THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 125130/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

10 FEBRUARY 2026
DATE

[redacted]
SIGNATURE

In the matter between:

ANDILE THWALA	Applicant
and	
MONAGHAN FARM HOMEOWNERS ASSOCIATION NPC	Respondent
In re:	
MONAGHAN FARM HOMEOWNERS ASSOCIATION NPC	Applicant
and	
ANDILE THWALA	Respondent

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on ___ February 2026.*

JUDGMENT

VAN EEDEN AJ

[1] This is an application for leave to appeal a judgment I signed on 19 September 2025. The parties referred to themselves as in the main application, and I shall also adopt that terminology.

[2] The application for leave to appeal is dated 30 October 2025. It is common cause that condonation is required for the late launching of the application for leave to appeal. To that end, the respondent launched a substantive application. The founding affidavit was signed on 10 November 2025. The applicant filed an answering affidavit and the replying affidavit was filed on the morning of the hearing of this application.

[3] The delay in launching the application for leave to appeal was apparently caused by financial distress. In the founding affidavit the respondent stated as follows:

> "13. After receiving the judgment, there was a delay in giving the necessary financial mandate to my attorneys of record to proceed with the matter. This is considering that I had recently made payments north of R220 000.00 to the Applicant to cover the debt which stretched me financially."

[4] In the replying affidavit this issue was further explained:

> "23. I had recently made substantial payments towards the judgment debt. Those payments reduced my immediate disposable funds and required me to secure additional funds to continue the litigation responsibly. This is precisely the conduct of a person attempting to pay his debts, not to evade them."

[5] Mr T Mahapa appeared on behalf of the respondent. He submitted that the high value of the respondent's house undermines the finding of insolvency made in the main judgment. He submitted that this militated against the finding of factual insolvency.

[6] In the main judgment, I stated that it appeared to be common cause that the immovable property in issue was unencumbered and that it had a value of approximately R4,5 million. The fact that the property is unencumbered, seen in isolation, does not have the result Mr Mahapa contended for. Nor is the submission that the respondent was simply unwilling to pay and that there is not an inability on his part to effect payment. The respondent was compelled to pay in accordance with the court order obtained by the applicant. In these circumstances, the authority of *Barlow's (Eastern Province) Ltd v Bouwer 1950 (4) SA 385 (E) at 390* relied upon by Mr Mahapa is not of assistance. In fact, it seems to me that it goes against the respondent. The respondent is not entitled to hide behind a contention that he is simply unwilling to pay, without providing a factual basis for such contention. This is an issue which I highlighted in the main judgment. The application for condonation does not rectify this shortcoming in the respondent's case.

[7] Mr Mahapa contended that there was no advantage shown to creditors. This submission cannot be supported for the reasons set out in paragraph [12] of the main judgment. If I understood the papers in the condonation application correctly, they reflect not only that the respondent remains indebted to the applicant, but also that the amount of indebtedness is increasing on a monthly basis. Given the shortage of facts provided by the respondent as to his financial position, there is in my view a clear benefit to creditors. Moreover, the house is unencumbered.

[8] Mr Mahapa also contended that the application was defective for non-compliance with section 9(3)(a)(iv) of the Insolvency Act in that the applicant did not state whether the debt was secured or not secured. In my view, it is clear from a reading of the application that the debt was not secured.

[9] In my view the application for leave to appeal has no prospects of success. It follows that the application for condonation can also not succeed. The parties agreed that costs would be allowed on the attorney and client scale.

[10] In the premises, I make the following orders:

1. The application for condonation is dismissed with costs on the attorney and client scale.

2. The application for leave to appeal is dismissed with costs on the attorney and client scale.

3. All costs are costs in the sequestration of the respondent.

[redacted]

H VAN EEDEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	Adv S Mushet instructed by AJ van Rensburg Inc
For the Respondent:	Adv T Mahapa instructed by Crafford Attorneys
Date of hearing:	9 February 2026
Date of judgment:	10 February 2026