

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

Case number: **2022-003946**

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHERS JUDGES: YES/**NO**

(3) REVISED

DATE: 21/7/2025

In the matter of:

BAREND TATI LODI

First Applicant

(ID NO: 7[...])

LILLIAN SEBOLA

Second Applicant

(ID NO: 7[...])

and

ABSA HOME LOANS GUARANTEE COMPANY (RF)

First Respondent

PROPRIETARY LIMITED

(REG NO : 2003/029628/07)

ABSA BANK LIMITED

Second Respondent

(REG NO: 1986/004794/06)

In re:

ABSA HOME LOANS GUARANTEE COMPANY (RF)

First Plaintiff

PROPRIETARY LIMITED

(REG NO: 2003/029628/07)

ABSA BANK LIMITED

Second Plaintiff

(REG NO: 1986/004794/06)

and

BAREND TATI LODI

First Defendant

(ID NO: 7[...])

LILLIAN SEBOLA

Second Defendant

(ID NO: 7[...])

JUDGMENT

Coram Ferreira AJ

1. In this application, the applicants approached the court on an urgent basis for interim relief claiming:
 - 1.1 Pending the finalization of a rescission application of the judgment order granted on the 22 April 2025 and the leave to appeal or finalisation of the rescission judgment order application granted on the 14th of June 2024.
2. Most importantly, the order of 22 April 2025 was the dismissal of a then existing rescission application (“the April 2025 rescission application”).
3. The April 2025 rescission application was dismissed in the absence of the applicants.
4. The applicants, whilst being represented by legal practitioners, failed to appear at the hearing of the April 2025 rescission application. The applicants explanation for this failure is that their legal representative arrived at court on the morning of the hearing but, seeing the motion court roll with allocated time slots, assumed that the matter (being low on the roll) would be heard only after lunch; she then left the court, only returning at around 11:40, by which time the

case had been called and dismissed.¹

5. The April 2025 rescission application follows from a default judgment, pursuant to a notice of bar, granted by Millar J on 14 June 2024. The applicant repeatedly implored this court, as contained in, *inter alia*, paragraph 5.1.1 of the applicants' heads of argument dated 12 July 2025, not to consider the merits of the aforesaid judgment and order, but to exercise a discretion to prevent an injustice.
6. Without consideration of the merits of the default judgment of 14 June 2024 and the resultant dismissal of the April 2025 rescission application, it is not clear, how this court from which interim relief is sought ought to establish the applicants' requisite *prima facie* right. In light of the conclusion hereunder a finding in this respect need not be made.
7. The above being said, the applicants have to overcome the hurdle of establishing a case to be heard on an urgent basis with the timeframes that they so chose. In this matter the applicants' knowledge of the sale in execution is by no means the only material point in time for consideration in respect of urgency. This court is approached on an urgent basis after a number of omissions, errors and delays resulting in the applicants' current predicament.
8. It is trite that there comes a point where litigants can no longer hide behind the lack of diligence of their legal representatives. In ***Salojee & Ano. v Minister of Community Development*** [1965] (2) 135 at 141 C to D, the Appellate Division, as it then was, states:

“There is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of the Appellate Division. Considerations ad misericordiam should not be allowed to become an invitation to laxity.”
9. By the examination of the chronological development in the present matter,

¹ CaseLines 0000057-22

this court has difficulty in coming to any other conclusion that the applicants and their legal representatives, to a larger or lesser degree, are the authors of the applicants' current misfortune and that any urgency that there may exist was self-created.

10. The present application, in my view, represents the textbook example of an abuse of the urgent court processes.
11. In the result the matter stands to be struck from the roll with costs on an attorney and client scale.
12. The following order is made:
 - "1. The matter is struck from the roll due to lack of sufficient urgency.
 2. The first and second applicant, the one paying, the other to be absolved, is to pay the first and second respondent's costs on an attorney and client scale."

EJ FERREIRA

Acting Judge of the High Court
Gauteng Division

Date of hearing:	16 July 2025
Judgment delivered:	21 July 2025
For the Applicants:	Maranti Kgomo Inc Attorneys
Counsel for the Applicants:	Adv MPT Maluleke
Attorney for the Respondents:	Haasbroek & Boezaart Inc.
Counsel for the Respondents:	Adv E van As