

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no 2024-009702

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 20 February 2026

In the matter between:

SPARTAN SME FINANCE (PTY) LTD
(Registration number: 1995/007383/07)

Applicant

And

HUMBULANI FREDDY MANENZHE
(Identity number: 7[...])

First Respondent

NORHA MOHLAOLA MANENZHE
(Identity number: 8[...])

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This matter was enrolled on my opposed motions roll. It is an application for the payment of an amount of R6 787 203,98 together with interests and costs on an attorney and client scale, for a debt arising from guarantees executed by the respondents and a subsequent written acknowledgement of debt.

[2] When the matter was called in the opposed motion court, there was no condonation application for the late filing of the answering affidavit, as has been

ordered by Mia J in the unopposed motion court on 24 April 2024, nearly two years ago. When I indicated to counsel that I regard there to be no answering affidavit before the Court, counsel for the respondent sought a postponement from the bar, with an attendant prayer for wasted costs on an attorney-and-client scale. I refused the postponement.

[3] This judgment provides reasons for refusing the postponement, for treating the purported answering affidavit as if it does not exist, and for granting the order sought in the applicant's notice of motion. To explain the first two findings, it is necessary to set out in some detail how the case came to be before this court.

Background

[4] The applicant advanced various funds to Tshau Civils CC ("Tshau Civils"), the principal debtor, pursuant to written agreements. The first and second respondents each signed a guarantee in favour of the applicant in terms of which they undertook to be liable as principal debtors for Tshau Civil's indebtedness.

[5] Tshau Civils defaulted. The applicant and the respondents then concluded a written acknowledgement of debt ("AOD"), under which the full indebtedness was to be repaid in agreed instalments, the last instalment due on 5 January 2022. The AOD recorded a certificate-of-balance clause and an attorney-and-own-client costs provision.

[6] Tshau Civils then commenced Business Rescue, which was later converted to liquidation. Neither Tshau Civils nor the respondents complied with the AOD. The applicant sent a written demand and, upon nonpayment, instituted these motion proceedings for payment against both respondents jointly and severally. The notice of motion is dated 21 January 2024.

Litigation history

[7] The matter was enrolled on the unopposed motion roll for 24 April 2024. The court then postponed the application, granting an order by agreement between the parties. The order clearly stated that the respondents had to file a substantive

application for condonation of the late filing of their answering affidavit by 16 May 2024.

[8] An answering affidavit has been uploaded to CaseLines dated 16 May 2024. No substantive condonation application was filed then, or thereafter. The applicants state that the answering affidavit was uploaded to CaseLines and thereafter sent to the applicant's attorneys, stating "[h]erewith receive the attached First Respondent Answering Affidavit, same was uploaded yesterday on caseline", which the applicant states is not correctly served either, which in their view means that there is no answering affidavit on record either.¹

[9] It is not in dispute that the respondents' answering affidavit was late when the April 2024 order was granted and never regularised by the required court-ordered condonation application.

[10] Nuker Inc withdrew as attorneys of record on 25 September 2024, and Gogome Inc came onto record on 30 June 2025.

[11] There are other indications on the record that the respondents just do not bother to follow any of the rules. It has been almost two years since the court granted the order directing the respondents to file a substantive condonation application. In that time, they filed heads of argument only after being compelled to do so, failed to participate in compiling a joint practice note, and filed supplementary affidavits, yet at no stage sought to comply with the order requiring a substantive condonation application for the court's consideration. Individual transgressions of the rules may still be condoned, even where the explanation is advanced from the bar, but a sustained pattern in which court orders and the rules are not complied with at all cannot be condoned. It bespeaks a flagrant disregard for the rules, a lack of respect for the opponent's right to finality, and a monumental waste of the court's time and resources. Worse still, it was only on the day of the hearing, when these concerns were raised from the bench, that the respondents saw fit to seek a postponement from the bar.

¹ Placing reliance on *Firstrand Bank Limited t/a Wesbank v Maenet JA Attorneys Inc* [2021] ZAGPPHC 612.

Postponement principles

[12] The grant or refusal of a postponement lies within the discretion of the court, and is not to be had merely for the asking. It is well known that a party seeking a postponement seeks an indulgence and must show good cause, including a full and satisfactory explanation of the circumstances giving rise to the need for a postponement, the reason for the delay and the steps taken to avoid it.²

[13] *Melane v Santam Insurance Co Ltd*,³ the following was said about applications for condonation:

"In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interest in finality must not be overlooked."

[14] The case underscores that the discretion to grant a postponement must be exercised judicially upon a consideration of all the facts, including the nature of the relief sought, the adequacy of the explanation, the prejudice to each party, and the wider interests of the administration of justice. The requirements in *Myburgh Transport* that "[a] Court should be slow to refuse a postponement where the true reason for a party's non-preparedness has been fully explained, where his

² *Myburgh Transport v Botha* 1991 (3) SA 310 (Nm) at 315 F – 216 B.

³ 1962 (4) SA 531 (A) at 532C-E.

unreadiness to proceed is not due to delaying tactics and where justice demands that he should have further time for the purpose of presenting his case" are of particular importance in this case. Here, the true reason for the lack of preparedness has not been explained; previous conduct indicates a propensity to delay, and the scales of justice are not tipped in their favour.

[15] Where the need for a postponement arises from a party's non-compliance with the rules or with a court order, the bar is necessarily higher. In *Saloojee and Another NNO v Minister of Community Development*⁴ the Appellate Division held that there is a limit beyond which a litigant cannot escape the consequences of his attorney's lack of diligence or the insufficiency of the explanation tendered on his behalf. It made it clear that condonation (a form of judicial indulgence) is not there for the mere asking.

[16] The respondent placed no affidavit before the court in support of their request for a postponement; it was made from the bar, after the court inquired about their non-compliance with the April 2024 order and the absence of a condonation application. There was no explanation under oath for the failure to bring the condonation application, as ordered by the court in April 2024, over the past 20 months. The answering affidavit was filed late when the April 2024 order was made; the respondents had to be compelled to file heads of argument so that the matter could be enrolled. There was a failure to properly serve the answering affidavit before filing it on CaseLines. While, individually, some of these transgressions may be overlooked in the broader "interest of justice" context, collectively they tell a story of respondents who simply do not regard themselves as bound by this court's orders, rules, or directives, or who have no interest in seeing this matter finalised.

[17] The court understands the change in legal representation that occurred in June 2025. However, the new legal representative had ample notice of the date of the opposed hearing and was aware of the applicant's concerns, as set out in the heads of argument, specifically regarding non-compliance with the court order and its effect on the filing of an answering affidavit. This was reiterated in the applicant's

⁴ 1965 (2) SA 135 (A) at 142B.

affidavit filed in response to the respondent's supplementary affidavit. They nonetheless failed to take the necessary steps to ensure compliance and instead waited until the last minute to seek further postponement.

[18] In these circumstances, the respondents have fallen short of the standard required for an indulgence to postpone. They have not furnished a full, candid, and acceptable explanation for the delay, they have not dealt with this matter diligently, and they have not taken steps to rectify their position. Instead, they seek a postponement, warning that, if it is not granted, it would effectively close the court's door to the respondent, without acknowledging that the door had been open for a long time and is only closed due to their own inaction.

[19] The prejudice arising from their inability to defend stems from their continued non-compliance with the rules and prior court orders. The prejudice to the applicant of yet another postponement is also there. A substantial commercial claim, with an indebtedness that has been outstanding for a protracted period, incurring high costs to try and bring the matter to finality in the opposed motion court, despite there being no answering affidavit.

[20] Having regard to the authorities, the interests of justice do not warrant granting a postponement in the face of serial non-compliance, an absence of any proper explanation for the delay, and the evident prejudice to the applicant and to the orderly functioning of the opposed motion roll. The application for a postponement was accordingly refused.

[21] Since the order granted in April 2024 remains in place and has not been varied, it remains binding. The respondents failed to comply with that order. There is no condonation application before the court, and because the answering affidavit was filed out of time (and not properly so), there is no answering affidavit before the court. The matter is therefore to be decided on the applicant's founding affidavit alone.

Merits of the claim

[22] The applicant's case is straightforward: funds were advanced to Tshau Civils under loan facilities, the respondents bound themselves as principal debtors under written guarantees, an AOD was subsequently concluded recording the consolidated indebtedness and repayment schedule, the AOD was breached, a written demand was sent, and a certificate of balance dated 31 December 2023 reflects the outstanding amount of R6 787 203,98.

[23] In *Rossouw v FirstRand Bank Ltd t/a FNB Home Loans*,⁵ the Supreme Court of Appeal confirmed that, while a certificate of balance is not immune from challenge, it constitutes prima facie proof of indebtedness and the onus then shifts to the debtor to adduce evidence to displace it. No such evidence is properly before this court.

[24] During oral submission, the respondents contended that there is a dispute over the quantum and that an updated certificate should have been produced. However, the founding papers make clear that the amount certified as at 31 December 2023 is based on the contractual interest rate and a full accounting of payments received, including the proceeds of the sale of secured immovable properties and occupational rentals.

[25] On these uncontested facts that the applicant has established, on a balance of probabilities, that the respondents are jointly and severally indebted to it in the amount of R6 787 203,98 together with contractually stipulated interest and costs on the attorney-and-own-client scale.

Conclusion

[26] The Legal Practice Act⁶ makes clear that one of its primary objects is to ensure that the legal profession serves the public interest and the administration of justice. The Code of Conduct for Legal Practitioners stipulates, among other things, that practitioners are officers of the court, must uphold the dignity and effectiveness

⁵ 2010 (6) SA 439 (SCA) para 47.

⁶ 28 of 2014.

of the courts, must not abuse the court process, and must conduct litigation efficiently, fairly and with proper regard to the rights of *all* parties.

[27] Chaotic litigation, non-compliance with orders, and last-minute requests for postponements place an unacceptable strain on already burdened motion rolls. They waste the time of the court, the opposing party and other litigants waiting for their matters to be heard. They undermine public confidence in the courts' ability to deliver timely and effective justice.

[28] This court is mindful that clients should not lightly be visited with the ultimate consequences of their representatives' defaults. But, as *Saloojee* teaches, there is a limit beyond which the court cannot overlook chronic non-compliance, especially not of a court order. To do so here would reward disregard of a clear court order and erode the integrity of the court's own processes.

[29] The applicant seeks costs in line with the AOD., I see no reason to depart from that.

Order

[30] The following order is made:

1. The application for postponement is dismissed, with costs to be taxed on a party-and-party scale A.
2. Judgment is granted against the first and second respondents, jointly and severally, the one paying the other to be absolved for:
 - 2.1. Payment of the amount of R6 787 203,98 (Six Million Seven Hundred and Eighty Seven Thousand Two Hundred and Three Rand and Ninety Eight Cents).
 - 2.2. Payment of interest on the amount of R6 787 203,98 Six Million Seven Hundred and Eighty Seven Thousand Two Hundred and Three Rand and Ninety Eight Cents) at a rate of 5,00% (five point zero zero per cent) above the prime rate per annum, which interest is calculated daily and compounded monthly from 31 December 2023 to the date of final payment, both days inclusive.

3. The judgment granted against the respondents herein is joint and several as between them, and further as between Tshau Civils CC and any other person or party that guaranteed the obligations of Tshau Civils CC to the Applicant, and where applicable acknowledged such indebtedness to the Applicant (the "other guarantors"), the one paying the others to be absolved.
4. The total amount to be recovered by the Applicant in relation to capital and interest payable from any or both of the respondents in terms of the judgment against them herein, and from Tshau Civils CC and the other guarantors, shall not exceed the amount in paragraph 2.1 above, plus interest calculated in terms of paragraph 2.2 above.
5. The respondents are ordered to pay the applicant's costs on the attorney and own client scale, jointly and severally, the one paying the other to be absolved.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	18 February 2026
Date of judgment:	20 February 2026
For the applicant:	M Reineke on behalf of Claasen Inc
For the respondent:	T Steyn on behalf of Gogome Inc