



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 963/2022

In the matter between:

IRIS KOOPMAN

APPLICANT

and

MINISTER OF POLICE

RESPONDENT

Neutral citation: *Koopman v Minister of Police* (963/2022) [2026] ZASCA 45
(7 April 2026)

Coram: MATOJANE and COPPIN JJA and KGANYAGO AJA

Heard: 10 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 11h00 on 7 April 2026

Summary: Security for costs – Rule 49(13) of the Uniform Rules of Court – Rule 9 of the Rules of the Supreme Court of Appeal – single judge of the high court refused leave to appeal – this Court granted leave to appeal to the full court – respondent made no request for security at the petition stage and no order for security was made – whether the obligation to furnish security under Rule 49(13) is revived when this Court directs the appeal to the full court – held: Rule 49(13) is definitionally confined to high court proceedings; the term 'court' in the Uniform Rules does not encompass this Court – Rule 9 of the Rules of the Supreme Court of Appeal provides a discrete and discretionary regime and imposes no obligation absent a respondent's request and a court order.

ORDER

The following order is made:

1 Condonation is granted to the applicant for her failure to apply for release from the obligation to furnish security for costs when she petitioned this Court in October 2022.

2 It is declared that Rule 49(13) of the Uniform Rules of Court does not apply to the prosecution of the applicant's appeal before the Full Court of the Gauteng Division of the High Court, Pretoria, under case number A280/2023 and 72988/2017, and that the applicant is not obliged to furnish security for costs in terms of that rule.

3 The costs of this application are to be costs in the appeal referred to in paragraph 2 of this order.

JUDGMENT

Matojane JA (Coppin JA and Kganyago AJA concurring):

Introduction

[1] This is an application by Ms Iris Koopman (Ms Koopman) for two orders: condonation to be granted for her failure to seek release from the obligation to furnish security for costs when she petitioned this Court in October 2022, and a declaration that Rule 49(13) of the Uniform Rules of Court (the Uniform Rules) does not apply to the prosecution of her appeal before the Full Court of the Gauteng Division of the High Court, Pretoria (the full court), alternatively an order releasing her from the security obligation. The respondent, the Minister of Police (the Minister), declined to waive the requirement but did not oppose this application and filed no answering affidavit. The factual averments in the founding affidavit therefore stand uncontradicted.

The background

[2] Ms Koopman is an unemployed, unmarried woman who lives with her minor

child in a shack in an informal settlement in Kuruman, in the Northern Cape. She owns no immovable property and has no assets of material value.

[3] On 4 March 2015, she was arrested at her home without a warrant on a charge of common assault against her then-boyfriend, Mr Leon Coetzee (Mr Coetzee), which had allegedly been committed two days earlier. She was detained at the Kathu South African Police Service station, together with her seven-month-old infant, whom she was still breastfeeding, until the morning of 6 March 2015. On 5 March 2015, Mr Coetzee had indicated that he wished to withdraw the charge.

[4] Ms Koopman brought an action for damages in the Gauteng Division of the High Court, Pretoria (the high court), against the Minister for unlawful arrest and detention. The Minister's defence relied upon s 40(1)(q) of the Criminal Procedure Act 51 of 1977 (the CPA), read with s 40(2) of the CPA, and s 3 of the Domestic Violence Act 116 of 1998 (the DVA). The trial was conducted on a virtual platform during the COVID-19 pandemic.

[5] The high court (per Rabie J) dismissed the action and, on 29 September 2022, refused leave to appeal. Ms Koopman petitioned this Court in terms of s 17(2)(b) of the Superior Courts Act 10 of 2013 (the Superior Courts Act)¹ for leave to appeal against the judgment of the high court. On 12 December 2022, this Court granted her leave to appeal to the full court.

[6] The prosecution of the appeal was delayed because the registrar had not preserved the virtual trial recordings. Ms Koopman's attorney eventually obtained the recordings from the MS Teams platform used for the proceedings, furnished them to the registrar, and had them transcribed. A hearing date before the full court was then allocated for 7 May 2025.

¹ Section 17(2)(b) of the Superior Courts Act provides the following:

'Leave to appeal

(2)(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave.'

[7] Neither party raised the issue of security for costs until shortly before the May 2025 hearing, when Ms Koopman's attorney requested that the Minister waive the security requirement, which the Minister declined to do. Ms Koopman thereupon applied to the full court for release from the obligation to furnish security for costs. The full court, taking the view that the matter fell outside its competence, removed the appeal from the roll because security had not been furnished and no power of attorney had been filed. The court expressed the view that the question of release from security for costs was one for this Court to determine before the appeal could proceed.

[8] The Minister failed to raise the security issue in terms of Rules 30 or 30A of the Uniform Rules at any stage of the appellate proceedings, and has also not alleged or demonstrated any prejudice attributable to the timing of this application to this Court.

The issues

[9] Three issues arise for decision. The first is whether condonation should be granted. The second, and central, issue is whether Rule 49(13) of the Uniform Rules applies at all to an appeal where leave was granted by this Court rather than by a judge of the high court. The third issue, which arises only if the second is answered affirmatively, is whether Ms Koopman should be released from the obligation to furnish security.

The applicable rules

[10] Rule 49(13)(a) of the Uniform Rules requires any party granted leave to appeal to the full court to furnish security for the respondent's costs of appeal before a hearing date may be obtained. The obligation is peremptory and is displaced only by the respondent's waiver or a court order.²

[11] Section 17(1)(a) of the Superior Courts Act regulates the granting of leave to appeal by the judge or judges who gave the decision under challenge.³ Where leave

² Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa, GN R48, GG 999, 12 January 1965.

³ Section 17(1)(a) of the Superior Courts Act provides as follows:

'Leave to appeal

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

is refused, the aggrieved party may petition this Court under s 17(2)(b) of the Superior Courts Act.

[12] Rule 9 of the Rules of the Supreme Court of Appeal (the SCA Rules)⁴ governs the position where an appeal is to be heard by this Court. It does not, on its terms, apply to cases in which this Court has granted leave to appeal to the full court of a high court division. It authorises this Court, when granting leave to appeal, to order that security for costs be furnished, but only upon the respondent's request. No automatic obligation arises. Unless the respondent makes the request⁵ and this Court makes an order.

[13] Rule 1 of the Uniform Rules defines 'court' as the high court of South Africa referred to in s 6 of the Superior Courts Act. This Court is established under the Superior Courts Act as a distinct institution governed by its own procedural rules. It falls outside that definition.

Condonation

[14] The Minister does not contest the condonation sought. The explanation for the omission is satisfactory. Ms Koopman's attorney proceeded on the understanding that no security obligation arose under the SCA Rules, and anticipated, not unreasonably, given the legal questions raised, that this Court would hear the appeal itself. The issue of security did not surface until preparations were underway for the full court hearing. No prejudice has been alleged or demonstrated. Condonation is accordingly granted.

Whether Rule 49(13) of the Uniform Rules applies

[15] The starting point is the source of this Court's jurisdiction. Jurisdiction is conferred by the Constitution of the Republic of South Africa, 1996 (ss 168(3) and 172(2)(a)), the Superior Courts Act, and the SCA Rules. None of these instruments, in express terms, confers jurisdiction on this Court to entertain a standalone originating application concerning security for costs in respect of an appeal pending before the

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.'

⁴ Rules regulating the conduct of the proceedings of the Supreme Court of Appeal of South Africa (the SCA Rules), GN R1523, GG 19507, 27 November 1998.

⁵ Rule 9(1) of the SCA Rules.

full court of a high court division.

[16] The Uniform Rules were promulgated under the Supreme Court Act 59 of 1959 (since repealed) and govern practice and procedure in the divisions of the high court. They constitute subordinate legislation promulgated by the Rules Board for Courts of Law pursuant to the Rules Board for Courts of Law Act 107 of 1985. The mandate of the Rules Board is to regulate procedural matters in the courts to which its promulgation authority extends. That mandate does not comprehend the conferral of jurisdiction on superior courts.

[17] It is a well-established principle that subordinate legislation cannot confer jurisdiction on a superior court;⁶ jurisdiction must be conferred by the Constitution or by primary legislation. A procedural rule made by the Rules Board is precisely that, a provision regulating procedure in the courts to which it applies. To treat it as capable of conferring original jurisdiction on this Court would be to accord to subordinate legislation a constitutional function it cannot discharge.

[18] The Uniform Rules, as rules of high court procedure, are directed at the divisions of the high court and not at this Court. The SCA Rules and the Superior Courts Act govern this Court's procedures. Rule 49(13) of the Uniform Rules operates within the procedural domain of the high court. Its mechanism is straightforward: a judge of the high court hears an application for leave to appeal in the matter they decided at first instance and, upon granting leave, activates the security obligation. Where a single judge refuses leave, that mechanism is never triggered; Rule 49(13) of the Uniform Rules is not activated, and no obligation under it arises. The matter then proceeds on petition before this Court under s 17(2)(b) of the Superior Courts Act, governed by the SCA Rules.

⁶ In *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)* [2205] ZACC 14; 2006 (2) SA 311 (CC); 2006 BCLR 1 (CC) The Constitutional Court emphasised that subordinate legislation derives its force from enabling legislation and cannot exceed or alter it, reinforcing that it cannot create jurisdiction where none exists. See also *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) which reiterated that subordinate legislation must remain within the bounds of its empowering statute, which includes not expanding jurisdiction.

[19] The issue is whether Rule 49(13) of the Uniform Rules is revived when this Court, acting under its own jurisdiction in terms of Rule 9 of the SCA Rules, grants leave to appeal to the full court. The answer turns on the definition of “court” in the Uniform Rules, which is expressly limited to the high court and does not extend to this Court. Accordingly, an order made by this Court directing that an appeal be heard by the full court does not constitute an order of the “court” as contemplated in Rule 49(13). It follows that the consequences ordinarily associated with that rule are not triggered or governed by it in such circumstances.

[20] Rule 9 of the SCA Rules confirms this conclusion. It provides a regime that is complete in itself and governs security for costs in proceedings before this Court. Its structure differs fundamentally from rule 49(13): security is not automatic; it requires a respondent's request and a court order. Where, as here, the respondent made no request at the petition stage, and no order for security for costs was made when leave was granted on 12 December 2022, no security obligation arose. To apply Rule 49(13) of the Uniform Rules in this setting would be to impose a preemptory obligation where the SCA Rules impose only a conditional one, without any textual basis for doing so.

[21] The contrary argument, that Rule 49(13) of the Uniform Rules governs all full court appeals and therefore applies whenever leave to appeal to a full court has been granted, regardless of who granted it, does not survive scrutiny. Rule 49(13) of the Uniform Rules ties the security obligation to a grant of leave by a high court judge who dismissed the original application. The destination of the appeal, whether to a full court or to this Court, does not determine whether Rule 49(13) of the Uniform Rules applies. The source of the order does.

[22] In *Strouthos v Shear*⁷, the court held, without analysis of the text of Rule 49(13) of the Uniform Rules or Rule 9 of the SCA Rules, that leave granted by the Chief Justice did not relieve the petitioner of the obligation to furnish security under Rule 49(13)(a) of the Uniform Rules, and that only this Court had power to release the petitioner from it. The court assumed, without establishing the point, that an

⁷ *Strouthos v Shear* 2003 (4) SA 137 (T) at 138A-B and 140G-H (*Strouthos*). See also C Marumoagae and P Lebitse ‘Security for costs when leave to appeal is granted by the SCA to the Full Court’ *De Rebus*, 1 August 2024.

obligation under Rule 49(13) of the Uniform Rules had arisen in the first place. For the reasons set out above, that assumption cannot be sustained. The decision in *LG v JG*⁸ followed *Strouthos* without engaging directly with the textual and structural considerations material to the question.

[23] In *Dr Maureen Allem Incorporated v Baard*⁹, a full court of the Gauteng Division of the High Court. Johannesburg (GJ) considered the question directly. It held that Rule 9(1) of the SCA Rules contemplates that any precondition for security in petition proceedings must derive from an order of this Court; that, since the respondent had not requested security, no entitlement to it had arisen; and that Rule 49(13) of the Uniform Rules did not apply because leave had been granted by this Court and not by a high court within the meaning of the Uniform Rules. The full court of the Limpopo Division reached the same conclusion in *Maake and Others v Chemfit Finechemical (Pty) Ltd.*¹⁰

[24] The reasoning in *Allem*, in my view, is correct. It is the only decision that engages directly with the text and structure of the applicable rules. The court in *Strouthos* assumed what was to be established and, on this point, erred. Rule 49(13) of the Uniform Rules does not apply to Ms Koopman's appeal. Since this Court did not order her to furnish security, she was under no obligation to do so, and the Minister acquired no entitlement to demand it in the absence of a court order.

[25] Enforcing the security requirement in these circumstances would permanently foreclose the appeal. That result would constitute an unjustifiable limitation of the right of access to courts entrenched in s 34 of the Constitution. Ms Koopman's grounds of appeal are substantive. The interaction of s 40(1)(q) of the CPA read with s 3 of the DVA in the particular circumstances of this arrest, effected two days after the alleged incident, at a residence the complainant had already vacated, in the complainant's absence, with an infant present, raises genuine and unresolved questions of law.

⁸ *LG v JG* (32377/2012) 2023 JDR 1402; [2023] ZAGPJHC 450 (28 April 2023).

⁹ *Dr Maureen Allem Inc v Baard* [2021] ZAGPJHC 677; [2022] 1 All SA 680 (GJ); 2022 (3) SA 207 (GJ) (*Allem*).

¹⁰ *Maake and Others v Chemfit Finechemical (Pty) Ltd* (5772/2016, HCAA04/2018) [2018] ZALMPPHC 71 (22 November 2018) para 18.

Leave having been granted, the prospects of appeal are reasonable. Against the prospect of Ms Koopman's permanent loss of access to the appellate process, the Minister has demonstrated no real prejudice. The security issue was raised only at the last moment, after more than two years of appellate proceedings conducted without objection. The evidence is finalised, and the record is complete. The uncontested facts would, on the alternative ground, favour release from any security obligation.

Costs

[26] Ms Koopman seeks an order that the costs of this application be costs in the appeal, alternatively that the Minister pay them. The Minister's reliance on *Strouthos* was not without foundation, that decision being unreversed at the time these proceedings were instituted. This Court has not previously clarified the position in circumstances such as these. An adverse costs order against the Minister is not warranted. The costs of this application are to be costs in the appeal before the full court.

Order

[27] The following order is made:

- 1 Condonation is granted to the applicant for her failure to apply for release from the obligation to furnish security for costs when she petitioned this Court in October 2022.
- 2 It is declared that Rule 49(13) of the Uniform Rules of Court does not apply to the prosecution of the applicant's appeal before the Full Court of the Gauteng Division of the High Court, Pretoria, under case number A280/2023 and 72988/2017, and that the applicant is not obliged to furnish security for costs in terms of that rule.
- 3 The costs of this application are to be costs in the appeal referred to in paragraph 2 of this order.

KE MATOJANE
Judge of Appeal

Appearances

For appellants:

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