



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

Case No.: 1697/2024

Date Heard: 18 July 2025

Date Delivered: 09 September 2025

In the matter between:

TOM CAMPHER MOTORS (PTY) LTD

t/a TOM CAMPHER VOLVO CARS, JOHANNESBURG

Plaintiff

and

PAUL JACQUES ANDRE

Defendant

JUDGMENT

RONAASEN AJ:

Introduction

General

[1] This judgment concerns an application for leave to appeal by the defendant against my order of 22 October 2024 in terms of which I granted summary judgment against him.

[2] Ironically, despite seeking leave to appeal in terms of a belated notice delivered on 27 February 2025, the defendant has employed every means possible to try and ensure that his application for leave to appeal not be determined, raising various obstacles in his endeavour to indefinitely delay the hearing of the application and a decision thereon. His endeavours included ill-conceived applications for the postponement of the application for leave to appeal and for my recusal, both of which I dismissed with costs. The reasons for those dismissals are included in this judgment.

The order of 22 October 2024

[1] At the instance of the plaintiff, I granted an order for summary judgment ("the order") against the defendant, on 22 October 2024, as follows:

1. Summary judgment is granted against the defendant:

1.1 In respect of the BMW:

1.1.1 Payment in the sum of R830 000.00 together with interest at the rate of 11.75% per annum *a tempore morae* from 22 June 2024 (being the date of service of summons) until the date of payment.

1.1.2 In the event that the defendant fails to make payment referred to in paragraph 1.1.1 above within 5 (five) days of service on the defendant of the court order, the Sheriff is authorised to attach the BMW wherever he may find it and deliver it to the plaintiff who shall have the BMW valued by a sworn valuator and

thereafter set off the valuation against the sum referred to in paragraph 1.1.1 above.

1.2 In respect of the Audi:

1.2.1 Payment in the sums of R140 000.00 and R1 501.45, totalling R141 501.45 together with interest at the rate of 11.75% per annum *a tempore morae* from 22 June 2024 (being the date of service of summons) until the date of payment.

1.2.2 In the event that the defendant fails to make the total payment referred to in paragraph 1.2.1 above within 5 (five) days of service on the defendant of the court order, the Sheriff is authorised to attach the Audi wherever he may find it and deliver it to the plaintiff who shall have the Audi valued by a sworn valuator and thereafter set off the valuation against the sum referred to in paragraph 1.2.1 above.

2. Costs of the action.

[2] I invited the parties to request reasons for my granting the order. These reasons were provided on 17 December 2024, pursuant to such a request by the defendant.

Background

[3] I propose to set out the background facts in some detail as they demonstrate the pattern of the defendant's dilatory conduct and the disregard he has displayed throughout the proceedings for rules of procedure and court orders.

- [4] On 10 May 2024 the plaintiff instituted action against the defendant. The relief sought by the plaintiff foreshadowed the relief granted in terms of the order.
- [5] The combined summons and accompanying particulars of claim were served on the defendant on 24 June 2024.
- [6] The defendant delivered a plea and claim in reconvention on 24 August 2024, only after a notice of bar had been served on 6 August 2024.
- [7] The delivery of the plea prompted an application for summary judgment by the plaintiff, which was launched on 10 September 2024.
- [8] The defendant failed to respond to the application for summary judgment, which was enrolled for hearing, as an unopposed application, on 8 October 2024. On that date the application for summary judgment was postponed, at the cost of the defendant, to 22 October 2024. The defendant, furthermore, was directed by this court to deliver his affidavit opposing summary judgment by 15 October 2024.
- [9] The defendant did not deliver an affidavit opposing the application for summary judgment as directed or at all, but rather, on 22 October 2024, the date on which the application for summary judgment was enrolled for hearing, delivered a notice of intention to amend his plea as well as a so-called "explanatory affidavit". The affidavit did not contain a request for a further postponement but, rather, unilaterally, sought to direct how the application for summary judgment would unfold thereafter, in the absence of the opposing affidavit which the defendant had failed to deliver, as ordered.

Furthermore, the affidavit contained no explanation for the failure to deliver an opposing affidavit.

[10] The defendant, on 22 October 2024, applied from the bar for a further postponement of the matter, which I refused for the reasons furnished on 17 December 2024. The defendant's counsel declined to address me on the merits of the summary judgment. After hearing argument from the plaintiff, I granted summary judgment in favour of the plaintiff for the reasons provided on 17 December 2024.

[11] On 27 February 2025 the defendant delivered a notice of application for leave to appeal. As the application was substantially out of time it was accompanied by an application in terms of which the defendant sought condonation for its late delivery. It is the applications for leave to appeal and for condonation with which this judgment is primarily concerned.

[12] After 27 February 2025 the defendant simply did nothing to advance his application for leave to appeal.

[13] The defendant's application for condonation for the late delivery of his application for leave to appeal indicated that the defendant had engaged with numerous counsel with a view to advancing his application for leave to appeal. This created uncertainty as to precisely which counsel would be representing him in the application for leave to appeal.

[14] It is not disputed that the plaintiff's attorney repeatedly, during May 2025, by email, sought confirmation from the defendant's attorney as to which counsel would be

representing the defendant in the application for leave to appeal, to enable counsel for the parties to approach me to arrange a suitable date for the hearing of the application. The defendant's attorney did not respond to these emails.

[15] The defendant's silence prompted the plaintiff's attorney to instruct his counsel, Ms Ellis, to approach me to fix the date for the hearing of the application for leave to appeal. On 16 May 2025 she directed an email to me, to the following effect:

"I am instructed by Mr Nel (on behalf of the respondent) to approach you and request a date for hearing of the applicant's application for condonation as well as the leave to appeal.

Despite numerous requests, the applicant and/or his attorney has failed to provide us with suitable dates, and they were informed that we are going to approach you to allocate a date.

Kindly provide us with a date for the hearing."

[16] Later, on the same day, I telephoned Ms Ellis and advised her that I would hear the applications on 6 June 2025 at 09:30. I requested her to advise the Registrar of this Court of my determination to enable the Registrar to issue a notice of set down to the parties. In determining the date as I did I acted in accordance with the relevant practice direction in this Division (practice direction 10), whereby the parties were given the required 10 court days written notice of the application. I shall revert more fully to the provisions of the practice direction later. I emphasise that I allocated the date unilaterally, applying the practice direction, and not by agreement with Ms Ellis, as incorrectly suggested by the defendant in the further applications brought by him and

to which I refer below. My foregoing description of events represented the sum of my interaction with Ms Ellis, regarding the allocation of the 6 June 2025 date.

[17] In response to my allocation of a date for the hearing of the application for leave to appeal, the defendant's attorney advised the Registrar that his counsel would not be available on the date allocated and requested that I allocate a different date. I asked the Registrar to inform the parties that their counsel should approach me directly on the question of the allocation of a date for the hearing.

[18] This resulted in Ms Ellis and Mr Mbenyane (who had appeared for the defendant on 22 October 2024 when he sought a second postponement of the summary judgment application), representing the plaintiff and the defendant, respectively, seeing me on 3 June 2025. Mr Mbenyane indicated to me that he would not be available at all that term (i.e. the second term of 2025) to argue the defendant's applications and would only be available at the end of July or in early August 2025. Ms Ellis stated that the plaintiff would abide with any date determined by me. I then allocated 18 June 2020 as the date on which I would hear the applications. In so doing I applied the provisions of the practice direction of this Division regarding applications for leave to appeal, again giving the parties at least 10 court days' notice of the date. I considered it to be unreasonable to agree to the dates put forward by Mr Mbenyane, as these dates were in my view too far hence given that:

18.1. I had granted summary judgment on 22 October 2024;

18.2. reasons for my order of 22 October 2024 had been given on 17 December 2024;

18.3. the defendant had belatedly given notice of his intention to seek leave to appeal (subject to condonation being granted) on 27 February 2025 and had taken no steps to advance his application after that;

18.4. my order for summary judgment concerned the return of movable property in the form of motor vehicles which were susceptible to depreciation over time; and

18.5. given these factors I considered it reasonable that the application for leave to appeal be finalised before the end of the second term, 2025.

[19] In the correspondence forming part of the papers before me it is suggested that when I met with counsel to arrange a new date for the hearing of the applications for condonation and leave to appeal I “postponed” the application to 18 June 2025. I did not do so. I determined a fresh date in accordance with the applicable practice direction, as requested by the defendant.

[20] On 12 June 2025 the defendant corresponded directly with me by email advising me that he had lodged a complaint against me with the Legal Practice Council. No particularity of the complaint was provided.

The events of 18 June 2025

[21] Prior to the commencement of the hearing of the applications for condonation and leave to appeal I was approached in Chambers by Mr Bongani an advocate and member of

the Eastern Cape Society of Advocates who advised me that he represented the defendant in the applications. He asked that the hearing of the two applications stand down to allow the defendant time to attest to founding affidavits in two applications, namely an application for the postponement of the leave to appeal proceedings pending the hearing of an application for my recusal from hearing the applications for condonation and leave to appeal.

[22] I afforded the defendant the opportunity requested. Neither I nor the plaintiff had received any prior notice of the defendant's intention of bringing the applications for postponement and my recusal on the day on which the applications for condonation and leave to appeal were to be heard.

[23] Mr Bongani had barely completed the first sentence of his address to me on the application for postponement when he was rudely interrupted by an outburst from the defendant, who indicated that he wished to terminate Mr Bongani's mandate. The defendant ignored my requests to act courteously, whereupon I adjourned proceedings to allow the defendant and his counsel to resolve whatever issues had arisen between them. After the adjournment, which included an opportunity to allow the parties to pursue a mooted interim settlement, the defendant advised me that he had dismissed his counsel.

[24] The defendant suggested that the proceedings would have to be postponed. I responded that I would not accede to his request on the ground that he had dismissed his counsel and was now unrepresented. I shall revert to this, below. I was advised by

the defendant that he would represent himself in the applications for postponement and my recusal.

[25] I proceeded to hear argument from the parties on the applications for postponement of the applications for condonation and leave to appeal and for my recusal from hearing the applications for condonation and leave to appeal.

[26] I dismissed the postponement and recusal applications with costs and thereafter heard the applications for condonation and leave to appeal, in respect of which I reserved judgment.

[27] In what follows I shall first give the reasons for my dismissal of the postponement and recusal applications and thereafter provide my judgment on the applications for condonation and leave to appeal.

Reasons for the dismissal of the applications for postponement and my recusal

General

[28] The facts in the two applications were inter-related and the applications were both centrally premised on the defendant's alleged perception that I would be biased in determining the defendant's applications for condonation and leave to appeal because he had laid a complaint against me with the Legal Practice Council. Accordingly, my reasons provided apply to both applications.

Practice direction 10

[29] Practice direction 10 of the practice directions applicable in this Division provides as follows:

"Applications for leave to appeal

- (a) Applications for leave to appeal shall be heard on dates to be arranged by the legal representatives of the parties in consultation with the judge who is to hear the application.
- (b) Within 10 court days of the application for leave to appeal being filed, the legal representatives of the parties are to approach the judge who is to hear the application in order to attempt to arrange a mutually convenient date for the matter to be heard.
- (c) In the event of the judge concerned not being approached within the aforementioned period of 10 days or such longer period to which the judge may agree, or in the event of it not being possible to determine a date convenient for all concerned within such period as a judge may deem to be reasonable, the judge will determine the date and give the parties at least 10 court days notice thereof.
- (d) Once the date for the hearing of the application for leave to appeal has been determined, the registrar will issue a notice of set down stipulating the date and time of the hearing and deliver a copy thereof to each party."

Legal principles - postponements

[30] The legal principles governing the grant and refusal of postponements are well established. The granting of an application for postponement is not a matter of right,

but is an indulgence granted by a court to a litigant in the exercise of a judicial discretion. The litigant seeking a postponement is usually required to provide a reasonable explanation for the need to postpone and the capability of an appropriate costs order to nullify the opposing party's prejudice or potential prejudice. *Magistrate Pangarker v Botha and Another* 2015 (1) SA 503 (SCA) at [25].

[31] The Constitutional Court in *Lekolwane and Another v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 (CC) at [17] set out the general principles in respect of applications for postponement, as follows:

"The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted unless this court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any other parties, whether the application is opposed and the broader public interest."

[32] The following passage from *Take and Save Trading CC v Standard Bank of SA Ltd* 2004 (4) SA 1 (SCA) at [3] *mutatis mutandis* finds particular application in this matter:

"One of the oldest tricks in the book is the practice of some legal practitioners, whenever the shoe pinches, to withdraw from the case (and more often than not to reappear at a later stage), or of clients to terminate the mandate (more often than not at the suggestion of the

practitioner) to force the court to grant a postponement because the party is then unrepresented. Judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure that this abuse is curbed by, in suitable cases, refusing a postponement. Mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement as of right."

[33] It is against this background that I had to consider the defendant's application for a postponement.

Legal principles – recusal

[34] In applying the test for recusal our courts have recognised the presumption that judicial officers are impartial in adjudicating disputes. There is a recognition that legal training and experience prepare judges for the often-difficult task of fairly determining "*where the truth may lie in a welter of contradictory evidence*". See *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 (CC) at [40] and also at [48] where the test for recusal was stated to be as follows:

"It follows from the foregoing that the correct approach to this application for the recusal of members of this Court is objective and the *onus* of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to administer justice without fear or favour, and their ability to

carry out that oath by reason of the training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reason, was not or will not be impartial."

[35] The Constitutional Court, with reference to judgments of that court, in *Bernert v ABSA Bank Ltd* 2011 (3) SA 92 (CC), at [34], emphasised the double requirement of reasonableness that the application of the test for bias imports, namely that the person who apprehends bias and the apprehension itself must be reasonable. "*Mere apprehension on the part of a litigant that the judge will be biased - even a strongly and honestly felt anxiety - is not enough*". It, then, went on to hold, at [35] that:

"The presumption of impartiality and the double requirement of reasonableness underscore the formidable nature of the burden resting upon the litigant who alleges bias or its apprehension. The idea is not to permit a disgruntled litigant to successfully complain of bias simply because the judicial officer has ruled against him or her. Nor should litigants be encouraged to believe that, by seeking the disqualification of a judicial officer, they will have their case heard by another judicial officer who is likely to decide the case in their favour. Judicial officers have a duty to sit in all cases in which they are not disqualified from sitting. This flows from a duty to exercise their judicial functions. As has been rightly observed, 'judges do not choose their cases; and litigants do not choose their judges'. An application for recusal should not prevail, unless it is based on substantial grounds for contending a reasonable apprehension of bias."

[36] The authors *Herbstein and Van Winsen*, *The Civil Practice of the Superior Courts of South Africa*, sixth edition, volume 2 in an analysis and useful summary of the case law relating to recusal, at 33-36/37, describe a current alarming trend, as follows:

“More and more recusal applications are being brought as a tactical device or simply because the litigant does not like the outcome of an interim order made during the course of the trial. The seeming alacrity with which legal practitioners bring or threaten to bring recusal applications is cause for concern. The recusal of a presiding officer, whether it be a magistrate or a judge, should not be standard equipment in a litigant’s arsenal, but should be exercised for its true intended objective, which is to secure a fair trial in the interests of justice in order to maintain both the integrity of the courts and the position they ought to hold in the minds of the people whom they serve. Judges are expected to be stoic and thick-skinned. What is expected of a judge in presiding over a matter is clear, as is the right of a litigant to raise the impropriety of a judge’s conduct and without fear, to seek his or her recusal. There can also be no doubt that the right to seek a recusal is imbedded in the right to a fair trial and should not be stifled, even indirectly. Where a judge’s character is seriously impugned and clearly defamatory statements are made at a personal level in respect of an alleged extra-curial event or incident legal representatives should bring a more analytical appraisal to bear, particularly where the judge’s recusal was not pursued expeditiously. Where a litigant brings an application for recusal in a transparent and dishonest strategy to obtain a postponement, the application will fall foul of the principles governing recusal and will be dismissed.”

[37] These legal principles informed my decision to dismiss the application for my recusal with costs.

Application of legal principles

[38] The defendant's application to postpone his applications for condonation and leave to appeal was premised on his application for my recusal. In paragraph 36 of his application for a postponement he said the following:

"If the postponement is not granted I submit that I will not have a fair hearing due to the fact that I hold a reasonable apprehension that Honourable Acting Judge Ronaasen will not bring an impartial mind to bear on the adjudication of this case due to the fact that I have lodged a complaint against him at the LPC, which I am entitled to do so."

[39] No facts are provided to support the defendant's "reasonable apprehension".

[40] The application for my recusal, in turn, appears to be premised on the following:

- 40.1. my interaction with Ms Ellis when I initially allocated the date for the hearing of the applications for condonation and leave to appeal; and
- 40.2. the fact that the defendant, pursuant to my interaction with Ms Ellis submitted a complaint against me to the Legal Practice Council, as a result of which I would no longer be able to be impartial when presiding over his applications for condonation and leave to appeal.

[41] The premise of the application for recusal is set out as follows in the defendant's founding affidavit in that application:

- "12. The fact that the Honourable Judge entertained the email by Advocate Leanne Ellis when my legal representative where not included has caused me to think that the Honourable Judge is bias and will be bias in dealing with the application for leave to appeal (hereinafter referred to as the "main application") going forward.
13. Following the interaction between the Honourable Judge and Advocate Leanne Ellis I lodged a formal complaint against the Honourable Judge at the Legal Practice Council of the Eastern cape. A copy of the formal complaint is attached hereto marked ("Annexure 3").
14. In the formal complaint I am the complainant, and the Honourable Judge is the respondent meaning we are opponents. It must be noted that we are opponents on issues that emanate from the main application which the Honourable Judge is currently presiding over.
15. This has further created a reasonable apprehension in me that the Honourable Judge will not be able to be impartial when presiding further over the main application.
16. I submit that this parallel relationship in which the Honourable Judge is now the subject of a professional complaint made by me makes it inappropriate for the Honourable Judge to continue presiding over the main application.
17. I respectfully submit that the circumstances set out above give rise to a reasonable apprehension of bias, such that the Honourable Judge ought not to continue presiding over this case."

[42] As stated, my interaction with Ms Ellis regarding my initial allocation of a date for the hearing of the applications for condonation and leave to appeal was confined to a response by telephone to her email requesting that I fix a date, which date I fixed with reference to the applicable practice direction and without any reference to Ms Ellis. The defendant's averment in the founding affidavit of his application for postponement that I had "agreed" the initial date with Ms Ellis is thus entirely without foundation.

[43] After allocating the initial date I acceded to the defendant's request to allocate a different date. I allocated the later date in the presence of counsel for the parties, after discussion with them. This was on 3 June 2025. Again, the later date was allocated in accordance with the applicable practice direction. I explained to counsel why I considered it to be unreasonable, in the context of the circumstances envisaged in the practice direction, to enrol the matter only in the third term when the defendant's counsel attending the meeting would be available for the first time. In determining the date I bore in mind that the counsel attending the meeting had not been briefed on the merits of the summary judgment application and had only been briefed to seek a postponement on the date on which the application was heard.

[44] In his application for my recusal the defendant has not set out any factual basis from which could lead to a reasonable conclusion, arising from the events which led to my initial allocation of a date for the hearing of the applications for condonation and leave to appeal, of an apprehension of bias on my part.

[45] No doubt, to bolster his allegations regarding my bias, and to add an additional arrow to his quiver, the defendant lodged a complaint against me to the Legal Practice Council.

This was done to create a perception that I was now involved, litigiously, in a dispute with the defendant and could therefore no longer act independently and without bias. Any argument in that regard is fundamentally flawed as the Legal Practice Council has no jurisdiction over the conduct of judges.

[46] My view that the defendant was not acting reasonably and could not have had a reasonable apprehension of bias on my part is enhanced by the following:

- 46.1. since launching his belated application for leave to appeal he made no attempt to set his applications for condonation and leave to appeal down, for hearing in the manner required by local practice directive 10, to which I have referred above;
- 46.2. the defendant ignored at least three written requests from the plaintiff's attorney, in compliance with the practice directive, to cooperate in arranging a date for the hearing of the leave to appeal application;
- 46.3. the defendant's notifying me directly, by email, of the fact that he had lodged a complaint against me with the Legal Practice Council. No doubt this was done in an attempt to intimidate me;
- 46.4. after I had initially fixed the date for hearing the applications for condonation and leave to appeal, I acceded to the defendant's request to revisit my determination of the date. On 3 June 2025 I allocated a new date in terms of the practice direction in the presence of the defendant's counsel. Surely this

would have served to dispel any apprehension of bias on my part. Significantly, no mention of these events is made in the application for my recusal or in the defendant's complaint to the Legal Practice Council, which is annexed to the application, all of which is illustrative of the defendant's dishonesty;

46.5. the applications for postponement and for my recusal were only brought on the morning of the day on which the applications for condonation and leave to appeal were set to proceed; and

46.6. the defendant's abrupt dismissal of his counsel was a further stratagem in his endeavour to secure a postponement.

[47] Paragraph [33] of the judgment in *Pangarker* (supra) is apposite and applies equally to the conduct of the defendant:

"Fourth, the criticism of the magistrate is unjustified. There is no doubt that AB engineered an application for a postponement under the guise of a recusal application. This application was a transparent and dishonest strategy to obtain a postponement. The decision of this court in *Take and Save* referred to in [26] above is instructive. He fell foul of the principles espoused in that case. It is incomprehensible how it could be said that the magistrate had committed a gross irregularity under these circumstances."

[48] The defendant, for reasons known only to him, has made every attempt to avoid following the practice direction to get his applications for condonation and leave to appeal heard. To this end his application for my recusal and the dismissal of his counsel

mid-argument were part of a transparent and dishonest strategy to obtain a postponement.

[49] The defendant's Johannesburg attorneys have remained on record throughout the proceedings. They prepared the applications for postponement and recusal for the applicant. These applications were poorly and belatedly prepared, were based on insufficient and incorrect facts and failed to disclose relevant facts. The recusal application makes no reference to my agreement to revisit the allocation of a hearing date and my meeting, to that end, with the parties' counsel on 3 June 2025 at which I allocated a new hearing date. The complaint to the Legal Practice Council was lodged on 12 June 2025. It contains no reference to the meeting of 3 June 2025.

[50] It is apparent that the applications for postponement and recusal were not preceded by any analytical appraisal by the defendant's attorneys particularly in circumstances where the applications were very belatedly brought, making them complicit in the defendant's strategy to secure a postponement under the guise of an application for my recusal. See *Bennett and Another v The State* 2021 (2) SA 439 (GJ) at [113]-[116].

[51] For these reasons I dismissed the applications for postponement and my recusal, with costs.

The conduct of Ms Ellis

[52] Ms Ellis has been much maligned by the defendant in correspondence which forms part of the record of proceedings, unjustifiedly so. I have set out above the limited extent

of my interaction with Ms Ellis regarding my determination of a date for the hearing of the applications for condonation and leave to appeal. There was nothing inappropriate in her approach to me directly in the absence of a response from the defendant's attorney. In no way did Ms Ellis act improperly in her limited engagements with me regarding the allocation of a date. During the proceedings on 18 June 2025 Ms Ellis had to endure further verbal attacks from the defendant. Throughout Ms Ellis acted decorously in the manner expected of an advocate and an officer of this court

The applications for condonation and leave to appeal

[53] My judgment on the application for condonation will be informed by the defendant's prospects of success in the application for leave to appeal. In view of the decision I have reached on the merits of the application for leave to appeal I consider it unnecessary to dwell on his lengthy and wholly unconvincing explanation for his delay in bringing the application for leave to appeal.

[54] Uniform rule 32(3) allows a defendant to resist summary judgment in three possible ways, namely by providing security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or to satisfy the court by affidavit or by way of oral evidence (with the leave of the court) that the defendant has a *bona fide* defence to the plaintiff's claims.

[55] When the application for summary judgment came before this court on 8 October 2024 the defendant had indicated that he wished to establish his defence by way of affidavit

and for that purpose was granted a postponement and directed to file his opposing affidavit by 15 October 2024.

[56] On 22 October 2024, the date on which I gave the order for summary judgment, the defendant did not avail himself of the other options afforded him by rule 32(3). He had on that date delivered a notice signifying his intention to amend his plea. When I queried as to why he had not delivered the affidavit he was ordered to deliver by 15 October 2024, which would be in harmony with the proposed amendment of his plea, he sought a further postponement to file such an affidavit. I refused the request for a further postponement and granted summary judgment in favour of the plaintiff, in the terms set out above, for the reasons provided by me.

[57] In paragraph 3 of his notice of application for leave to appeal the defendant states as follows:

“Having delivered the notice of intention to amend and the explanatory affidavit, the applicant made application for postponement of the application for summary judgment in order to allow him to file an affidavit in opposition to the application for summary judgment. The affidavit opposing summary judgment would be in accordance with the defences raised, and referred to, in the notice of intention to amend the applicant’s plea.”

[58] The defendant, therefore, accepts that I correctly applied the provisions of rule 32 by finding that the filing of a notice indicating an intention to amend his plea was in itself not sufficient to resist summary judgment in the absence of an affidavit which was in harmony with the proposed amendment.

[59] The defendant's attack on my judgment is thus directed at my refusal to grant him a postponement to file an affidavit resisting summary judgment, which request I refused for the reasons furnished. In essence, the defendant had been directed to file his affidavit resisting summary judgment by 15 October 2024. By the time of the hearing before me, on 22 October 2024, he still had not done so and provided no explanation for his failure to do so. In a contemporaneously filed "explanatory affidavit" he rather sought to dictate how the further process in respect of the application for summary judgment should unfold in the light of his notice of amendment. In the circumstances I exercised my discretion to refuse him a further postponement and granted summary judgment in favour of the plaintiff.

[60] The discretion to grant or refuse a postponement referred to in the passage cited in paragraph [31] above is a judicial discretion. See also *Pangarker* (supra) at [25]. In exercising my discretion and refusing the postponement I took into account the fact that the application for postponement had not been timeously made and had only been brought from the bar on the morning of the hearing of the application for summary judgment. I also took into account the further factors set out in paragraph [11] of the reasons for my granting summary judgment in favour of the plaintiff.

[61] There is no suggestion in the defendant's notice of application for leave to appeal that I failed to exercise my discretion judiciously when I refused his application for postponement. Nor are any facts advanced to demonstrate that I did not act judiciously.

[62] Accordingly, an appeal would not have reasonable prospects of success. Thus, I make the following order:

- 1. The defendant's application for condonation for the failure to deliver his application for leave to appeal timeously is dismissed with costs.*
- 2. The defendant's application for leave to appeal against the order of 22 October 2024 in terms of which summary judgment was granted against him in favour of the plaintiff is dismissed with costs.*




O H RONAASEN

ACTING JUDGE OF THE HIGH COURT

This judgment was circulated to the parties electronically on Tuesday, 09 September 2025 at 14:30 and is deemed to have been handed down on Tuesday, 09 September 2025 at 14:30.

Appearances: **Plaintiff:** **Ms L Ellis**
 Instructed by Gerrie Nel Inc, c/o Joubert Galpin & Searl, 173
 Cape Road, Mill Part, Gqeberha
Email: gerrie@gerrienelinc.co.za
 lucy@gerrienelinc.co.za
 joyl@jgs.co.za

Defendant: In person

**Represented by: Ian Levitt Attorneys, c/o James Phillipson
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