

SOUTH AFRICA / JUDGMENT

Mgwenya and Another v NMI Durban South Motors (Pty) Ltd t/a Garden City Motors Mbombela and Another (525/2023) [2025] ZAMPMBHC 44 (30 May 2025)

[2025] ZAMPMBHC 44

COURT

Mbombela High Court, Mpumalanga

BEFORE

M R Moleleki

CASE / FILE NUMBER

525/2023

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IN THE HIGH COURT OF

SOUTH AFRICA

MPUMALANGA DIVISION,

MBOMBELA

CASE NO: 525/2023

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED YES/NO

DATE

30 May 2025

SIGNATURE

In

the application between: ZODWA
MARIA MGWENYA
FIRST APPLICANT
ETHEL
MGWENYA
SECOND APPLICANT
and
NMI
DURBAN SOUTH MOTORS (PTY) LTD
t/a
GARDEN CITY MOTORS MBOMBELA
FIRST RESPONDENT
THE
SHERIFF, NELSPRUIT
SECOND RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 11:00 on 30 May 2025.

JUDGMENT

Moleleki AJ

- [1] This is an application to stay the execution of prayer 3 of the judgment and order dated 15 December 2023 pending the finalisation of an action against the First Respondent under Case Number: 833/2023 and that costs be paid in the event of opposition of this application.
- [2] The application is opposed by the First Respondent.

Common cause facts

- [3] Facts relevant to these proceedings are as follows: On 15 July 2022 the First Applicant's motor vehicle, a 2018 Mercedes Benz C200, was delivered to the First Respondent's workshop for repairs. Later that same day, the First Applicant was informed that the motor vehicle was hijacked whilst one of the First Respondent's employees was test-driving it. As a result, the First Applicant was offered a courtesy car by the First Respondent pending investigation. Following the investigation, the First

Respondent concluded that it was not liable towards the First Applicant for any loss stemming from the hijacking incident of her motor vehicle.

- [4] The First Respondent demanded its courtesy car back from the First Applicant without success. The First Respondent ultimately instituted a rei vindicatio application against the First Applicant to get its courtesy car back. The rei vindicatio application was granted in favour of the First Respondent with costs. It is the taxed costs stemming from these proceedings in the amount of R131 799.81, which the First Applicant seeks to have the execution of, stayed.
- [5] Aggrieved by the First Respondent's decision to not accept liability for the loss of her motor vehicle, the First Applicant instituted a delictual claim under Case Number: 833/2023 (the main action), for the payment of the motor vehicle's value, which amounted to R537 139.99. The First Applicant's attorneys served a notice of intention to amend the particulars of claim. On the same day, the First Respondent's attorneys sent a notice of attachment to the First Applicant's attorneys on 10 July 2024, whereas it bears a court date stamp of 20 June 2024. In turn, the First Applicant's attorneys sent a letter to the First Respondent's attorneys requesting a stay of execution of the cost order, which request was declined.

Stay of proceedings

- [6] It is trite that an application for a stay of proceedings and/or execution of court orders is provided for in Rule 45A of the Uniform Rules of Court, which provides that a court may suspend the execution of any order for such period as it may deem fit.
- [7] With reference to case law, courts in applying the requirements of Rule 45A for the stay of execution of orders or court proceedings have stated that the general principle is to grant a stay of execution where real and substantial justice requires it, or where injustice would otherwise result. The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but is attempting to avert injustice. The court must be satisfied that:

7.1 The Applicant has a well-grounded apprehension that the execution is taking place at the instance of the Respondent; and

7.2 Irreparable harm will result if execution is not stayed and the Applicant ultimately succeeds in establishing a clear right.[1]

- [8] Irreparable harm will invariably result if there is a possibility that the underlying causa may ultimately be removed, i.e. where the underlying causa is the subject-matter of an ongoing dispute between the parties. The court is not concerned with the merits of the underlying dispute – the sole enquiry is simply whether the causa is in dispute.[2]
- [9] In the present matter the First Applicant is attempting to avert an injustice. That injustice, according to the First Applicant would come about in that her main action against the First Respondent would not be adjudicated by a court. The First Applicant contends further that the First Respondent is intent on attaching her right of action, which the First Respondent contends is necessitated by the First Applicant's inability to satisfy payment of a duly taxed bill of costs. This, according to the First Applicant, would be unjust, considering that the

First Respondent is a big corporation.

- [10] Effectively, the First Applicant's contention is that a decision in the main application in her favour might or will ameliorate the burden to pay the taxed costs. The First Applicant is not suggesting that those costs be set aside but that they only be stayed until the matter is wholly finalised. The First Applicant asserts that she would suffer irreparable harm if execution took place at this stage without waiting for a favourable decision in the main action. The First Respondent on the other hand maintains that the First Applicant is unable to satisfy the court order and it has no other means of securing payment of that debt.
- [11] Rule 45A affords the court a discretion of the widest kind and imposes no procedural or other limitations nor does it fetter on the power it confers. In an application of this nature, an applicant is seeking an indulgence based on the apprehension of injustice. Although the Rule provides that the grounds on which a court may exercise the discretion are that the causa of a judgment is being impugned or that execution of the judgment is being sought for improper reasons. The court's discretion under Rule 45A cannot, however, be limited only to these circumstances. In exercise of its discretion, a court must stay a writ of execution where real and substantial justice requires such a stay.[3]
- [12] The First Applicant has no intention to challenge the taxed bill of costs. This may well suggest that the causa of the First Respondent's judgment is not in dispute. However, there is a possibility that the First Applicant's debt to the First Respondent might be paid up in full consequentially. I am alive to the fact that a stay of execution is not to be had on flimsy grounds merely to accommodate an alternative payment plan by the judgment debtor (the First Applicant herein). Of significance is that the court's exercise of its discretion is fact specific. That being so, the First Respondent has a right to redeem the judgment debt and should therefore, not be frustrated from pursuing further avenues of debt recovery. I am therefore not willing to grant the relief in wider terms as prayed for by the First Applicant. The decision I am called upon to make must strike a balance between the First Applicant's interests on the one hand, and those of the First Respondent on the other.
- [13] It cannot be disputed that the decision of the court in the main action may have the effect for which the First Applicant contends. There is a suggestion that the First Respondent might be indebted to the First Applicant. This is a case where related proceedings are yet to be determined in future, which may have some ameliorating effect on the order sought to be executed, in that, such amount is in excess of the amount of the cost order. In the result, prejudice and an injustice may be prevented.
- [14] I am of the view, therefore, that the First Applicant laid a proper foundation for contending that an injustice would result if execution was not stayed pending the decision in the main action. Consequently, it would be in the interest of justice in the peculiar circumstances of this case to grant a stay.

Costs

[15] Costs in respect of this application shall be costs in the cause. It would be fair and reasonable that costs be deferred until the main case is decided. A party who is ultimately successful at the hearing of the main case, will be entitled to the costs of this application.

Order

[16] In the premise, I make the following order:

1 The application for the suspension of execution of prayer 3 of the judgment of Gumede AJ, dated 15 December 2023, is granted insofar as it relates to the attachment by the First Respondent of the First Applicant's right to an action that she launched in Case Number: 833/2023, pending the finalisation of the main case.

2 The costs of this application shall be costs in the cause.

M R MOLELEKI AJ

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: Mr. Simon Maelane T G Mbatha Attorneys Incorporated Mbombela For the Defendant: Ms RJL Miranda Barkers Umhlanga C/O Du Toit Smuts & Partners Mbombela Matter heard on: 8 May 2025

Judgment

delivered on: 30 May 2025

[1] Gois t/a Shakespeare's Pub v Van Zyl and Others 2011(1) SA 148 (LC) para 37.

[2] Ibid.

[3] Road Accident Fund v Strydom 2001

(1) SA 292 (C) at 304G-H.

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Prepared on 9 October 2026 · Esheria