



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-024137

- (1) Reportable: NO
- (2) Of interest to other Judges: NO
- (3) Revised: NO
- (4) Signature of Acting Judge: 

Delivered on 10 July 2025

In the matter of

ZULU KHENSANI FIONA

Plaintiff / Applicant

And

ROAD ACCIDENT FUND

Defendant / Respondent

CORAM: R HAWMAN AJ

HEARD ON: 01 APRIL 2025

JUDGMENT BY: HAWMAN AJ

DELIVERED ON: The date and time for hand-down is deemed to be 10 July 2025.

SUMMARY:

- [1] Defendant under bar to plead. No application to uplift the bar brought by the Defendant. Notice of Intention to Amendment does not automatically “re-open” the door to the Defendant to introduce a defence to all aspects of the claim. Neither does it automatically open the door for the Defendant to bring consequential adjustments.

INTRODUCTION:

- [2] In this matter, the Plaintiff, a (currently) 30-year-old female person, had instituted action against the Defendant, claiming compensation for injuries sustained in a motor vehicle accident that occurred on 30 May 2022. Also in this matter, the Plaintiff had made application for default judgment on both the merits (liability) and quantum aspects of the claim. Plaintiff’s application for default judgment was brought on the basis that the Defendant had been barred from delivering its plea in the matter.

CHRONOLOGY:

- [3] The claim was (via registered mail) lodged with the Defendant on 27 October 2022.
- [4] Summons was, by hand, served upon the Defendant on 28 May 2023.
- [5] The Defendant served its Notice of Intention to Defend upon the Plaintiff attorneys on 14 November 2024.
- [6] Having failed to timeously deliver its plea in the matter, a Notice of Bar was served upon the Defendant on 31 January 2025.

- [7] The five days afforded by Rule 26 within which the Defendant had to deliver its plea, had become expired on 07 February 2025.
- [8] Having failed to deliver its plea on 07 February 2025, the Defendant, on 08 February 2025, became *ipso facto* barred from delivering its plea in the matter.
- [9] The Notice of set down for hearing was, by hand, served upon the Defendant on 25 April 2025 and was placed on the default roll for hearing on 01 July 2025.
- [10] The following heads of damage and amounts were claimed in Plaintiff's original particulars of claim:

Past medical expenses:	R10 000.00
Future medical expenses:	Undertaking in term of Section 17(4)(a)
Future loss of earnings:	R100 000.00
General damages:	<u>R200 000.00</u>
TOTAL:	<u>R310 000.00</u>

- [11] On 10 June 2025, the Plaintiff attorneys, by hand, and, in terms of Rule 28(1), served a Notice of Amendment of Particulars of claim upon the Defendant. In terms of the amendment, Plaintiff's amounts claimed were increased to the following:

Past medical expenses:	R10 000.00
Future medical expenses:	Undertaking in terms of Section 17(4)(a)
Future loss of earnings:	R2 500 000.00
General damages:	<u>R600 000.00</u>
TOTAL:	<u>R3 110 000.00</u>

- [12] On 27 June 2025, the Plaintiff attorneys, by hand, served Plaintiff's amended pages (amended Particulars of claim) upon the Defendant.

ISSUES BETWEEN THE PARTIES:

- [13] On the date of hearing, Adv C D'Alton, who appeared on behalf of the Plaintiff, indicated her intention to proceed with argument on the application for default judgment. Further on the date of hearing, this Court was surprised with an unexpected (and without any prior notice) appearance by a representative for the Defendant, namely State attorney, Mr T Mukasi.
- [14] During his address to Court, Mr Mukasi informed the Court that he holds instruction to oppose the continuation of the application for default judgment in light of the fact that the Plaintiff has recently brought an application to amend their particulars of claim (more particularly, the amounts claimed as compensation). Although Mr Mukasi, on his own accord, admitted Plaintiff's amendment to her particulars of claim to have been properly effected, he argued that such amendment caused the bar (to plead) that was previously placed upon the Defendant, to have been automatically uplifted, therefore allowing the Defendant the opportunity to "plead afresh".
- [15] Although both parties advanced oral arguments on the subject, the respective legal representatives were requested to provide the Court with written heads of argument by 18h00, 01 July 2025. The matter was therefore stood down for further argument, alternatively, for judgment, until 02 July 2025.
- [16] On 02 July 2025, after having heard oral-, and considered, written arguments advanced by the opposing parties, I provided the parties with a shortened version of my judgment. This was done in order to allow the Plaintiff the opportunity to proceed with her application for default judgment and to prevent any further delay in affording the Plaintiff her so-called "day in Court". During my shortened version of the judgment, I indicated my intention to provide the parties with a comprehensive judgment, which I herewith proceed with.
- [17] **Note should be taken that, in this matter, the Defendant had not brought any application to uplift the bar. Nor did the Defendant apply for a postponement / condonation in order to bring such application.**

- [18] The aspect upon which this Court had to make a determination was therefore whether Plaintiff's amendment of her particulars of claim (more particularly the amounts claimed) brought about an automatic right to the Defendant to deliver a plea.

THE LAW:

[19] **Rule 22 (Plea) provides as follows:**

- (1) *Where a defendant has delivered notice of intention to defend, he shall within 20 days after the service upon him of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.*

[Rule 22(1) substituted by GNR 2021 in G. 3304 with effect from 15 November 1971, GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987].

[20] **Rule 26 (Failure to deliver pleadings – Barring) provides as follows:**

Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be ipso facto barred. If any party fails to deliver any other pleading within the time laid down in these 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 days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and ipso facto barred: Provided that for the purposes of this rule the days between 16 December and 15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading.

[Rule 26 substituted by GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987].

[21] Rule 27: (Extension of time and removal of bar and condonation), provides as follows:

- (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 to it seems meet.*
- (2) *Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these Rules.*
- (3) *The court may, on good cause shown, condone any non-compliance with these Rules.*

[Rule 27(3) substituted by GNR 235 in G. 1375 with effect from 18 February 1966.]

[22] Rule 28: (Amendment of pleadings and documents), provides as follows:

- (1) *Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.*

- (2) *The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.*
- (3) *An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.*
- (4) *If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.*
- (5) *If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule.*
- (7) *Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.*
- (8) ***Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30.***
- (10) *The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.*

[Rule 28 amended by GNR 235 in G. 1375 with effect from 18 February 1966, GNR 2164 in G. 10958 with effect from 2 October 1987, GNR 2642 in G. 11045 with effect from 31 December 1987, GNR 2410 in G. 13558 with effect from 1 November 1991; substituted by GNR 181 in G. 15464 with effect from 1 March 1994.]

[23] Rule 39 (Procedure at trial) provides as follows:

- (2) *When a defendant has by his default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interests of justice may otherwise order, be permitted, either personally or by an advocate, to appear at the hearing.*

[24] Rule 31: (Judgment on confession and by default and rescission of judgments), provides as follows:

- (2)(a) *Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.*

SUBMISSIONS MADE BY THE PARTIES’S REPRESENTATIVES:

- [25] Mr Mukasi (for the Defendant)** argued, firstly, that the amendment of the particulars of claim by the Plaintiff had the effect of re-opening the pleadings and that, as such, the previous notice of bar, had “fallen away”. Secondly, it was argued that, once the pleadings had been re-opened, there were no longer any jurisdictional grounds for the granting of the default judgment.

[26] As part of his argument, Mr Mukasi made reliance on several judgments, i.e the matters of *Qhamakonae v Road Accident fund*¹, *Nkala v Harmony Gold Mining Co Ltd*², *Ngubane v Road Accident Fund*³, *Olivier NO v MEC for Health, Western Cape and Another*⁴ and *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁵.

[27] The facts of the matter under discussion are distinguishable from the facts of the matters I was referred to. I will discuss some of the differences hereunder:

[27.1] In the **Natal Joint matter**, the Court found that the Defendant, despite making certain admissions during pre-trial proceedings, informally, altered the scope of the litigation on the day of trial by seeking to introduce new issues (now disputing the validity of a provision to which it had previously agreed to). In this matter, the Defendant departed from its previous stance (pleadings already delivered) and under the circumstances the Court found that: “It would make a mockery of the principles of *litis contestatio* to permit Endumeni to depart from its previous stance by challenging the validity of the proviso, but to bind the Fund to a factual situation at the close of pleadings that had altered by the time that Endumeni sought to challenge the validity of the proviso.”

[27.1.1] In the *Natal Joint* matter, proper and timeous pleadings (including Defendant’s plea) were exchanged between the parties.

¹ (19131/2020) [2024] ZAGPPHC 795 (12 August 2024).

² (48226/12, 31324/12, 31326/12, 31327/12, 48226/12, 08108/13) [2016] ZAGPJHC 97; [2016] 3 All SA 233 (GJ); 2016 (7) BCLR 881 (GJ); 2016 (5) SA 240 (GJ) (13 May 2016).

³ (2020/20008) [2022] ZAGPJHC 275; 2022 (5) SA 231 (GJ) (26 April 2022).

⁴ (886/2023) [2025] ZASCA 45 (17 April 2025).

⁵ (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012).

- [27.1.2.] In the *Natal Joint* matter, the Defendant wished to introduce new issues into the matter, whilst, *in casu*, the amendment of the amounts claimed does not constitute the introduction of new issues into the matter.
- [27.1.3.] Furthermore, in the matter of *Natal Joint* the court did not make reference to any authority that pleadings are re-opened. It simply referred to the re-opening of the case without having had to decide the point. The court dealt with the matter in the context of *litis contestatio* and personal claims that have lapsed which is not applicable to the current matter.
- [27.2] In the matter of **Olivier v MEC for Health, Western Cape**, the issues related to an amendment of a claim of a deceased after *litis contestatio* which is not applicable in this matter. The finding did not relate to a matter where default judgment was sought, where a defendant was barred or where a plea was struck out. The matters are distinguishable.
- [27.3] Regarding the matter of **Qhamakoane v RAF**, the Court dealt with a situation where, despite providing the Defendant a period of 10 (ten) days within which to oppose a Notice of Intention to amend (in terms of Rule 28(2)), the 10 day period had not yet lapsed when the matter was heard.
- [27.3.1.] In the above matter, my sister Kruger AJ found the following: “If a party has been barred from pleading, they have the option of bringing an application in terms of Rule 27 to uplift the bar, but same can also be “uplifted” by agreement between the parties, In my view this does not pertain to a situation where the plaintiff, by his conduct, through amending the particulars of claim, “invites” the defendant back into litigation by re-opening the pleadings, as the defendant had been barred to the pre-amendment pleadings and not to the reopened and amended pleadings. Therefore, in my view, it is not necessary for the defendant to bring an application to uplift the bar, but through the amendment attains the right to plead to the amended particulars of claim”.

[27.3.2.] Regarding the *Qhamakoane* judgment, and with all due respect, I disagree with the findings made by my sister, Kruger AJ, more specifically for the following reasons:

[27.3.2.1.] I could not find any rule in the Uniform Rules of Court (or any other case law for that matter) that allows for the situation, where a Defendant has been placed under bar to deliver its plea, for such “bar” to automatically “fall away” (as if it had never existed) once an amendment of the particulars of claim has been brought;

[27.3.2.2.] *In casu*, the fact of the matter is that the Defendant had previously been placed under bar to deliver its plea and that such bar can only be uplifted with the bringing of a substantial application to do so;

[27.3.2.3.] Furthermore, in my view, the Uniform Rules of Court, and more specifically **Rule 27(3)**, are very clear on this issue, where it provides *as follows*:

- (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 to it seems meet.*
- (2). *Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these Rules.*
- (3) ***The court may, on good cause shown, condone any non-compliance with these Rules.***

[27.3.2.4.] Furthermore, as the judgment by Kruger AJ was delivered by a single Judge, in the same division, I can not be found to be bound to such judgment.

[28] **Ms D’Alton (for the Plaintiff)**, on the other hand, submitted that, as there is no application to uplift the bar by the Defendant, the Defendant has not met the jurisdictional prerequisite for this Court to exercise its discretion. In this regard, the Court was referred to, *inter alia*, the matter of **Standard General Insurance Co Ltd v Eversafe Pty Ltd**⁶, where the following was found: “It is well-established that an applicant for any relief in terms of Rule 27 has the burden of actually proving, as opposed to merely alleging, the good cause that it stated in Rule 27(1) as a Jurisdictional prerequisite to the exercise of the court’s discretion”.

[29] I was furthermore referred to the matter of **Ingosstrakh v Global Aviation Investments (Pty Ltd) and Others**⁷ (934/2019) [2021] ZASCA 69 (4 June 2021), where the following was found:

“Thus, in order to succeed in this regard, on good cause shown, condone any non-compliance with the rules. Thus, in order to succeed in this regard, Ingosstrakh would be expected to show good cause why condonation should be granted for its failure to deliver its plea. Generally, the concept of “good cause” entails a consideration of the following factors: a reasonable and acceptable explanation for the default; a demonstration that a party is acting *bona fide*; and that such party has a *bona fide* defence which *prima facie* has some prospect of success.”

The Court went further to say that: “With regard to the explanation for the default, there are two periods of default which Ingosstrakh must explain for its failure to deliver a plea. The first is before the notice of bar was served on it, and second relates to the period after the bar was served”.

⁶ 2000 (3) SA 87 (W).

⁷ (934/2019) [2021] ZASCA 69 (4 June 2021).

CONCLUSION:

[30] The fact of this matter is that, initially, after summons was served upon the Defendant, the Defendant has served its Notice of Intention to Defend upon the Plaintiff. By doing so, the Defendant clearly, already at that stage, indicated its intention to oppose some (or all) of the issues raised by the Plaintiff. However, instead of timeously delivering its plea thereafter, the Defendant chose to sit on its hands, waiting for the matter to get to trial stage before any further action was taken. Now, on the date of trial, the Defendant appears to want to take a “second bite at the cherry” by alleging that the Defendant is, “in law”, entitled to re-enter the litigation arena and to submit its plea. It is therefore evident that the Defendant, not only, wants an opportunity to plead to the amendments made by the Plaintiff, but also wants to introduce a defence to all aspects of Plaintiff’s particulars of claim. This, simply cannot be allowed. The Defendant had the opportunity to timeously introduce a plea in the matter and had (on its own accord), chose not to do so. Furthermore, the Defendant was provided two opportunities to deliver its plea, the first, after its Notice of Intention to Defend was served upon the Plaintiff and the second, after the Notice of Bar was served upon the Defendant. Even during the period from 08 February 2025 until 01 June 2025, the Defendant had the opportunity to bring a formal application to uplift the bar. Yet again, the Defendant failed to do this. Instead, the Defendant chose to show up to court on the day of trial, without advancing any explanation or “good cause” for its delay in the matter.

[31] If, by the mere wave of a paper (in this instance, the Plaintiff’s Notice of amendment), it was so easy to make the Notice of Bar to “fall away” and to “undo” all of the work that the Plaintiff has done to get the matter to trial, the following question can be posed: Why would the legislator have had the intention to allow a Defendant (who is in default of having delivered its plea), a greater and more comprehensive right to (without first having to bring an application to uplift the bar) deliver a plea “afresh” on all of the issues raised

by the Plaintiff, as opposed to the situation where a Defendant, having timeously delivered its plea in a matter, is given the opportunity to only “make any consequential adjustments to the documents (already) filed by him”?

- [32] It is evident that, where a party has been barred from pleading in a matter, that party is punished for not complying with the Rules of Court and the Plaintiff is entitled to obtain judgment. The only route available to such party is to apply to Court for upliftment of the bar. The pleadings are not all of a sudden reopened to entitle the Defendant to deliver a plea.
- [33] I am of the view that, in a situation where it is found that the Notice of Bar “falls away” automatically, and where it is, accordingly, not required of the Defendant to bring a substantial application to uplift same, it will lead to a serious infringement of Plaintiffs’ rights in the sense that, in the absence of any substantial application by the Defendant, the Plaintiff will be denied the right to oppose the so-called “automatic upliftment of the bar”. Furthermore, the Court’s judicial discretion to allow or deny such an application will be obliterated. Moreover, a situation like this will infringe on the *audi alteram partem* principle, a right that is enshrined by Section 34 of the Constitution.⁸
- [34] Therefore, the only route available to the Defendant in this matter would have been to, firstly (in terms of Rule 27(3)), apply to this Court for an upliftment (on good cause shown) of the bar - something that was simply not done.
- [35] Alternatively, the Defendant could have brought a formal application for condonation for the delivery of its plea or an application for the postponement of the matter in order to bring an application for upliftment of the bar, if the Defendant was of the view that the amendment brought by the Plaintiff, has granted it some right to plead afresh.

⁸ Constitution of the Republic of South Africa, 1996.

[36] Furthermore, even in the event that the Defendant was to successfully uplift the Notice of Bar, I am of the view that Rule 28(8) would still not find any application, more specifically for the fact that there is no existing pleading which lends itself to consequential adjustment/s. In this regard, Rule 28(8) prescribes that consequential adjustment may be done to the documents **“filed by him” (my emphasis)**. The Rules are therefore clear on this - adjustments can only be done to **documents filed** (and not to documents (the plea in this instance) that were never filed).

[37] In making a finding in this matter, I had regard to the following judgments:

[37.1] In the matter of **Road Accident Fund v Labuschagne**⁹, the Court had to consider an application for rescission of judgment where the Defendant (Applicant in the application) sought to rely upon *litis contestation* having not been met consequent upon an amendment having been effected (to which no objection was received to the notice of intention to amend). The learned Judge Rust AJ found as follows: “the adjustments such an affected party may make are limited to consequential adjustments to any **pleading already filed by him. Contrary to the argument advanced on behalf of the RAF, such an affected party does not acquire the general right to plead to the amended particulars of claim. (my own emphasis)**.”

[37.2] The following was found in a judgment by my brother Raubenheimer AJ in the matter of **Ntoko, Charmaine Petunia N.O. v Road Accident Fund**¹⁰:

(At paragraph 32): “The defendant did not launch an application to have the bar lifted, neither did it apply for condonation for the delivery of its plea. It instead relied on the mistaken proposition that a bar is automatically lifted with the filing of a Notice of Intention to Amend. This was the election that the defendant made and did so at its peril well knowing of the existence of a prescribed procedure to have a bar lifted.”

⁹ (48804/2017) [2025] ZAGPPHC 639 (17 June 2025).

¹⁰ Case number 2024-073741, Gauteng Division, Johannesburg.

The application for the dismissal of the default judgment application was accordingly dismissed.

[38] In the matter of **Manufacturing Engineering & Related Services Sector Education & Training Authority v Dr Joseph Qhunaphi Mhlaba¹¹**, the Honourable Noko J found as follows:

(At par 13): “A party who is placed under bar has recourse in terms of Rule 27 to uplift the bar and be given an opportunity to be allowed back and participate in the case. The court may on good cause shown uplift the bar.”

[39] I therefore find that the amendment brought by the Plaintiff did not have the effect of automatically opening the door for the Defendant to deliver a plea.

[40] The insistence that the Defendant may now (automatically) file a plea should clearly not succeed.

[41] In light of the above, the following order is made:

1. The argument by the Defendant, i.e., that it has a right to automatically re-enter the litigation arena, fails.
2. Under the circumstances, the Plaintiff may therefore proceed in presenting its case before Court.
3. The order on the issues of merits (liability) and quantum, subsequently granted on 02 July 2025 (annexed hereto marked “X”), is incorporated herein.



R HAWMAN AJ

¹¹ Case number 033076/2022, Gauteng Division, Johannesburg.

On behalf of Plaintiff:

Adv C D'ALTON

Instructed by:

O JOUBERT ATTORNEYS

Pretoria

On behalf of Defendant:

Mr MUKASI

State Attorneys

Pretoria