

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 29875/20

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

Date: 11 October 2024

E van der Schyff

In the matter between:

T M Mathonsi

Applicant

and

The Road Accident Fund

Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] This matter was enrolled as an application for default judgment before me on 10 October 2024. When the matter was called, counsel for the plaintiff indicated that a

notice of intention to defend was belatedly filed by it being emailed to the plaintiff's attorney of record. Counsel submitted that the plaintiff did not provide an email address as an address for the service of documents. When the matter was called, the notice of intention to defend was not filed on the court file by uploading it to the CaseLine's file. The state attorney dealing with the matter was, however, in court. I note that the notice of intention to defend has now been uploaded to the CaseLine file.

Discussion

- [2] Counsel for the plaintiff referred me to *Oostelike Transvaalse Ko-Operasie Bpk v Aurora Boerdery en Andere*.¹ In this case, the court held that a defendant must apply under Rule 27 to condone the late filing of the notice of intention to defend.

- [3] I understand a plaintiff's frustration when the defendant belatedly serves a notice of intention to defend. Rule 19(5), however, provides for the late filing of a notice of intention to defend. This subsection to Rule 19 was inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987, effective from 1 January 1988.

- [4] The filing of a notice of intention to defend before default judgment is granted, cannot merely be ignored. *In casu*, I was informed of the defendant's intention to defend the matter. This information can, likewise, not merely be disregarded. To proceed with the matter as if the defendant's intention is non-existent will, in my view, be contrary to the spirit of section 34 of the Constitution of the Republic of South Africa, 1996.

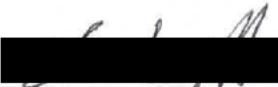
- [5] Defendants may, however, not be allowed to litigate on their own terms as if oblivious to the provisions of the Uniform Rules of Court. A court must protect the sanctity of its own processes.

¹ 1979 (1) SA 521 (T).

ORDER

In the result, the following order is granted:

1. The application for default judgment is postponed *sine die*;
2. The matter is retained by Van der Schyff J, or any other judge appointed by the Deputy Judge President, for case management;
3. The plaintiff is afforded ten (10) days from the date of this order to institute the legal proceedings it deems necessary, if any, to challenge the late filing of the notice of intention to defend;
4. If the plaintiff fails to institute any proceedings as provided for in paragraph 3 above, the defendant must file its plea within ten (10) days after the expiry of the period provided for in paragraph 3, above;
5. If the matter becomes settled, the parties may approach Van der Schyff J in chambers for an appropriate order;
6. The wasted costs occasioned by the late filing of the notice of intention to defend are to be paid by the defendant on an attorney and own client scale.



 E van der Schyff
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the plaintiff:	Adv. L Van Eeden
Instructed by:	Gert Nel Attorneys
For the defendant:	Ms. M. Potelo
Instructed by:	The State Attorney

Date of the hearing:	10 October 2024
Date of judgment:	11 October 2024