued in argument. In view of the conclusion reached below, it is unnecessary to determine that objection. The respondents' contention that the application constitutes an abuse of process was advanced as part of their opposition to the relief and their submissions on costs.

I. The further affidavit

[6] Bekker is the deponent to the answering affidavit and the attorney associated with the second respondent. The applicants seek to introduce

a transcript of evidence he gave before Vuma J on 9 June 2026 in ***Christo Bekker Incorporated v Raziserve (Pty) Ltd***, case number 111982/2024, in this Division. They contend that his evidence substantiates allegations already advanced in their founding papers concerning his handling of trust and other funds.

[7] The respondents objected to the delay in bringing the evidence and the incomplete and insufficiently contextualised presentation of the transcript. They submit that the applicants have not explained the delay in presenting it, and take issue with the context. The Court also understood the objection to be that the applicants had not adequately explained the context thereof. They further submitted that the Court should refrain from making findings concerning Bekker's conduct while judgment in those proceedings remains outstanding.

[8] Only part of the transcript accompanied the further affidavit. The Court was informed that a second part had been uploaded to the electronic case file during the week of the hearing. The applicants nevertheless stated that they did not rely on that portion. Its presence on the electronic file does not, without an explanation of its relevance and context, resolve the difficulty created by reliance on selected passages.

[9] Rule 6(5)(e) permits the Court, in its discretion, to allow further affidavits. The ordinary sequence of founding, answering and replying affidavits

serves the orderly and fair determination of motion proceedings. A party seeking to depart from that sequence must show good reason. The explanation for the late introduction of the evidence, its materiality, the stage of the proceedings and the prejudice to the opposing party are relevant considerations. See ***Hano Trading CC v JR 209 Investments (Pty) Ltd*** 2013 (1) SA 161 (SCA) at [10]–[12].

[10] The discretion must be exercised with due regard to the desirability of deciding the dispute on the relevant facts and to fairness to both sides. The enquiry does not, however, end there. It is also necessary to consider whether admitting the evidence would materially assist in determining the issues and whether its late introduction has been satisfactorily justified.

[11] The applicants have not satisfactorily addressed those considerations. In particular, they have not adequately established the material connection between the selected evidence in the separate proceedings and the test applicable to the present application for a stay of execution. Their reliance on the transcript is principally directed at substantiating allegations of misconduct by Bekker. It does not sufficiently explain how that evidence demonstrates an improper purpose in the enforcement of these costs orders or the injustice said to follow from execution.

[12] The lack of adequate context, the limited explanation for the late tender of the evidence and the failure to establish its materiality weigh against its

admission. I therefore decline to admit the further affidavit and the transcript tendered through it. This ruling entails no finding on the truth of the allegations against Bekker or on the issues awaiting determination in the separate proceedings.

II. The principles governing suspension of execution

[13] Rule 45A confers a discretion to suspend enforcement of an order. That discretion must be exercised judicially. The governing consideration is whether real and substantial justice requires a stay or whether injustice would otherwise result. In ***Van Rensburg NO and Another v Naidoo NO and Others; Naidoo NO and Others v Van Rensburg NO and Others*** 2011 (4) SA 149 (SCA) at [51]–[52], the Supreme Court of Appeal recognised suspension where the underlying causa is disputed or no longer exists, or where execution is employed for ulterior purposes.

[14] In ***Newnet Properties (Pty) Ltd t/a Sunshine Hospital v Road Accident Fund***[1] [2025] ZASCA 19 at [26]–[27], the Supreme Court of Appeal reaffirmed those principles and stated that an applicant seeking relief under Rule 45A must establish a prima facie right, a well-grounded apprehension of irreparable harm if relief is refused, a balance of

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[1] Not to be confused with Road Accident Fund v Newnet Properties (Pty) Ltd t/a Sunshine Hospital and Another (616/2024) [2026] ZASCA 15; [2026] 1 All SA 482 (SCA) (11 February 2026)

convenience favouring the order, and the absence of another satisfactory remedy.

[15] The respondents contend that the applicants' acceptance of the validity of the costs orders is dispositive of the application. I do not agree. A challenge to the validity of an order is not an invariable prerequisite for suspension of its enforcement. A stay regulates execution and need not entail reconsideration of the merits of the judgment. Nevertheless, the applicants must establish sufficient grounds for deferring enforcement of a judgment whose validity they accept.

[16] The costs orders remain binding. Their validity and the respondents' entitlement to enforce them are material considerations. Rule 45A does not provide an opportunity to reopen matters finally determined or to postpone payment merely because the judgment debtor would prefer to await the outcome of other litigation. The applicants must place facts before the Court demonstrating why a stay is required in the circumstances of this case.

III. The grounds advanced by the applicants

[17] The applicants' ground is expressed, *inter alia* in paragraphs 7.8, 7.12 and 7.13 of the founding affidavit. They describe the purpose of the application as the prevention of irreversible prejudice pending the determination of the

main action. They assert that attachment would cause irreversible prejudice to them and their business, whereas the respondents would suffer no prejudice because they already enjoy security under the interdict over immovable property. They further rely on their alleged lack of prior knowledge of the second respondent's mismanagement of trust and other funds.

[18] Those contentions require consideration of the anticipated outcome of the pending litigation, the effect of the alleged security, the relevance of Bekker's alleged conduct, and the evidence of harm said to justify intervention.

IV. The anticipated recovery and set-off

[19] In argument, the applicants had difficulty identifying the basis upon which the outcome of the pending litigation would justify withholding payment of the existing costs debts. Their contention was, in substance, that success in those proceedings might yield a favourable costs order. When this was explored, they initially suggested that set-off would follow, although they subsequently sought to characterise their case differently.

[20] To the extent that the applicants rely on set-off, the difficulty is that they have not established an existing reciprocal debt capable of extinguishing the respondents' costs claims. A possible future costs award depends

upon the outcome of litigation and the terms of any order ultimately made. It does not constitute a current and established counterclaim capable of extinguishing the existing costs debts by set-off.

[21] In ***Cooper v Feinstein*** [2005] ZAWCHC 28 at [16]–[19], the Court considered the disputed basis for set-off, the relevance of interdict principles and the circumstances governing a stay. The judgment recognises that there is no inflexible rule and that the enquiry depends on the facts. It does not support the proposition that the mere pendency of further litigation entitles a debtor to withhold payment under an existing costs order.

[22] The applicants' anticipated recovery is uncertain. Whether their contention is described as prospective set-off or as a reason for postponing payment, it does not, without further facts establishing injustice, justify a stay. Their additional grounds of prejudice and alleged misconduct must therefore be assessed separately.

V. The alleged security

[23] The applicants contend that the interdict relating to immovable property provides the respondents with security for capital and costs, whereas the applicants enjoy no equivalent protection. The respondents submit that Rule 45A is not a mechanism for obtaining security for costs.

[24] The existence of adequate protection for the respondents is relevant to the balance of convenience. It does not, however, establish that execution would cause the applicants irreparable harm or substantial injustice. Even accepting, in the applicants' favour, that the respondents are adequately secured, the applicants must still establish a sufficient basis for suspending enforcement. The absence of corresponding security in their own favour does not, by itself, supply that basis.

VI. The allegations concerning Bekker

[25] The applicants place considerable emphasis on Bekker's alleged actions and motives. Their allegations concern his conduct before judgment and, in material respects, before the litigation commenced. The respondents contend that these allegations do not justify staying execution.

[26] A distinction must be drawn between allegations of misconduct in the parties' earlier dealings and facts showing that the present execution process is being employed for an ulterior purpose. Earlier conduct is not necessarily irrelevant merely because it predates judgment, but it cannot be equated with conduct in the execution process. Its significance depends upon whether it establishes the requisite connection to the execution now sought to be restrained or to the injustice that execution would cause.

[27] The applicants have not established that connection. Their allegations are principally directed at Bekker's handling of funds and his conduct in other dealings. They do not sufficiently demonstrate why enforcement of these particular costs orders constitutes an abuse of the execution process. An allegation that a successful litigant previously acted improperly does not, without that connection, justify suspending an otherwise enforceable costs order.

[28] The relief is sought against both respondents, whereas the allegations of misconduct are directed principally at Bekker and the second respondent. Asked to explain the basis for relief against the first respondent, the applicants relied on the second respondent's role as her attorney and agent. That relationship, without further facts connecting the alleged conduct to execution on her behalf, does not establish grounds for staying execution. The applicants have not sufficiently explained why the allegations concerning Bekker justify the relief sought against her.

[29] It is unnecessary to determine the merits of the allegations against Bekker. I make no finding concerning his integrity, professional conduct or handling of funds. The conclusion is confined to the applicants' failure to show that those allegations establish grounds for the suspension of execution in this application.

VII. Harm and the exercise of the discretion

[30] The applicants assert that execution will cause irreversible prejudice to them and their business. Those assertions are not supported by sufficient evidence explaining the commercial consequences of execution or the nature and extent of the substantial harm they apprehend. The Court is accordingly unable to conclude that enforcement will produce the irreparable harm or substantial injustice upon which the application depends.

[31] Those allegations identify the conclusion the applicants ask the Court to reach. They do not adequately establish the factual basis for that conclusion. Nor does the alleged absence of prejudice to the respondents cure that deficiency. A balance of convenience favourable to the applicants, even if assumed, does not itself demonstrate that execution would cause the injustice necessary to warrant intervention.

[32] In ***Stoffberg NO and Another v Capital Harvest (Pty) Ltd*** [2021] ZAWCHC 37 at [27]–[28], the Court weighed the protection afforded to the creditor against the substantial consequences of execution, while cautioning that a stay is not available merely upon a plea ad misericordiam. The discretion requires a sufficient factual foundation. On the evidence presented here, the applicants have not established such a foundation.

[33] The relief sought would also defer enforcement until the finalisation of the underlying actions, the duration of which remains uncertain. The respondents' entitlement to payment would consequently be postponed for a potentially substantial period. That consideration reinforces the need for a properly substantiated case. It is not, by itself, decisive: the principal difficulty is that the applicants have not established grounds warranting a stay at all, whether for the period requested or for a shorter period.

[34] A stay necessarily delays the creditor's exercise of rights under the judgment. That consequence cannot itself exclude relief under Rule 45A. Equally, the discretion to regulate execution must be exercised with due regard to the binding force and finality of Court orders. In this case, the uncertainty of the anticipated recovery, the absence of a demonstrated improper purpose in execution, and the insufficient evidence of harm do not justify postponing enforcement.

[35] The applicants have therefore failed to establish a sufficient basis for suspending execution. Their acceptance of the validity of the costs orders does not preclude relief in principle, but the grounds advanced do not justify it on these facts. The case presented likewise provides no basis for the principal relief sought, namely the setting aside of the warrants.

VIII. Costs

[36] Both sides seek punitive costs. The respondents also contend that a costs order de bonis propriis is appropriate against the applicants' attorney, who is the second applicant's father. The family relationship does not, without more, justify such an order. The relevant enquiry concerns the attorney's conduct of the litigation, rather than his relationship with a client.

[37] Although the application is unsuccessful and the grounds advanced do not justify the relief, that does not, without more, establish mala fides or warrant punitive costs. Rule 45A makes relief of this nature available in appropriate circumstances. Merely invoking it unsuccessfully does not justify a punitive order. I am not persuaded that the circumstances warrant either punitive costs or an order de bonis propriis. The ordinary rule that costs follow the result should apply, both to the application for leave to introduce further evidence and to the substantive application.

Order

[38] The following order is made:

1. The application for leave to introduce the further affidavit and the transcript tendered through it is dismissed with costs.

2. The application to set aside the warrants of execution, alternatively to suspend execution, is dismissed with costs.

3. The costs in paragraphs 1 and 2 include the costs of counsel on Scale B.



H.R. GROENEWALD AJ
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Date of hearing: 21 October 2026

Date of judgment: 30 October 2026

For the applicants: S Bester

Instructed by: Steve Bester Attorneys

For the respondents: Adv E Prophy

Instructed by: Johan Nysschens Attorneys