



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

Case Number: 28705/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
4/3/2026 DATE	
 SIGNATURE	

THULISILE MPANGANE

RESPONDENT/ PLAINTIFF

AND

ROAD ACCIDENT FUND

APPLICANT / DEFENDANT

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.

1. In this matter, the applicant seeks an order:
 - 1.1. Condoning the late filing of this application.
 - 1.2. Extending the time and removal of bar.
 - 1.3. Further and any alternative relief.
 - 1.4. No orders to cost if the application is not opposed.
2. The salient facts leading to this application are set out here under. During or about 2020 the respondent lodged a claim with the applicant claiming compensation for injuries that she says she sustained in a motor vehicle accident on the 30th of November 2019.
3. On receipt of the claim, the applicant's claim handler, one Violet Ngema, addressed a letter to the respondent's attorneys, Messis Sepamla Attorneys, and in it said the following.

"We acknowledge receipt of your claim form lodged in terms of the act. The RAF hereby repudiates your claim and will defend any action instituted against us in that: no nexus. We will also bring this letter to the attention of the presiding judicial officer to take into account when making orders towards cost."

4. On the 15th of June 2021, respondent's attorneys issued summons against the applicant claiming damages under various heads for a total amount of R1 800 000,00. The summons were served on the applicant's offices in Parktown on the 18th of June 2021.
5. In the summons issued on the 15th of June 2021, the defendant (Applicant) was called upon to file its intention to defend within 10 days of the service of summons on them. The applicant did not do that, Instead, notice to defend was only filed and served on the respondent's attorneys on the 10th of March 2022, a

period of nine months after service. The notice of intention to defend is signed by Ms N.Moyo from the office of the State attorney.

6. On the 25th of October 2023, the respondent's attorneys served a notice of bar on the applicant's attorneys calling on them to file their plea within five days from date of that notice. The applicant did nothing and did not comply with that notice.
7. On the 16th of October 2024, the respondent's attorneys served a notice on the applicant's attorneys to the effect that they will be applying for default judgment due to their failure to file a plea.
8. The application for default judgment was set down for hearing on the 5th of August 2025. The notice of set down was served on the applicant on the 27th of February 2025. The applicants did nothing.
9. On the 17th of September 2025, the application for default judgment served before acting Judge Kruger. I am informed that Ms Moyo appeared for the applicant and resulting from her presentation, the Court granted the applicants an indulgence and were ordered to file a substantive application within 15 days presumably to remove the bar and that applicant be granted leave to file their plea. The matter was postponed sine die.
10. The 15 days came and passed and no application as ordered by the Court was filed. The respondent, as she was entitled to do, set down the application for default judgment for hearing on the 10th of February 2026.
11. On the 10th of February 2026, this matter served before me and once more attorney Moyo on behalf of the applicants pleaded for more time. I granted indulgence and directed that the applicant file a substantive application by not later than Friday the 13th of February 2026 and that the matter be heard on the 18th of February 2026.
12. My order and directive were duly complied with as the respondent duly filed the opposing affidavit and short heads of

argument. This is the application that served before me on the 18th of February 2026.

13. The affidavit support of application is deposed to by Ms Hanelie Conradie, who says that she is in the employ of the applicant as a manager in the Merits Determination Department. I understand this to mean that she is employed by the Road Accident Fund and not by the Office of the State Attorney.
14. In paragraph 4.5 of her affidavit, Ms Conradie says that the reason for them having failed to comply with the Notice of Bar is due to volumes of litigious matters that the applicant deals with on a daily basis. She concludes by saying that failure to file a plea was not wilful. There is no confirmatory affidavit from the Office of the State Attorney to corroborate that allegation.
15. Ms Conradie confirmed that as far back as the year 2020, they had discovered material discrepancies in the claim, hence they repudiated in a letter annexed as *RAF3* to this application.
16. This means that the RAF had already satisfied itself that the respondent has no valid claim and should have filed their plea, which they did not do.
17. In support of the Nexus finding, Ms Conradie says that there are discrepancies in the description of the motor vehicle involved as well as to the time when the accident happened. She concludes that the respondents have no prospect of success. This conclusion the RAF reached and knew as far back as the year 2020 and yet by February 2026 they had not filed a plea or explained to the Court why they did not file a plea.
18. It is trite law that extension and abridgment of time for condonation purposes may only be granted if not by agreement between the parties by a Court on good cause shown. The Appellate division in the matter of *Tshivhase Royal Council vs Tshivhase*, 1992 (4) SA 852 (A), held that condonation is an indulgence which may be refused in cases of flagrant breaches of the rules. In the matter of *Small Business Development Corporation Limited vs Khubeka*, 1990 (2) SA 851 (T), the Court

concluded that condonation may also be refused, where it would defeat the purpose or object of the rule of which the applicant is in breach.

19. In this matter, the applicant has not only failed to comply with the notice calling upon them to file a plea on two occasions, firstly, in the body of the summons in 2021, secondly, when a notice of bar was served, and as if that was not sufficient, the applicant ignored a Court order by Kruger AJ granted in September 2025.
20. The applicant failed to set out precisely what prevented them from filing their plea despite so many indulgences, all that Ms Conradie tells this Court is that they had administrative challenges without explaining precisely what that means. There is no affidavit setting out the merits to enable this Court to weigh prospects of issues worthy of being tried in a court.
21. In the matter of *Standard Bank of South Africa Limited vs John and Ajax, Kircos*. 1957, P.H.F. 46 (SR) , the Court held that an affidavit of merits would appear to be a statement setting out the applicant's case in sufficient detail to enable the Court to decide whether it is bona fide and not frivolous. In *Levin vs Rick*, CPD 242 the Court held that a failure to file such affidavit could result in the application to remove the bar being refused.
22. All that the applicant says in the affidavit is that respondents provided information to the police and to the hospital which is a fabrication. What the applicant cannot dispute is that on the 30th of November 2019 the respondent was admitted at hospital and on admission she told the medical people that she was a backseat passenger in a motor vehicle that overturned and that is how she sustained the injuries.
23. The applicant, despite being furnished with details of the motor vehicle, did not do anything to trace the owner and get a statement from the owner. There is, in my view, no evidence to gainsay what the respondent has said in a Section 19 affidavit. The applicant has, in my view, failed to set out reasons for the

The applicant has, in my view, failed to set out reasons for the delay and omission on so many occasions until the matter is set down for default judgment on two occasions. What is most aggravating is to flagrantly ignore a Court order by Kruger AJ. This alone warrants a punitive cost order against applicant.

24. The respondent has been waiting for five years to be compensated and has been to Court on two occasions and been delayed further. I deem it appropriate that respondent be granted preferential date of hearing of her default judgment application by approaching the office of the Deputy Judge President.

Order:

1. The application for condonation and removal of the bar is dismissed.
2. The applicant is ordered to pay the cost of this application on an attorney client scale.
3. The respondent is granted leave to approach the office of the Deputy Judge President in this division to be allocated a preferential date on the default judgment role.



MAKUME J 4/3/2026

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearance

For the Applicant:

Sepamla Attorneys

For the Respondent:

Road Accident Fund