

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-067913

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

DATE: 30 January 2026

SIGNATURE OF JUDGE:

A black rectangular box redacting the signature of the judge.

In the matter between:

BUFFELSFONTEIN GOLD MINES (PTY) LTD

First Plaintiff

TAU LEKOA GOLD MINING CO (PTY) LTD

Second Plaintiff

KOPANANG GOLD MINING CO (PTY) LTD

Third Plaintiff

and

**THE DIRECTOR GENERAL: DEPARTMENT OF EMPLOYMENT
AND LABOUR**

First Defendant

**THE MINISTER: DEPARTMENT OF EMPLOYMENT
AND LABOUR**

Second Defendant

JUDGEMENT

H F OOSTHUIZEN AJ**INTRODUCTION**

1. The first and second plaintiffs (collectively "the plaintiffs") seek summary judgement against the third defendant for the repayment of amounts allegedly paid in error.
2. The third defendant, who is appointed under section 2 of the *Compensation for Occupational Injuries and Diseases Act, 1993*¹ ("the COIDA"), is the representative of the Compensation Fund, established under section 15 of the COIDA.
3. The purpose of the COIDA is to provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases. Employers, as defined in the COIDA, are obliged to make payment of assessments to the third defendant.
4. The *Occupational Diseases in Mines and Works Act, 1973*² (the ODMWA) provides for the payment of compensation in respect of certain diseases contracted by persons employed in mines and works to the Mines and Works Compensation Fund, established under section 61(1) of the ODMWA.
5. The plaintiffs plead that:

¹ Act 130 of 1993

² Act 78 of 1973

- 5.1. they are owners of controlled mines who are liable to pay amounts determined in terms of section 62 of the ODMWA for the benefit of the Mines and Works Compensation Fund;
 - 5.2. during the period June 2019 to August 2021, the plaintiffs were liable for the payments of the amounts claimed in this application to the Compensation Commissioner for Occupational Diseases, appointed under section 54(a) of the ODMWA;
 - 5.3. during the said period, the plaintiffs paid the said amounts in error to the third defendant instead of to the Compensation Commissioner for Occupational Diseases;
 - 5.4. the third defendant was enriched and the plaintiffs were impoverished in the amounts of the payments and the third defendant is accordingly liable to repay the amounts to the plaintiffs on the basis of unjustified enrichment; and
 - 5.5. the fact that the payments had been made to the third defendant was only discovered on 30 June 2021 and could not have been reasonably discovered earlier.
6. The third plaintiff initially also claimed payment of amounts paid in error to the third defendant and also applied for summary judgement in respect of such amounts. This claim was settled on the basis that the amounts received by the third defendant were paid to the Rand Mutual Assurance. The third plaintiff does not accordingly claim any relief in this application any longer.

PROCEDURAL CHRONOLOGY

7. On 15 August 2024, and pursuant to the delivery of a notice of bar, the defendants delivered a bare denial plea.
8. On 5 September 2024, the plaintiffs applied for summary judgement.

9. The application was enrolled for hearing on the unopposed motion roll of 23 October 2024, which implies that the defendants were obliged to deliver their opposing affidavit in terms of rule 32(3)(b) by no later than 15 October 2024, which they failed to do.
10. On 23 October 2024, Twala J removed the application from the roll; directed the third defendant to file its opposing affidavit within 20 days from 23 October 2024 (i.e. by no later than 20 November 2024); and ordered the third defendant to pay the wasted costs on an attorney and client scale.
11. The third defendant failed to file its opposing affidavit in compliance with the order of Twala J.
12. On 9 December 2024, the application was yet again enrolled for hearing on the unopposed motion roll of 28 January 2025.
13. On 24 January 2025, the third defendant filed their opposing affidavit as well as a notice of intention to amend their plea.
14. In the opposing affidavit defendants conceded that the plea contained a bare denial of the allegations in the particulars of claim and relied for their alleged *bona fide* defence to the action on the alleged defences contained in the notice of intention to amend.
15. On 28 January 2025, Baqwa J removed the application from the roll and ordered the third defendant to pay the wasted costs on an attorney and client scale.
16. On 7 February 2025, the plaintiffs delivered an objection to the proposed amendment of the plea.
17. The defendants failed to lodge an application for leave to amend in terms of rule 28(4), which application should have been lodged by 19 February 2025.

18. On 27 August 2025, the plaintiffs delivered their heads of argument, a practice note, a list of authorities and an affidavit opposing the defendants' application for condonation for the late filing of its opposing affidavit.
19. On 2 September 2025, the application was set down for hearing on the opposed motion roll of 26 January 2026.
20. No heads of argument, practice note or list of authorities were filed by the defendants.
21. During the pre-hearing conference in terms of paragraph 25.17 of the Practice Directions held on 22 December 2025, a candidate attorney in the employ of the state attorney indicated that the state attorney has no instructions from the defendants and would not be able to provide any input in respect of the draft joint practice note.
22. I allocated the application for hearing on 28 January 2026 at 11:30.
23. On 27 January 2026 at 19:32, my secretary received a letter from the state attorney in which it was indicated that they intended to file an application for leave to amend the defendants' plea and that "[t]he amendment arises from fresh instructions from our clients' Fraud Section, which has determined that the claims are part of a money-laundering operation". The letter ended with the following request: "Given these serious developments, we humbly request that the matter be removed or postponed sine die to avoid wasting the Court's time with voluminous, moot documents."
24. On 27 January 2026 at 20:32, the defendants served an application for leave to amend the defendants' plea in accordance with their notice of intention to amend dated 24 January 2025.

RELEVANT LEGAL PRINCIPLES PERTAINING TO APPLICATIONS FOR SUMMARY JUDGEMENT

25. An affidavit in support of summary judgement must in terms of rule 32(2)(a) be made by the plaintiff or by any other person who can swear positively to the facts.
26. First-hand knowledge of every fact which make up the plaintiff's cause of action is not required and where the plaintiff is a corporate entity, the deponent may legitimately rely on records in the company's possession for their personal knowledge.³
27. Rule 32(3)(b) provides in relevant part that a defendant in a summary judgement application may "*satisfy the court by affidavit ... that the defendant has a bona fide defence to the action; such affidavit ... shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.*"
28. The nature and grounds of the defence and the material facts relied upon must be in harmony with the allegations in the plea.⁴
29. In *Vukile Property Fund Ltd v True Ruby Trading 1002 CC t/a Postnet*⁵ Moorcroft AJ dealt as follows with this principle and the effect and implications thereof:

"[6] The plaintiff is required in his affidavit to explain why the defence as pleaded does not raise any issue for trial. The plaintiff can only comply with this requirement when it knows what the defences outlined by the defendant are. It follows that the defendant may not raise defences in the affidavit resisting summary judgement that are not pleaded...

³ *Rees v Investec Bank Ltd* 2014 (4) SA 220 (SCA) par [12] and [15]

⁴ *Jovan Projects (Pty) Ltd v ICB Property Investments (Pty) Ltd* (2020/32427) [2021] ZAGPJHC 836 (20 December 2021) par [67]

⁵ Unreported, GJ case number 2020/9705, dated 21 May 2021

[8] *The defendant is therefore called upon to file a plea that sets out its defence, and in the summary judgement application to amplify the defence on affidavit to illustrate a bona fide defence to the action. In evaluating the plea and the affidavit the distinction between the facta probanda and the facta probantia must be kept in mind - the affidavit should contain facta probantia whereas the plea should not...*

[10] *A defendant is required to set out a defence with reasonable clarity and when the defence raised in the affidavit resisting summary judgement is inconsistent with the plea it cannot in the absence of an explanation for the consistency be said to be bona fide.*

[11] *The new rule, like the old, does not provide for a replying affidavit and this is so for understandable reasons. When the defendant raises issues in the affidavit that are not dealt with in the plea the plaintiff has no opportunity to respond.*

[12] *The practice of filing an affidavit resisting summary judgement that differs markedly from the plea and is to some extent totally unrelated to the plea, must therefore be deprecated.*

[13] *it has been held that a defendant is not precluded from amending its plea after an application for summary judgement is brought. The correct procedure then is for the application to amend the plea to be finalised first, and if the amendment were granted for the plaintiff to bring a fresh application for summary judgement in respect of the revised plea if so advised. The courts will have to guard against abuse of the process."*

30. If the plea is one of bare denial which does not raise any issue for trial, the defendant should therefore not be allowed, in the absence of a notice of intention to amend the plea in order to properly set out its defence to the action, to rely on an affidavit resisting summary judgement in which the nature and

grounds of a *bona fide* defence and material facts relied upon therefor, which are unrelated to the bare denial in the plea, are set out.

31. The word “*may*” in rule 32(5) confers a discretion on the court, so that even if the defendant’s affidavit does not measure up fully to the requirements of rule 32(3)(b), the court may nevertheless refuse to grant summary judgement if it thinks fit.⁶
32. The discretion under rule 32(5) should not be exercised against the plaintiff on the basis of mere conjecture or speculation but should be exercised on the basis of material before the court. If, on the material before it, the court sees a reasonable possibility that an injustice may be done if summary judgement is granted, that is a sufficient basis on which to exercise its discretion in favour of the defendant.⁷

THE DEFENDANTS’ APPLICATION FOR POSTPONEMENT

33. The defendants accept that the bare denial plea does not raise any issue for trial and Mr Mahlangu, who appears on behalf of the defendants, accordingly applied on 28 January 2026 for the postponement of the application for summary judgement to enable the application for leave to amend the plea be finalised first in accordance with the legal principles, as set out in paragraphs 28 to 30 above. No formal application for postponement was filed.
34. Mr Joubert, who appears on behalf of the plaintiffs, opposed the application for postponement and sought summary judgement against the third defendant.
35. The principles pertaining to applications for postponement were enunciated as follows by the Constitutional Court in *National Police Service Union v Minister of Safety and Security*.⁸

⁶ *Gruhn v M Pupkewitz & Sons (Pty) Ltd* 1973 (3) SA 49 (A) at 58C-D

⁷ *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 229E-H

⁸ 2000 (4) SA 1110 (CC) para [4]

"[4] The postponement of the matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such 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 show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court... In exercising that discretion, this Court will take 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 of the parties and whether the application is opposed. All these factors will be weighed by the Court to determine whether it is in the interests of justice to grant the postponement.

[5] What is in the interests of justice will in turn be determined not only by what is in the interest of the parties themselves, but also by what, in the opinion of the Court, is in the public interest. The interests of justice may require that a litigant be granted more time, but account will also be taken of the need to have matters before this Court finalised without undue delay."

36. Other factors to be considered in granting a postponement include the prospects of success on the merits and the reason for the lateness of the application if not timeously made.⁹
37. In support of the application for postponement Mr Mahlangu contended that it is in the interests of justice that the dispute between the parties be resolved with reference to the defences which are raised in the proposed amended plea and

⁹ *Shilubana v Nwatmitwa* 2007 (5) SA 620 (CC) par [11]

that the plaintiffs should not be allowed to obtain a technical advantage due to the defendants' plea of bare denial.

38. The only reason why the defendants require a postponement of the application for summary judgement is due to their failure to timeously lodge an application for leave to amend, which should have happened by no later than 19 February 2025.
39. The defendants were thus obliged to furnish a full and satisfactory explanation of their failure to do so, preferably under oath, which they completely failed to do. The defendants in this regard acknowledged the delay in lodging the application for leave to amend but merely indicated in the founding affidavit in support of the application that they intend to file a substantive application for condonation without any indication on what evidence they intend to rely in support of the envisaged application.
40. The defendants moreover failed to provide any explanation why they waited until less than 24 hours before the allocated hearing date to seek a postponement of the application for summary judgement, bearing in mind that the application was set down for hearing on the opposed motion roll on 2 September 2025.
41. In view of the fact that there is currently no application to extend the prescribed time period to lodge the application for leave to amend, there is no prospects of success in the application for leave to amend.
42. I have considered the defences which the defendants intend to raise in the proposed amended plea to ascertain whether an injustice will occur if the doors of the court are closed to the defendants by refusing them the opportunity to attempt to amend their plea.
43. The proposed plea contains four special pleas:
 - 43.1. The first special plea is to the effect that the plaintiffs have failed to attach the necessary authority to institute the action, which defence is without

merit. A challenge to the authority of anyone acting on behalf of the plaintiffs should have been done in terms of rule 7(1).

43.2. The defendants contend in the second special plea that some of the plaintiffs' claims have been extinguished by prescription. The defendants contend that prescription commenced to run from the date of making the payments, which contention ignores the provisions of section 12(b) of the *Prescription Act, 1969*¹⁰ which provides that "*a debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises; provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care*".

43.3. The defendants contend in the third and fourth special pleas that the plaintiffs failed to comply with sections 3(1) and 3(2) of the *Institution of Legal Proceedings against Certain Organs of State Act, 2002*,¹¹ which requires a notification of intention to institute legal proceedings against an organ of state for the recovery of a "*debt*". The problem for the defendants is that the word "*debt*" is confined to a claim for damages,¹² which does not include a claim for unjustified enrichment.

44. On the merits the defendants intend to rely on investigations of "*a suspected fraudulent money laundering and/or a fraudulent scam*". Mere investigations of criminal conduct does not amount to a defence to the relief sought by the plaintiffs. It is in this regard important to note that the application for amendment contains no evidence "*that the claims are part of a money-laundering operation*", as stated in the state attorneys letter.

45. I accordingly find that:

¹⁰ Act 68 of 1969

¹¹ Act 40 of 2002

¹² *Vhembe District Municipality v Stewarts & Lloyds Trading (Booysens) Pty Ltd* [2014] 3 All SA 675 (SCA) para [10]-[16]

- 45.1. the defendants have failed to show good cause for the postponement;
and
- 45.2. the interests of justice does not require that the defendants be granted more time but rather that the application for summary judgement should be finalised without any further undue delay.
46. I accordingly refuse the defendants' application for postponement.

THE MERITS OF THE APPLICATION FOR SUMMARY JUDGEMENT

47. As I have indicated above, the plea contains no triable issue and the defendants are not entitled to rely on the proposed amended plea in opposing the application for summary judgement.
48. In support of the defendants' application for condonation for the late filing of the opposing affidavit and the failure to comply with the order of Twala J, the defendants contend that the delay in filing the opposing affidavit was **solely** due to the ongoing fraud investigation and the lack of standing of the deponent to the affidavit in support of the summary judgement application.
49. Both explanations are without merit. There is **no** evidence that the fraud investigation has, 15 months since the order of Twala J, been finalized, which implies that this factor does not have any bearing on the failure to comply with the rules of court and an order of court. Rule 32(2)(a) does not require that the deponent to the affidavit in support of an application for summary judgement must be authorized; they must merely be a person who can swear positively to the facts.
50. I am accordingly not prepared to grant condonation for the defendants' failure to comply with the rules of court and the order of Twala J.
51. Although I am not prepared to grant condonation for the late filing of the opposing affidavit, I will deal with two defences raised in the affidavit on the

basis that they could have been raised during argument without the need for an affidavit.

52. Contrary to what is contended by the defendants, the plaintiffs' claims are for liquidated amounts in money. It is clearly capable of speedy and prompt ascertainment.¹³
53. There is similarly no merit in the defendants' contention that the deponent to the affidavit in support of summary judgement, Mr de Koker, the Head of Finance of the plaintiffs, cannot "*swear positively to the facts*", as required by rule 32(2)(a).
54. Mr de Koker relies on the following allegations to support the plaintiffs' contention that they have complied with rule 32(2)(a):

"2. *As the Head of Finance of the plaintiffs, the facts contained herein are within my personal knowledge and I can swear positively to the facts as set out in the Particulars of Claim and herein. I am also in a position to verify the cause of action as set in the Particulars of Claim as well as the correctness of the amounts claimed therein.*

3. *My knowledge of the fact is derived from the fact that the incorrect payments were made by my department and all of the relevant documents pertaining to this matter fall under my control. I was personally involved in establishing the error and subsequent attempts to recover the money. I have again reviewed all of the relevant documents including the relevant bank statements before deposing to this affidavit."*

55. As I have indicated above, first-hand knowledge of every fact which make up the plaintiff's cause of action is not required and where the plaintiff is a corporate entity, the deponent may legitimately rely on records in the company's possession for their personal knowledge.

¹³

Botha v W Swanson & Company (Pty) Ltd 1968 (2) PH F85 (CPD)

56. I am accordingly satisfied that Mr de Koker can “*swear positively to the facts*”, as required by rule 32(2)(a).

CONCLUSION

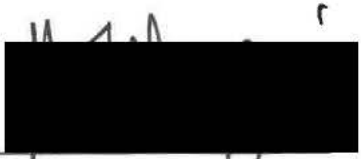
57. The plaintiffs are accordingly entitled to summary judgement.
58. There is in my view no reasonable possibility that an injustice may be done if summary judgement is granted and I am accordingly not prepared to exercise my discretion in favour of the defendants.
59. In view of the defendants' complete disregard of the rules of court, the order of Twala J and the Practice Directions (as demonstrated by the procedural chronology set out above) and the continued insinuation of criminal conduct without any evidence to support such extremely serious allegations a punitive costs order against the third defendant is in my view justified.

ORDER

60. In the premises I grant the following order:
- 60.1. The first, second and third defendant's application for postponement is dismissed.
- 60.2. Summary judgement is granted against the third defendant for payment to:
- 60.2.1. the first plaintiff of the sum of R5 646.40 together with interest on the sum of R5 646.40 at the rate of 11,75% per annum calculated from 4 July 2023 until date of payment; and

60.2.2. the second plaintiff of the sum of R3 660 075.16 together with interest on the sum of R3 660 075.16 at the rate of 11,75% per annum calculated from 4 July 2023 until date of payment.

60.3. The third defendant is ordered to pay the costs of the application for summary judgement as well as the first and second plaintiffs' costs in opposing the application for postponement on the scale as between attorney and client.


HF OOSTHUIZEN AJ

ACTING JUDGE OF THE HIGH COURT

This judgement was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 2 February 2026.

Appearances

Counsel for the First and Second Plaintiffs: Adv D C Joubert SC
instructed by Werksmans Attorneys

Counsel for the First to Third Defendants: Adv Mahlangu
instructed by the State Attorney

Date of Hearing: 28 January 2026

Date of Judgement: 30 January 2026