



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

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE: 3 March 2026

SIGNATURE: [REDACTED]

Case No. 2025-098693

In the matter between:

AFRICAN BANK LIMITED

APPLICANT

And

HEAD, JOHN BEACHY

FIRST RESPONDENT

Coram: Millar J

Heard on: 24 February 2026

Delivered: 3 March 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 3 March 2026.

REASONS FOR JUDGMENT OF 24 FEBRUARY 2026

MILLAR J

- [1] On 29 November 2012 the respondent (Mr. Head) signed a Guarantee in favour of Grindrod Bank for the obligations of a company called Cuperex Pty (Ltd) in the sum of R15 950 000.00 (fifteen million nine hundred and fifty thousand rand).
- [2] The present proceedings arise in consequence of the calling up of that Guarantee. When the matter was called, counsel for Mr. Head moved an application for postponement. Counsel for Mr. Head was only instructed to appear for the postponement and after I heard argument regarding the postponement and refused it, she took no further part in the proceedings.
- [3] It bears mention that when the matter was called, the pleadings were already closed as Mr. Head's answering affidavit had been filed and the applicant's replying affidavit had also been filed.
- [4] The application came to be set down after African Bank, having complied with the rules and the practice directives of this court, had filed their heads of argument.

Mr. Head failed to file his heads of argument within the prescribed time and accordingly upon the expiry of that time, African Bank sought and was allocated the week of the 23 February 2026 for hearing.

- [5] After having heard the postponement and refused it, I took the view that since Mr. Head's defences to the claim for performance in terms of the Guarantee had been set out in his answering affidavit and that these could be addressed by me that an order should follow in favour of African Bank.
- [6] I intend to deal with 3 topics. The first is the postponement, which was refused. The second, which is Mr. Head's defence that it was the incorrect party that was seeking enforcement of the Guarantee and thirdly, that his obligation in terms of the Guarantee had "*become prescribed*".
- [7] The starting point for the consideration of the application for postponement is the date upon which African Bank's notice of set down for 23 February 2026 was served on Mr. Head's former attorneys. This occurred on 5 November 2025. The attorneys withdrew on 13 January 2026 – more than 2 months later. In his affidavit, Mr. Head states:

"The reason I did not deliver heads of argument any earlier than now was because at that time, I did not have sufficient funds with which to pay my previous attorney the required deposit for his fees and cover for the Senior Advocate who he had briefed to assist me in this matter.

Only on 13 January 2026 my previous attorney withdrew as such. On that date he sent me copies of certain documents from my file. I did not however, realize that the application had been set down on the Opposed Roll, or that that meant that the main application would be heard on 24 February 2026.

Since that date, I searched for new legal representation and only secured the necessary funds to employ new attorneys and identified and secured a consultation with Bouwer Cardona Inc on 12 February 2026.

It was only on that date that I realized that the entire application was going to be heard on 24 February 2026. As stated above, my new attorneys advised me that there was not sufficient time to prepare heads of argument and brief counsel for 24 February 2026”.

- [8] Besides this explanation of what transpired at the time of the withdrawal of the former attorneys and the appointment of the new attorneys, there is no explanation given as to whether or not the previous attorneys had informed Mr. Head in November 2025 of when the application had been set down for hearing or what he or they did in that period until their withdrawal on 13 January 2026.
- [9] Furthermore, there is no explanation by him as to what he did in the month between the withdrawal of his former attorneys 13 January 2026 and the appointment of his current attorneys on 12 February 2026. The high watermark of the explanation given by Mr. Head is that:

“I submit that this explanation is brutally frank and complete. It is no small thing to be humble enough to mention a lack of funds being the reason for a delay in proceeding to deliver heads of argument and hire a legal team.”

- [10] It is trite that a party seeking an indulgence is required to provide a full and frank explanation to the Court. Besides the bare allegations made by Mr. Head in the affidavit, there is nothing to substantiate or corroborate anything that he has said. In my view, his explanation lacked substance and was not *bona fide*. In my view the application for postponement was not properly substantiated and fell to be refused. It is for this reason that I refused the postponement with costs.

[11] Turning now to the two defences raised by Mr. Head. Before dealing with these, I refer to *Joint Venture Aveng (Africa) (Pty) Ltd / Strabag International GMBH v South African National Roads Agency SOC LTD*¹ in which the nature of a Guarantee is set out. Regarding letters of credit, which is of equal application to a performance guarantees the following was said:

"[7] Before I consider the Joint Venture's submissions before us, it is necessary to restate our jurisprudence on the nature and effect of letters of credit (which applies equally to performance guarantees). Our law is well settled, and firmly recognises the autonomy principle, i.e. the autonomy of the performance guarantee from the underlying contract. The principle is best expressed in the oft-quoted passage from Lord Denning MR's speech in *Edward Owen*:

'A bank which gives a performance guarantee must honour that guarantee according to its terms. It is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contracted obligation or not; nor with the question whether the supplier is in default or not. The bank must pay according to its guarantee, on demand if so stipulated, without proof or conditions. The only exception is where there is a clear fraud of which the bank has notice.'

[8] Thus, in *Loomcraft*, with reference to *Edward Owen* and other decisions, Scott AJA explained at 815G – J:

'The unique value of a documentary credit, therefore, is that whatever disputes may subsequently arise between the issuing bank's customer (the buyer) and the beneficiary under the credit (the seller) in relation to the performance or, for that matter, even the

¹ 2021 (2) SA 137 (SCA) at para [7] – [9]. See also *Minister of Transport & Public Works, Western Cape & Another v Zanbuild Construction (Pty) Ltd & Another* 2011 (5) SA 528 (SCA) at paras [13] – [14].

existence of the underlying contract, by issuing or confirming the credit, the bank undertakes to pay the beneficiary provided only that the conditions specified in the credit are met. The liability of the bank to the beneficiary to honour the credit arises upon presentment to the bank of the documents specified in the credit, including typically a set of bills of lading, which on their face conform strictly to the requirements of the credit. In the event of the documents specified in the credit being so presented, the bank will escape liability only upon proof of fraud on the part of the beneficiary.'

[9] Loomcraft was followed in a long line of decisions, which have consistently recognised the autonomy principle. The Joint Venture accepted this principle. However, it submitted that our law should be developed to recognise an exception, so that, where the underlying contract restricts or qualifies a beneficiary's right to call up the guarantee, a contractor is entitled to interdict a beneficiary from doing so until the conditions in the underlying agreement have been met (the underlying contract exception). As I have already said, the Joint Venture asserted that the proposed exception would apply to the performance guarantee currently before us." (footnotes omitted and my underlining)

[12] What is readily apparent is that the guarantee is a separate obligation that must be honoured in the terms upon which it was given.

[13] The relevant clauses in the guarantee concerned provide that Mr. Head as guarantor would:

[13.1] "Pay punctually to the creditor a capital amount not exceeding **R15 950.000.00 (fifteen million nine hundred and fifty thousand rand)** (the "**debt**") when is due and payable . . . "

[13.2] That, "This guarantee shall remain in full force and effect notwithstanding any temporary fluctuation in or extinction of the Guaranteed Obligations and may not be termination other than with the written consent of the Creditor,

which consent the Creditor shall be obliged to issue upon the full, final and unconditional discharge of all the Guaranteed Obligations."

[13.3] That, *"Upon receipt by the Guarantor of any written notice from the Creditor stating that any amount is payable by the Guarantor, or that the Guarantor is obliged to perform any obligation to the Creditor, in terms of this Guarantee, the Guarantor shall, notwithstanding that the Guarantor may dispute liability to make such payment, immediately: perform such obligation."*

[13.4] *"A certificate under the hand of any manager of the Creditor as to the existence and amount of the indebtedness of the Debtor and/or of the Guarantor to the Creditor at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon, the rate of interest applicable thereto and as to any other fact, matter, or thing relating to the indebtedness of the Debtor and/or of the Guarantor to the Creditor shall be prima facie proof of the contents and correctness thereof and the amount of the Guarantor's indebtedness hereunder for the purpose of provisional sentence or summary judgment or any other proceedings against the Guarantor in any competent court, and shall be valid as a liquid document for these purposes. It shall not be necessary to prove the appointment of any person signing such certificate."*

[13.5] *"A Creditor shall be entitled to cede (whether out and out or by way of succession securitatem debiti) all or any portion of its rights in terms of this guarantee to any third party/ies ("Cessionary/ies") without notice of reference to the Guarantor . . ."*

[14] Neither of the 2 defences set out in the answering affidavit of Mr. Head are meritorious.

- [15] The first defence is that he furnished the guarantee in favour of Grindrod Bank and not in favour of African Bank, the current applicant. He is correct in this regard as far as the signature and furnishing of the guarantee in 2012 is concerned.
- [16] However, the Guarantee as reflected in paragraph [13.5] above permitted in any event the cession of the rights in terms of that guarantee by Grindrod Bank to any third party. It is pertinently stated in the founding affidavit that African Bank Ltd took over both the assets and liabilities of Grindrod Bank in terms of s 5(5) of the Banks Act² of 1990 and attached to the papers was a letter from the Prudential Authority confirming that the resolutions confirming the transfer had been *“duly registered in accordance with the provisions of Section 54(5) of the Banks Act with effect from 1 August 2024.”*
- [17] It was not placed in issue by Mr. Head that the resolutions had been passed or that a transfer had taken place. The nub of the defence in this regard is the statement made by Mr. Head that *“there is no mention as to what assets and liabilities became “vested” in the applicant”*. In a notice published in the Government Gazette on 6 September 2024,³ the South African Reserve Bank gave notice, for general information that “consent had been given by the Minister of Finance to the “transfer of all assets and liabilities” of Grindrod Bank to African Bank. There can be no doubt as to what was transferred. This dispute is however put beyond question given that Grindrod Bank was in any event entitled to cede its rights in terms of the guarantee, without notice to Mr. Head.
- [18] The final defence raised by Mr. Head was that of prescription. In this regard, Mr. Head has conflated the obligations in the original agreement between Grindrod Bank and Cuperex with the terms of the Guarantee. The high watermark of this

² 94 of 1990.

³ Notice 2712 of 2024 in GG 51171 of 6 September 2024.

defence is that because payment of those debts by Cuperex was extended to 28 February 2022, prescription would at the latest have started to run on that day. Mr. Head contended for earlier dates but ignored that there had been 4 extensions granted to Cuperex for the payment of what was owed by it.

- [19] On this basis, the 3-year period referred to in section 12(1) the Prescription Act⁴ would have expired on 27 February 2025. Since the demand in the present matter and for that matter the application itself, were issued after that date, any entitlement of African Bank in terms of the Guarantee had lapsed and was unenforceable.
- [20] This defence is without merit for two simple reasons. The first is that the guarantee is a separate and self-standing obligation which is to be considered without reference to the underlying obligations between Grindrod and Cuperex.
- [21] The Guarantee, in its terms, remains extant indefinitely having regard to its terms as set out in paragraph [13.2] above. It only becomes payable when a written notice is sent to the guarantor as set out in paragraph [13.3] above.
- [22] In the present matter, the first written notice requiring performance in terms of the guarantee, it is common cause, was sent on 20 May 2025. It is on this day that the guarantee and the R15 950 000.00 became due and payable.
- [23] This is the first time it became due and payable and insofar as prescription is concerned, this is the date upon which it began to run.⁵ The obligations in terms of the guarantee only became due when demand was made and consequently, legal proceedings having been instituted shortly thereafter, it did not prescribe as contended by Mr. Head.

⁴ 68 of 1969.

⁵ *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* 2018 (1) SA 94 (CC) at paras [47] and [96].

- [24] Costs were dealt with in the guarantee. It provided that should legal proceedings eventuate against Mr. Head in consequence of the enforcement of the obligations in the guarantee then he agreed to pay costs on the scale as between attorney and own client.
- [25] I see no reason to depart from the scale agreed between the parties. Given the amount involved and its importance to African Bank, the engagement of senior counsel was a wise and reasonable precaution and for that reason the costs are to include these costs. The costs relating to the dismissal of the postponement are also to be paid on the scale as between attorney and own client.
- [26] These are the reasons for dismissal of the application for postponement with costs and the granting of the money judgment and costs order on 24 February 2026


A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	24 FEBRUARY 2026
JUDGMENT DELIVERED ON:	24 FEBRUARY 2026
REASONS REQUESTED:	27 FEBRUARY 2026
REASONS FURNISHED:	3 MARCH 2026
COUNSEL FOR THE APPLICANT:	ADV. JE SMIT SC
INSTRUCTED BY:	ENS INC.

REFERENCE:

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