

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 208805-2019

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE 5/2/2026 [REDACTED]	

HOWELL HERBERT JAMES KNOCKIES

APPLICANT

AND

THE ROAD ACCIDENT FUND

RESPONDENT

JUDGMENT

This Judgment was handed down electronically and by circulation to the parties' legal representative by way of email and shall be uploaded on CaseLines. The date of the hand down is deemed to be on the **05 FEBRUARY 2026**.

MAKUME J:

1. In this matter the applicant seeks an order that the defence pleaded by the defendant in the main application be struck off, and that the applicant thereafter be granted leave by this court to enrol the matter on the default trial roll of this division.
2. The basis of the application is that the respondent failed to comply with the court order dated 23 April 2025, in which the Honourable Wright J made the following order:

“The defendant is to discover by 4 pm on 5 May 2025, failing which the plaintiff may apply for the striking of the defence and the entering of judgment in favour of the plaintiff.”

Background facts

3. It is common cause that the main action was removed from the trial roll on 22 April 2025 as it was discovered that respondent had not filed discovery in terms of the rules, hence a finding that the matter was not ripe for hearing.
4. It is also common cause that the respondent served the discovery affidavit on the applicants by way of email on 26 April 2025, in terms of rule 4 A(1)(c) of the *Uniform Rules of Court*. On 21 August 2025 the applicant lodged this application. In his affidavit the applicant says the following:

“The respondent sent an email on 25 April 2025 in which it annexed a discovery affidavit for service in terms of rule 4 A(1)(c). The email and discovery affidavit are annexed hereto and marked as ANNEXURE RP2 and RP3 respectively. There exists no agreement between the applicant and the respondent for service of documents per email. The

respondent has thus failed to make discovery in terms of the order as service thereof was irregular.”

The issues

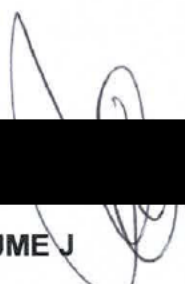
5. What is in issue is that the service of the discovery affidavit was irregularly served and not in accordance with rule 4 A(1)(c) of the *Uniform Rules of Court*.
6. It is the applicant’s case that there was no agreement between the parties that documents be exchanged via email, and not be served physically.
7. The applicant did receive the discovery affidavit on 25 April 2025 and did not object that it was served irregularly. He condoned the service, and has not been able to prove that such service has been prejudicial to the further conduct of his case. It is also on record that when the applicant’s attorney took over this matter from the applicant’s previous attorneys, they served their notice of appointment during 2021 per email. They did not have the consent of the respondent’s attorneys to do so, and yet they now insist that there should have been consent. I find this rather disingenuous and an act of self-serving.
8. The cornerstone of our legal system is not only entrenched in section 34 of the *Constitution*, but also in the rules of this court, which require that notice of legal proceedings against any party be served on such person or party, failing which any judgment that follows upon non-service is regarded as null and void *ab initio*.
9. This rule applies equally to applications for striking off a defence due to alleged non-compliance. The court in *MEC for Department of Public Works and Others v Ikamva Architects and Others* (235/2021) [2022] ZAECHC dealt with striking out defences and held as follows:

"As noted by Plasket J it is only when a court has had the opportunity to decide that ground exists for the striking off a defence, that an application for default judgment may be made. The dismissal of a claim or the striking of a defence is a drastic remedy, and the power to grant such a remedy is discretionary, a discretion that must be exercised judicially. The power to strike out a defence is derived from the uniform rules. The interpretation and application of a court rule often requires a consideration of the provisions of the *Constitution*. Section 34 is relevant in this respect, providing that everyone has a right to have a dispute that can be resolved by the application of law, decided by a court or a tribunal, in a fair public hearing. The striking off a plaintiff's claim or a defendant's defence has a far-reaching impact on this right. It has a potential to deprive a litigant of a fair trial, bringing an end to a claim or defence in the case of a defendant. The usual effect of a striking out is to prevent the presentation of a defence so that judgment will be entered for the plaintiff subject to any further order of court."

10. In this matter the applicant has failed to show what prejudice he has suffered by receiving the discovery affidavit via email instead of physical. In my view, the applicant is relying on technicality, when in fact what he asked for he has received.
11. In the result, I make the following order:

11.1. The application is dismissed;

11.2. The applicant is ordered to pay the respondent's
taxed party and party costs.



MAKUME J

JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant:

Adv Anton Louw

For the Respondent:

State Attorney, Johannesburg

Mr Matimu Madasele