



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case no: 788/2019

In the matter between:

AFGRI VEEVOERE 'n DIVISIE VAN

AFGRI (PTY) LTD

PLAINTIFF

and

ALETTA JOHANNA KOTZE

DEFENDANT

Neutral citation: *Agri Veevoere 'n Divisie van Afgri (Pty) Ltd and Aletta*

Johanna Kotze (Case no 788/2019) [2025] ZAWCHC ... (24-
10-2025)

Coram: **PATHER S AJ**

Heard: 23 October 2025

Delivered: 24 October 2025

Summary: Claim for payment pursuant to a suretyship - matter set down for trial - defendant raised special plea on prescription - no set down of special plea- no appearance at trial by defendant or defendant's representative -default judgement granted-attorneys disregard for Plaintiff and the Court.

ORDER

- 1 The Defendant is ordered to pay the Plaintiff the sum of R5 515 796.43 (Five Million Five Hundred and Fifteen Thousand, Seven Hundred and Ninety-Six Rand and Forty-Three Cents).
- 2 The Defendant shall pay interest, *a tempore mora* on the aforesaid amount at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.
- 3 The Defendant is directed to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, in accordance with Rule 70 of the High Court Rules, subject to the discretion of the taxing master, with costs of counsel to be taxed on Scale B;

JUDGMENT

PATHER, AJ

[1] This case once again demonstrates how parties and their legal representatives can take deliberate actions to obstruct and delay legal proceedings, ultimately hindering the Plaintiff's ability to pursue their case effectively.

[2] The matter involves the Defendant executing a suretyship in favour of OK Kloof Plase CC (In Liquidation) on 14 December 2014.

[3] The Plaintiff issued summons, and served it on the Defendant on 29 January 2019, pursuant to the payment received from the liquidator in reduction of the amount due by the principal debtor.

[4] The Defendant delivered her Plea through her first legal representatives, Peet Hugo Attorneys, on 6 February 2020, just over a year after the summons was served. She raised a Special Plea of prescription. Defendant further pleaded over on the merits denying that she understood the document to be a suretyship agreement, that the nature of the suretyship was not explained to her, that she never consented to being a surety and that had she known, she would not have concluded and signed the suretyship agreement.

[5] The Applicant had initiated summary judgement proceedings against the Defendant prior to the Plea. However, the parties agreed to take a consent order that summary judgement be refused, and the Defendant be granted leave to defend the matter. This Order was granted on 19 March 2019.

[6] The Plaintiff delivered a Notice of Bar on July 9, 2019, while the Defendant failed to deliver a Plea. The Plaintiff obtained a default judgement against the Plaintiff on 28 August 2019, as the Plea had not yet been delivered. That Order for Default Judgement was set aside on 21 January 2020. The Defendant subsequently appoints a new attorney to represent her, and Notice was filed on 14 August 2020.

[7] Defendant failed to comply with the delivery of her discovery affidavit and an application to compel discovery was brought by the Plaintiff. On April 19, 2022, an order was issued in favour of the Plaintiff's requested relief.

[8] The Defendant's second attorney on record withdraws and new representation is on record by Visser and Partners Inc. This is the same firm that remains on record.

[9] The matter was declared trial ready and the set down of the matter was delivered to both attorneys via email on 10 December 2024.

[10] The Defendant failed to respond to the Plaintiff's Request for Further Particulars that was delivered on 17 September 2025.

[11] Representatives of both parties signed a Rule 37 Minute on 31 May 2024. The matter was dealt with by Lekhuleni J, to whom it was presented for a pre-trial. The parties were directed to file a pre-trial minute, and the matter was again postponed for pre-trial to 31 October 2024.

[12] On 24 October 2024, the Plaintiff delivered a practice note to this Court confirming that the parties had complied with the Rule 37 formalities and directed the Court to the Pre-trial minute that had been filed. On 12 November 2024, Willie J certified the matter to be trial ready pursuant to the pretrial that he dealt with on 31 October 2024.

[13] I noticed that this matter was set down for trial on 23 and 27 October. I was available to deal with the matter consecutively on 23 and 24 October and requested my registrar address a letter to both party's representatives, to enquire whether f they were amenable to this. A follow up email was sent by my registrar on 17 October 2025. There was no response from the Defendant's representative to either of the emails. The Plaintiff's representative responded on 20 October 2025 confirming their acceptance of this suggestion. My registrar addressed further emails to the Defendant's representative and both emails were not acknowledged. On 21 October 2025, my registrar contacted the Defendant's attorney's firm and was informed that the attorney handling the case was unavailable but would be reminded to respond to the email. On 22 October 2025, the Defendant's representative contacted my registrar and informed her that the attorney that was dealing with the matter was no longer with the firm and that he was in prison, and that there were issues with representation for the trial. My registrar requested that the Defendant's representative deal with the further conduct of this matter with the

Plaintiff's representative. No further communication was received and the court prepared for the trial.

[14] I read the pleadings, the practice note and the notices filed on record.

[15] The Court was ready to commence with the trial, however, neither the Defendant nor her representative was present at court. The Plaintiff's Counsel addressed the Court and informed the court that the Partys 'representatives had exchanged emails during the afternoon of the day before. The court was given a bundle of documents under cover of an affidavit deposed to by the Plaintiff's attorney.

[16] The affidavit handed up to court set out a chronology of the events leading up to the date of the trial and the email exchange between the parties on Wednesday, 22 October 2025. The Defendant's attorney was allegedly in hospital, and he addressed responses to the Plaintiff's attorney allegedly from hospital.

[17] The Plaintiff's counsel addressed the Court and stated that this was dilatory conduct by the Defendant. There was no application for a postponement.

[18] The Court found that the Defendant and his representative had shown no good reason why they were not at court. The Defendant's representative could have and in fact should have taken every possible measure to ensure that his client was represented at court. The Defendant's representative did not brief counsel, nor did he arrange for any person from his office or a colleague to address the court. His behaviour demonstrated complete disrespect for the court and he seemed to

believe that the granting of a postponement due to him being in hospital if this were to be true was a foregone conclusion.

[19] From the affidavit and bundle handed in by the Plaintiff's counsel, it is clear that the Defendant's representative had no intention of making any arrangement regarding the conduct of this matter.

[20] The excuses and explanation tendered by the attorney for the defendant is not acceptable. The Defendant's attorney alluded in correspondence contained in the bundle that his client was aware that the matter was set down for 28 October 2025. This indicated that the Defendant herself did not take steps to ascertain what was happening in her matter.

[21] The Defendant's attorney seems to be in charge of the firm. The fact that an attorney who was employed by him has left his employ does not absolve the firm and the said attorney from their responsibilities to clients and the court. Mr Visser ought to have ensured that this matter was receiving attention.

[22] Mr. Visser's failure to make appropriate representations to the court is additionally reprehensible. Mr Visser did not even ensure that the Defendant was present in court. An attorney is reasonably expected to have at least requested his client to attend court. Mr Visser, in his email to the Plaintiff's representative on 22 October 2025, states that he contacted the defendant the day before (21 October 2025), and she thought the matter was in court on 28 October 2025. This court finds it troubling that neither the attorney nor the defendant took any action on this

matter. This was the day before Mr Visser's alleged hospitalisation. Mr Visser was content to leave the matter in the hands of the court, as his email suggests.

[23] This court cannot accept that the unavailability of the defendant and her attorney should impact adversely on the Plaintiff. The Plaintiff has been seized with this matter for 6 years. Numerous delays have occurred, primarily attributable to the Defendant.

[24] The Court has also had regard to the Defendant's Plea, and it is satisfied that the defence raised will not succeed. The defendant did nothing after her special plea was raised and if she believed in the defence, one would have expected this to have been set down for a determination of the special plea. This was also not raised in the pre-trial proceedings between the parties or at the pre-trial dealt with by Judge Wille.

[25] It is in the interests of justice for the Plaintiff to have this matter finalised. The Plaintiff has done everything it could to prosecute this matter and there exist no justifiable excuse for the Defendant or her representatives to have been absent from court proceedings.

[26] The Court believes that in this matter a punitive cost order against the defendant's attorney seemed justified, however, since the Plaintiff did not request this, the court finds no need to make such an order.

[27] Attorneys are to be cautioned about encouraging litigants to delay matters. They must at all times acknowledge that they are officers of the court. This

process is expensive and emotionally taxing for the parties involved. It is therefore unacceptable to remain uninformed of matters and neglect it to the detriment of the opposing party.

[28] In this matter and on weighing the prejudice, the court finds that the prejudice to the Plaintiff outweighs the prejudice to the Defendant.

PATHER AJ
JUDGE OF THE HIGH COURT

Appearances:

For Plaintiff: Adv M McChesney
Instructed by: Strydom & Benekamp Inc
C/O: Assheton-Smith Ginsberg Inc.
Box 39

For Defendant: No appearance