



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no. 3818/2023

In the matter between:

FREDERICK JOHANNES GREYLING

Applicant

and

KRAALPUNT BOERDERY CC

First Respondent

PETRONELLA SOPHIA VAN DER BERG

Second Respondent

HEARD ON: 18 APRIL 2024

DELIVERED ON: 11 JULY 2024

JUDGMENT BY: MANYE, AJ

[1] This is an application in which the Applicant seeks an order for the removal or lifting of Bar dated the 9th October 2023 in terms of which the Applicant was *ipso facto* barred from delivering a plea.

[2] Rule 26 of the Superior Court Rules provides as follows:¹

¹ Erasmus Superior Court Rules

"If any party fails to deliver any other pleading within the time laid down in this rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five (5) days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to the notice within the time therein-required fall within such further period as may be agreed between the parties, be in default of filing the pleading and ipso facto barred."

- [3] It is common cause between the parties that the summons was issued on 24 July 2023 and served personally on the Applicant on the 26th July 2023.² The Applicant duly filed his notice of intention to defend on the 4th September 2023. In terms of rules, the Applicant had twenty (20) days thereafter to serve and file his Plea, which was due on or before the 2nd October 2023.
- [4] The time period in which the Applicant had to file a plea, 2nd October 2023, lapsed without the plea being filed. Notwithstanding, the Respondents' attorneys contacted the Applicant's attorneys informing them that the plea was overdue. The Applicant was granted a further extension until the 6th October 2023 to deliver a Plea. Further the Applicant was warned that should a plea not be filed, the Respondents will be left with no option but to place the Applicant under Bar.³
- [5] It is common cause that the Applicant failed to heed the Respondents' attorneys' warning about failing to deliver a plea, and the Notice of Bar was effected on the Applicant on 16 October 2023.
- [6] The purpose of this application, in essence, is to request the above Honourable Court to remove the Bar; allow the filing of a plea out of time limits provided and to permit the Applicant to defend the main action.
- [7] Rule 27 provides that:

² Record, p. 84

³ Record, p. 55

(1) *In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as it seems meet.*⁴

(2)

(3) *the court may, on good cause shown, condone any non-compliance with these rules.*⁵

[8] The Applicant's explanation for failure to deliver the Plea timeously can be summarized as follows:

8.1 The Applicant upon receiving service of the combined summons and particulars of claim instructed his attorney of record to defend the matter.

8.2 A notice of intention to defend was filed on the 4th September 2023.

8.3 A consultation with counsel was scheduled and it took place on the 18th September 2023 in which the appointed counsel was alerted to the fact that the plea was due on the 2nd October 2023.⁶

[9] Mr Callie Steenkamp, the correspondent for the Applicant's attorney of record, upon being served with the Notice of Bar enquired from Applicant's attorneys of record (Mrs Koen) about the Plea being overdue and having been afforded until the 6th October 2023 to deliver a Plea.⁷

[10] It is so that the Notice of Bar was served on the Applicant's correspondent attorneys on the 9th October 2023, affording the Applicant a further five (5)

⁴ Uniform Rule of Court: Rule 27 (1)

⁵ Rule 27(3)

⁶ Record, p. 47, para 10.3

⁷ Record, p. 47, para 10.4

days to deliver a plea failing which the Applicant would be *ipso facto* barred from delivering such a plea.

- [11] It is so that upon receipt of the Notice of Bar, Mrs Koen the Applicant's attorney enquired from appointed Counsel on the 11th October 2023 about the outstanding plea and further informing Counsel about the notice of bar that has been delivered. The Applicant's appointed Counsel for his part replied on the same day informing Mrs Koen, the Applicant's attorney, that a plea will be attended to.⁸
- [12] On the 18th October 2023 the Applicant's attorney Mrs Koen once again enquired from Counsel on the outstanding plea to which she was informed by counsel that it would be attended to.
- [13] On 23 October 2023 Mrs Koen requested via e-mail from the Respondents' attorneys, Mr Steenkamp, another week to deliver the Applicant's plea. The Respondents' response was that the Applicant was already under bar and further that the request for extension of time periods was refused.⁹
- [14] Suffice to state that the Applicant's plea was finally received from Counsel on the 31st October 2023 and same was sent to the Respondents' attorneys on the same day with a request to condone the late filing of same. The Applicant's request for late filing of the plea was rejected and the Applicant's attorney Mrs Koen, with the difficulties encountered with the Counsel, decided on obtaining another Counsel's assistance after terminating the mandate of the former Counsel. It is not in dispute that the plea was filed on 31 October, which is more than three (3) months after the issuing and serving of the Summons on the Applicant.
- [15] The Respondents, in opposition to the Applicant's application for lifting of Bar, submit that the Applicant has failed to satisfactorily explain his delay covering

⁸ Record, p. 56, annexure "FA 2"

⁹ Record, p. 48, para 10.8

the entire period of the delay in order for the Court to assess his conduct and motives. This, the Respondents submit amongst a fatal defect to the application.

- [16] The Respondents further submit that the Applicant has been reckless or intentional with his disregard, not only for the rules of the Court but more importantly the processes as set out in the Notice of Bar (*dies* as stipulated in the Notice of Bar, or the Court Rules in respect of a Notice of Bar). It is further submitted that the Applicant proceeded with this application with laxity and disrespect for the Court's processes, clearly thinking that condonation and lifting of Bar is simply there for the asking.¹⁰
- [17] The Respondents further submit that the Applicant's plea, which took more than three (3) months, consists only of three pages; does not disclose the necessary defence and amounts to nothing more than a bare denial. The Respondents further submit that despite the plea being a bare denial, one would have expected substantiation from the Applicant in its founding affidavit to convince the Court of its *bona fide* defence by elaborating on these bare denial allegations.
- [18] Simply put, the Respondents' submission is that the Applicant has failed to address any aspects of the Respondents' claim in the main. It is important to highlight that the Applicant's plea was never filed in Court, it was merely delivered to the Respondents.
- [19] The lack of particularity in the Applicant/Defendant's plea renders the defence bald, vague and sketchy. It is trite that the Defendant must file a plea which fully sets out¹¹ his defences to the main action. It is not enough to simply allege that he did not contract with the Plaintiffs/Respondents in a manner indicated in the summons.

¹⁰ Record, p. 84, para 6.4

¹¹ emphasis

- [20] In Gilinsky and another v Superb Launderers & Dry Cleaners (Pty) Ltd¹² the Court stated:

"It follows, therefore, that, if the allegations in the defendant's affidavit equivocal or incomplete or open to conjuncture, then the requirements of the rule in question have not been complied with."

- [21] Simply put, the allegations which underpin the Respondents' case against the Applicant remain largely, if not only, undisputed on the papers. The Applicant herein elected not to engage with the substantive allegations made by the Respondents in their claim nor did Applicant put any version to the contrary.
- [22] The question before the Court is whether the Applicant's default should be condoned, and the bar placed be lifted. The factors which are usually weighed by this Court in considering an application for exercise of discretion to lift the Bar, also include:
- (a) the degree of non-compliance; the explanation thereof;
 - (b) the importance of the case;
 - (c) the Respondents' interest in the finality of the matter;
 - (d) the convenience of the Court and;
 - (e) the avoidance of unnecessary delay in the administration of justice.¹³
- [23] In *casu*, the delay is excessive, as indicated above, that it took more than three (3) months for the filing of a plea as a result of all involved on behalf of the Applicant. The explanation put forward by the Applicant for the delay in filing the plea and the delivery thereof to the Respondents is relatively detailed and reveals regrettable disorganization and slackness on the part of those to whom the Applicant had entrusted with the matter.
- [24] In my view, this is an instance where the Applicant should not be prejudiced by any lack of compliance with the rules displayed by the attorneys and

¹² 1978 (3) SA 807 (C) at 810

¹³ 2013 ZASCA at p. 5

Counsel representing him. In all probability, what caused the delay is unknown to him. I am willing to assume in the Applicant's favour that the matter is of substantial importance to him and accept in his favour that there has been no or minimal inconvenience to the Court.

- [25] However, on the merits, which must be weighed against the other factors, this Court cannot be said to be charitable to the Applicant in lifting the Bar. On that score, the scales are evenly balanced for condoning the default and lifting the bar, thereby entitling the Court to grant the indulgence of lifting the bar.
- [26] In *casu*, the Applicant's legal representative submitted that the application is bona fide and not made with the objective of delaying the Respondents' claim. Counsel further submitted that the Applicant has a *bona fide* and the defence that is not ill-founded albeit being a bare denial. Counsel submitted further that procedural prejudice caused to the Respondents can be compensated by an appropriate costs order.¹⁴
- [27] The effect of denial, albeit bare in *casu*, is to put the fact denied in issue between the parties and, also, all the necessary implications which flow from it, and to advise the plaintiff that he will be required to prove these facts at trial.¹⁵
- [28] In light of the above, I am of the view that the Applicant's application is neither *frivolous* nor *vexatious* under the circumstances.
- [29] In the circumstances of the aforesaid the following order is made:

ORDER:

1. The Bar occasioned by Notice of Bar dated 9 October 2023 is lifted and/or removed.

¹⁴ Ferris v First National Bank Ltd 2014 (3) SA 39 (CC) at 43G-44A

¹⁵ Builders Ltd v Union Government (Minister of Finance) 1928 AD 46 at 53

2. The Applicant is granted leave to deliver his plea
3. Applicant to pay the costs of this application on party and party scale.


T.L. MANYE, AJ

Appearances:

For the Applicant:

Adv JJ BUYS

Bloemfontein Society of Advocates

Instructed by:

MARISA KOEN ATTORNEYS

C/O SALLEY'S ATTORNEYS

58 GENERAL DAN PIENAAR DRIVE

BLOEMFONTEIN

REF: C SALLEY/MAR2/0006

For the Respondents:

Adv SM VAN VUUREN

Brooklyn Chambers 57

Instructed by:

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361 OBERON STREET, FARIE GLEN

C/O EG COOPER MAJIEDT INC

R OOSTHUIZEN

17 THIRD AVENUE STREET

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