

SOUTH AFRICA / JUDGMENT

C.R.W v L.M.W and Another (12866/2014) [2025] ZAWCHC 279 (2 July 2025)

[2025] ZAWCHC 279

COURT

Western Cape High Court, Cape Town

BEFORE

Le Grange

CASE / FILE NUMBER

12866/2014

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 12866/2014

In the matter between: -

C[...] R[...] W[...]

Applicant

and

L[...] M[...] W[...]

First Respondent

SHERIFF OF THE HIGH COURT MALMESBURY Second Respondent

Date of hearing: 26 June 2025

JUDGMENT:

2 JULY 2025

(Electronically delivered to parties)

LEGRANGE, J

Introduction:

[I] This matter came before me in the fast lane. The Applicant seeks the stay of a sale in execution of an immovable property, in the form of a rule nisi, pending the outcome of his rescission application. The rescission application relates to a final divorce order that was granted by Judge Salie-Hlophe (as she then was, now Salie) on 26 August 2020. The date for the sale in execution is Friday 4 July 2025 and the rescission application has been set down for hearing on 18 September 2025.

[2] The First Respondent, (the Respondent) opposed the application and launched a counter-application, also couched in the form of a rule nisi in which she seeks interdictory relief preventing the Applicant from instituting any further litigation against her and directing that he furnishes security for her costs in respect of two recent applications that was launched out of this Court pending the return date where she seeks a final order declaring the Applicant a vexatious litigant. Both applications were heard simultaneously.

Background:

[3] It is common cause that on 26 August 2020, Judge Salie granted judgment and final order regarding the patrimonial consequences, maintenance and costs in respect of the divorce between the parties. The Respondent was substantially successful. The Applicant was ordered to pay an amount of R 16.8 million in respect of the Respondent's accrual claim. She was also granted ancillary relief, and the Applicant was ordered to pay various costs orders including the costs of the divorce.

[4] The subject of the current stay proceedings is the property owned by the C[...] 's Trust that is situated in an upmarket Golf Estate near Atlantic Beach, Cape Town. Judge Salie found that C[...] 's Trust was the alter ego of the Applicant and declared that the assets and liabilities of the Trust be transferred to him in his personal capacity within 60 days of granting the order. To date that has not happened. On 17 May 2024, Acting Judge Holderness (as she then was) now Judge Holderness, declared the property executable pursuant to a Rule 46A application to satisfy the outstanding amounts of over R 11 million to the Respondent. A reserve price of R 9 million was set by the court. Aggrieved by the decision of the Court, the Applicant sought leave to appeal from the Court which was refused with costs. He then approached the Supreme Court of Appeal for special leave to appeal the judgment. That was also refused with costs.

[5] It needs to be said that the Applicant was also dissatisfied with the judgment and order of Judge Salie and launched an application for leave to appeal in that Court which was refused. He petitioned the Supreme Court of Appeal, which included a second application for leave to appeal to the President of the Supreme Court of Appeal and ultimately the Constitutional Court. All were dismissed with costs. The issues that were determined by Judge Salie are therefore res judicata and cannot be revisited.

[6] According to the Respondent, the current application is but another attempt by the Applicant to undermine and avoid complying with court orders. In her answering affidavit the Respondent alleges that since the order of 26 August 2020, the Applicant has adopted a Stalin-grad strategy to challenge and disregard the orders of court. A list of litigations the Applicant had embarked upon during and post the divorce proceedings was also attached to the Respondent's papers. The bulk of the litigation by the Applicant revolves around the outcome of the divorce proceedings.

[7] It is evident that the Applicant does not accept the outcome of the divorce proceedings and is willing to go to great lengths to overturn it. In 2021 when the apex court dismissed his applications for leave to appeal, the Applicant launched an urgent application on New Year's Eve on 31 December 2021 to stay the provisions of the divorce order for six months. That application was dismissed with costs. The Applicant thereafter launched 3 different applications out of the

Maintenance Court in which he sought either stay or vary the divorce order and or to reduce the maintenance he needs to pay to the Respondent. All three applications were dismissed with costs.

[8] The Applicant then turned his attention to the Respondent's attorneys and counsel. He lodged complaints with the Cape Bar Council and the Legal Practice Council (LPC). All these complaints were dismissed. The applicant dissatisfied with that outcome has now appealed against the LPC's rulings. These appeals are still pending. He also turned against his own erstwhile counsel and attorney and lodged a complaint to the LPC. He reported both his senior counsel who appeared on his

behalf to the Cape Bar Council, including his erstwhile financial expert to the South African Institute of Chartered Accountants.

[9] Judge Salie did not escape the Applicant's wrath. He also lodged a complaint against her at the Judicial Services Commission which was dismissed.

[10] On 5 March 2025, the Applicant lodged a formal complaint with the Office of the Legal Services Ombud (OLSO) alleging that all the legal practitioners that have been involved in this matter, including Judge Salie committed perjury, fraud, and malfeasance in defrauding high-net-worth litigants in family matters.

[11] In May 2025, the Applicant directed letters of demand to the Respondent's attorneys in terms of which he threatened to institute proceedings to recover R 210 million from them for alleged financial loss, reputational harm and damage to his mental, emotional and professional life. On 10 June 2025, the Applicant submitted supplementary complaints against the Respondent's attorney's and counsel to the LPC.

Stay Application

- [12] In the notice of motion, the Applicant seeks interim interdictory relief that the operation and execution of the court order granted on 13 June 2024, declaring the said property executable be suspended pending the outcome of the rescission application which had been set down for hearing on 18 September 2025.
- [13] The Applicant, who appeared in person, submitted that allowing the auction will cause him irreversible harm as the rescission application is based on serious procedural and Constitutional violations. According to the Applicant the underlying issues have not been heard on the merits in any appeal and the property in question remains the primary residence of the C[...] 's Trust and himself. It was further contended that the characterization by the Respondent that the Trust is his alter ego was not only misleading but will be challenged in the rescission application. In respect of the counter-application the Applicant submitted that he was not given a reasonable time to prepare an answering affidavit, and the matter should be heard on a later date as it is a separate issue. He further submitted that the counter-application forms part of a broader pattern of bad faith litigation which is already the subject of complaints before the LPC and OLSO.
- [14] Advocate Buikman, SC who appeared on behalf of the Respondent submitted that the Applicant's rescission application is without merit and misplaced. According to her the Applicant's grounds for rescission are untenable as the evidence attached to his founding and replying affidavits were all part of the divorce proceedings. It was further contended that given the fact that the divorce proceedings are res judicata, the Applicant's rescission application is an abuse of the court's process as it has no prospects of success. In the counter-application it was argued that the Applicant (Respondent) have exploited and abused the processes of the Court for improper purposes and has become a vexatious litigant by refusing to comply with the orders of court and costs orders.

Discussion:

- [15] In terms of Rule 45A, a court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of appeal, such suspension is in compliance with section 18 of the Act. In the matter of Stoffberg NO and Another v Capital Harvest (Pty) Ltd[1] the court at para 26 held the following:

"[26] The broad and unrestricting wording of rule 45A suggests that it was intended to be a restatement of the courts' common law discretionary power. The particular power is an instance of the courts' authority to regulate its own process. Being a judicial power, it falls to be exercised judicially. Its exercise will therefore be fact specific, and the guiding principle will be that execution will be suspended where real and substantial justice requires that. 'Real and substantial justice' is a concept that defies precise definition, rather like 'good cause' or 'substantial reason'. It is for the court to decide on the facts of each given case whether considerations of real and substantial justice are sufficiently engaged to warrant suspending the execution of a judgment; and, if they are, on what terms any suspension it might be persuaded to allow should be granted."

- [16] The question now is whether on the facts of this case considerations of real and substantial justice are sufficiently engaged to warrant the relief sought by the Applicant.
- [17] There is a long and acrimonious history of litigation between the parties. The divorce proceedings started in July 2014 and the final order regarding the patrimonial consequences of the divorce was only granted on 26 August 2020. Although the Respondent was substantially successful, the applicant holds the firm view that the order of Judge Salie included directives that are financially devastating and unaffordable to him. The Applicant further believes that the process by which the order was reached was fundamentally flawed, unjust and subjects him to ongoing contempt proceedings based on an order which is impossible to comply with.
- [18] In the complaint to OSLO, the Applicant avers that there was systemic fraud, perjury, procedural abuse and judicial overreach. He blamed two of his own erstwhile advocates, that are senior counsel, for colluding with the Respondent's legal team by deliberately abandoning him midway and at key stages during the trial. He also believes there was judicial conflict and bias. According to him all the senior counsels in the matter acted at some point as judges in the Division and as such these long-standing associations fatally compromised the impartiality as required by s 165 of the Constitution, including the fact that Judge Salie was previously married to the then Judge President.
- [19] On the papers filed of record, the main grounds for the rescission application are the following: the divorce order is impossible to comply with; it enables execution proceedings against trust assets; it jeopardizes the applicant's livelihood and independence; it facilitates fraudulent enrichment by legal practitioners; it renders the applicant vulnerable to legal and financial ruin, and it will render him homeless and deprive the parties' children of their beneficial interest in trust assets.
- [20] The above-mentioned grounds are untenable. The divorce court specifically declared the C[...]s Trust to be an alter ego of the Applicant, with all assets therein beneficially held by him. This finding was never upset on appeal. It is on that basis that the proceedings were based to have the immovable property declared executable. Holderness J repeatedly emphasised in her judgment that the correctness and enforcement of the divorce order is *res judicata*.
- [21] The divorce order and judgment are based on evidence led by both parties relating to their respective financial standings, and the apex court has since found no cause upon which to consider the outcome of the divorce appealable. The evidence the Applicant had annexed to his founding and replying affidavits was all part of the divorce proceedings. There is accordingly no legitimate basis on which the Applicant can suggest that the outcome of the divorce was based on anything but evidence of his financial means.
- [22] It is patently clear the Applicant wants a second chance to relitigate his divorce proceedings before a different judge, hoping to secure a different outcome and will stop at nothing to achieve that goal. A case in point is the relentless attempts to report his erstwhile legal team,

his financial expert, the first respondent's legal team and members of the judiciary, to the relevant institutions. All of which had so far been unsuccessful. There is thus no legitimate basis on which the applicant can aver that any legal practitioner has been fraudulently enriched or that there was overreach by any judicial officer.

- [23] The pending rescission application, objectively viewed, is nothing more than a clothed appeal to prevent any attempts by the Respondent to execute on the immovable property to recover amounts legitimately owed to her in terms of the divorce order. Furthermore, the suggestion that the lack of impartiality fatally compromised the divorce proceedings because of collusion between his, the Respondents legal team and the Judge has no basis in fact or the law. That contention is simply farcical.
- [24] Simply put, the Applicant has now resorted to lawfare tactics to force a rehearing of the divorce proceedings hoping for a different outcome. In the process he is openly defying the orders of this Court.
- [25] A fundamental doctrine in our law is, there must be an end to litigation[2]. The policy which underlies this principle of res judicata is that nobody should be permitted to harass another with second litigation on the same subject as such litigation can be viewed as an abuse of process[3].
- [26] The current application for rescission, objectively viewed, is an abuse of process. The Applicant is harassing the Respondent with second litigation on the same subject. This must end.
- [27] On the facts of this case real and substantial justice demands that the execution of the court order granted on 13 June 2024, declaring the said property executable, must proceed and not be suspended pending the outcome of the rescission application.
- [28] It follows that the application for interim relief cannot succeed.
- [29] In the result the following order is made:
1. The application for interim relief is dismissed with costs, including costs of Senior Counsel on Scale C.
- [30] Turning to the counter-application. The Applicant (Respondent above) has overwhelmingly demonstrated that the Respondent (Applicant above) has gone to extraordinary lengths to avoid his obligations by embarking on a barrage of unrelenting litigation without any success. In the process, various cost orders, including a punitive cost order were granted against him. To date he has not abided by those orders. This lawfare has seriously prejudiced the Applicant. Moreover, the Respondent's flagrant disregard for paying the costs orders whilst continuing with relentless litigation is vexatious in the extreme[4]. This must stop.

[31] It follows that that the Applicant has made out a case for the relief sought in the Notice of Motion.

[32] In the result draft order marked 'X' is made an order of Court.

Le Grange, J

Before His Lordship Mr Justice, Le Grange

Cape Town, Wednesday 2/7/25

In the matter between:

L[...] M[...] W[...]

Applicant

C[...] R[...] W[...]

Respondent

ORDER

HAVING HEARD COUNSEL FOR THE APPLICANT AND THE RESPONDENT IN PERSON an order is granted in the following terms:

1. The application is postponed to the urgent roll on 5 August 2025;
2. A rule nisi is issued calling upon the respondent to show cause on 5 August 2025 why an order in the following terms should not be made final:

2.1 Declaring the respondent to be a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956 ("the Act");

2.2 Precluding the respondent from instituting any legal proceedings against the applicant in any Local or Provincial Division of the High Court of South Africa or any inferior Court, without first obtaining the leave of this Court, which leave shall not be granted until such time as:

2.2.1 the respondent has complied fully with the provisions of the Final Order of Divorce granted under case number 12866/2014 on 26 August 2020; and

2.2.2 the respondent has paid the costs orders, as finally taxed and determined by the relevant Taxing Masters, under case numbers: 12866/2014; A228/2023; CCT198/21; SCA Case No. 932/2020; SCA Case No. 276/2021; SCA Case No. 1339/2024;

2.3 Ordering the respondent to provide security in the amount of R100 000 (one hundred thousand Rand) each, in respect of the applications instituted by him in this Court on 4 June 2025, under case number 2025-083923 and on 12 June 2025, under case number 12866/2014. in accordance with the notices filed by the applicant in terms of Rule 47, within 10 days of this order being granted;

2.4 In the event of the aforesaid security not being furnished timeously, the applicant is given leave to apply on the same papers, amplified as may be necessary, for the dismissal of the aforesaid proceedings;

2.5 Ordering the respondent to pay the costs of this application on the scale as between attorney and own client, such costs to include the costs of senior counsel:

2.6 Granting the applicant such further and/or alternative relief as this Honourable Court may deem fit.

3. Pending the return day of the rule nisi, the relief in paragraphs 2.2 to 2.3 above shall act as an interim interdict with immediate effect.
4. The respondent is ordered to file his answering affidavit, if any, on or before 8 July 2025;
5. The applicant shall file her replying affidavit on or before 22 July 2025;
6. The parties shall file their respective heads of argument on or before 29 July 2025.

BY ORDER OF THE COURT

THE COURT REGISTRAR

Catto Neethling Wiid attorneys

HC Box no: 663

- [1] 2021 JDR 1644 (WCC)
- [2] Custom Credit Corporation (Pty)Ltd v Shembe 1972 (3) SA462 (A) at 472 B.
- [3] Janse Van Rensburg and Others NNO v Steenkamp; Janse van Rensburg an Others NNO v Myburgh 2010 (1) SA 649 (SCA) at 660H-661D.
- [4] See Beinash and Another v Ernst & Young and Others 1999 (2) SA 116 (CC) at para 21.

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