

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-225132

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
<u>06/03/2026</u> 	
DATE	SIGNATURE

In the matter between:

CAPITEC BANK LTD

Applicant

and

V P GROUP (PTY) LTD

Respondent

JUDGMENT

Summary: Late delivery of answering affidavit after matter had been set down, respondent not entitled as of right to deliver an answering affidavit at any stage before the hearing without seeking condonation.

HORN AJ

[1] On 2 March 2026, I granted the following order:

1. The respondent is placed under provisional winding-up in the hands of the Master.
2. A rule nisi is issued, calling on all interested persons to advance reasons, if any, why this court should not make the provisional winding-up order final on 4 May 2026.
3. The rule nisi is to be served:
 - 3.1 on the persons envisaged in section 346A(1) of the Companies Act 61 of 1973;
 - 3.2 on the respondent in terms of the Uniform Rules of Court;
 - 3.3 by one publication in the Government Gazette;
 - 3.4 by one publication in the Citizen and Beeld newspapers;
 - 3.5 on all creditors of the respondent known to the applicant by way of email or prepaid registered post.
4. The costs of this application are ordered to be costs in the respondent's liquidation.

- [2] I indicated that I would provide reasons for the order later. These are my reasons.
- [3] The applicant applied for the winding-up of the respondent. The applicant claims to be a creditor of the respondent in an amount of approximately R27 million in respect of various credit facilities extended to the respondent.
- [4] The application was served on the respondent on 25 November 2025. The respondent, through its attorneys, gave notice of its intention to oppose the application on 9 December 2025.
- [5] Taking into account the provisions of Rule 6(5)(aa), the respondent's answering affidavit was due by 19 January 2026. The applicant agreed to extend the period for delivery of the answering affidavit until 23 January 2026. The respondent did not deliver its answering affidavit within the extended period.

- [6] The applicant accordingly set the matter down on the unopposed roll. The notice of set down was served on the respondent's attorneys on 10 February 2026, indicating that the matter had been set down for hearing on 2 March 2026.
- [7] On 17 February 2026, the respondent's answering affidavit was served. The affidavit was uploaded to Caselines on Sunday, 1 March 2026. Later that day, the respondent's practice note followed. Counsel for the respondent indicated that he was not in a position to attend to the practice note earlier on account of the fact that he was briefed late. I have no reason to disbelieve counsel.
- [8] The answering affidavit was not accompanied by a condonation application and did not contain any explanation why the affidavit was delivered late.
- [9] Counsel for the respondent contended that no application for condonation or extension of time is required if the answering affidavit is served at any time before the hearing. It was submitted that the proper approach is for the Court to remove the matter from the roll for later enrolment on the opposed roll.
- [10] In support of this submission, respondent's counsel relied on *Ferreiras (Pty) Ltd v Naidoo and Another*¹ and *Pangbourne Properties Ltd v Pulse Moving CC and Another*.²
- [11] In *Ferreiras*, the respondent delivered an answering affidavit late. The court, per Louw J, disregarded the answering affidavit and granted judgment in favour of the applicant. The respondent brought an application for rescission of judgment. The applicant (respondent in the rescission application) delivered a Rule 30 notice, contending that the judgment granted by Louw J was not a default judgment and the rescission application was therefore an irregular step. This contention was premised on the fact that counsel for the party against whom judgment was granted was present in court when the order was granted.
- [12] The matter came before De Villiers AJ for determination of the Rule 30 application. The learned judge concluded that the judgment was indeed a default judgment capable of rescission and dismissed the Rule 30 application. But De

¹ 2022 (1) SA 201 (GJ).

² 2013 (3) SA 140 (GSJ).

Villiers AJ went further by stating no application for an extension of time or condonation is necessary if an answering affidavit is served out of time, but before the hearing.³ This latter finding was *obiter*, for it was not strictly necessary for a proper determination of the Rule 30 application.

[13] In holding that no application for an extension of time or condonation is necessary if an answering affidavit is served late, but before the hearing, De Villiers AJ relied on two decisions. The first is *IBR Fire Protection CC v Minister of Labour*.⁴ In that case the applicant contended that the answering affidavit was delivered late. Thirty days after delivery of the answering affidavit, the applicant brought an application in terms of Rule 30A, premised on the respondent's failure to comply with Rule 6 insofar as the time period for delivery of the answering affidavit is concerned. The Court, per Hughes J (as she then was), concluded that where the rules provide a particular remedy in particular circumstances, that remedy should be utilised rather than the general remedy for non-compliance in terms of Rule 30A.⁵ The remedy for an applicant where a respondent does not deliver an answering affidavit, so the Court concluded, lies in Rule 6(5)(f) which permits the applicant to set the matter down for hearing. The Court held that, since the applicant has not initiated Rule 6(5)(f), the answering affidavit stood.⁶

[14] Significantly, in *IBR Fire Protection CC*, the learned judge also remarked that there was no indication in the Rule 30A application that the answering affidavit was delivered outside of the extension granted for its delivery. The decision in *IBR Fire Protection CC* is not authority for the proposition that a respondent can deliver an answering affidavit out of time, but at any stage before the hearing without the need to seek condonation. The present case is also distinguishable from the *IBR Fire Protection CC*, because here the applicant did initiate Rule 6(5)(f) by setting the matter down for hearing.

[15] The second authority relied upon by De Villiers AJ in *Ferreiras* is the decision in *Pangbourne*.⁷ The *Pangbourne* matter came before Wepener J in the opposed

³ *Ferreiras* above at para [18].

⁴ 2015 JDR 1839 (GP).

⁵ *IBR Fire Protection* above at para [24] and [25].

⁶ *IBR Fire Protection* above at para [29].

⁷ Note 2 above.

motion court. The respondent delivered its answering affidavit nine days late and the applicant delivered its replying affidavit 10 months later. The learned judge concluded that it was not necessary for either party to bring a substantive condonation application and that there was no indication of prejudice to either party. Since all the affidavits were before court, the learned judge, correctly with respect, held that it was in the interests of justice that the matter be finalised and that unnecessary further costs be avoided.⁸ The decision in *Pangbourne* is also not authority for the proposition that a respondent can deliver an answering affidavit out of time, but at any stage before the hearing, without seeking condonation.

- [16] Counsel for the applicant referred me to the decision of *Waltloo Meat and Chicken SA (Pty) Ltd v Silvy Luis (Pty) Ltd and Others*.⁹ In that case, the applicant delivered its replying affidavit late. In the affidavit, the applicant explained the reasons for the late delivery of the affidavit and sought condonation. Poswa J held that the replying affidavit is not before him until its late delivery had been condoned. The learned judge concluded that the Court is not entitled to consider the content of the replying affidavit for purposes of determining condonation.¹⁰
- [17] In *Pangbourne*, the decision in *Waltloo* was criticised and not followed.¹¹ I am in respectful agreement with this criticism. It would be overly formalistic to insist on a separate affidavit for purposes of condonation. The explanation for the late delivery can conveniently be set out in the affidavit itself. After all, condonation requires good cause, which involves, amongst other things, a consideration of the merits of a party's case. In the case of an answering affidavit, the defences should be contained in that affidavit. There is no reason why the defences should be duplicated in a separate affidavit in support of condonation.
- [18] The Constitutional Court has held in *Eke v Parsons*¹² that the rules of court serve an undeniably important purpose and cannot be disregarded, but that they are not an end in themselves. The purpose of the rules is, first, to ensure a fair hearing

⁸ *Pangbourne* above at para [18] and [19].

⁹ 2008 (5) SA 461 (T).

¹⁰ *Waltloo Meat and Chicken* above at para [28] and [29].

¹¹ *Pangbourne* above at para [14].

¹² *Eke v Parsons* 2016 (3) SA 37 (CC).

and, second, to secure the inexpensive and expeditious completion of litigation and to further the administration of justice.¹³

[19] In relation to the purpose of the rules being to ensure a fair hearing, the Constitutional Court has held as follows:

“But for courts to function fairly, they must have rules that regulate their proceedings. Those rules will often require parties to take certain steps on pain of being prevented from proceeding with a claim or defence. A common example is the rule regulating the notice of bar in terms of which defendants may be called upon to lodge their plea within a certain time failing which they will lose the right to raise their defence. Many of the Rules of Court require compliance with fixed time limits, and a failure to observe those time limits may result, in the absence of good cause shown, in a plaintiff or defendant being prevented from pursuing their claim or defence. Of course, all these Rules must be compliant with the Constitution. To the extent that they do constitute a limitation on a right of access to court, that limitation must be justifiable in terms of s 36 of the Constitution. If the limitation caused by the Rule is justifiable, then as long as the Rules are properly applied, there can be no cause for constitutional complaint. The Rules may well contemplate that at times the right of access to court will be limited. A challenge to the legitimacy of that effect, however, would require a challenge to the Rule itself.”¹⁴

[20] The constitutionality of the time periods set out in Rule 6 has not been challenged before me, and rightly so. If it were open to parties in motion proceedings to deliver affidavits at will, at any stage of the proceedings, litigation will become chaotic and unmanageable.

[21] The suggestion that a respondent can deliver an answering affidavit at any stage before a hearing, in disregard for the rules of court, with a postponement as an inevitable consequence if it is done shortly before the hearing, provokes

¹³ Eke v Parsons above at para [39] and [40].

¹⁴ Giddey NO v J C Barnard and Partners 2007 (5) SA 525 (CC) at para [16].

misgivings. Such a practice would be destructive of the purpose of the rules to ensure inexpensive and expeditious finalisation of litigation.

[22] To the extent that the decision in *Ferreiras* provides authority for the proposition that it is permissible for a respondent to file an answering affidavit out of time and at any stage before the hearing without seeking condonation, the decision is in my view clearly wrong. I therefore decline to follow it.

[23] Counsel for the respondent submitted that the matter should be removed from the roll and the respondent ordered to pay the costs. This, it was submitted, would not cause any prejudice. I disagree. The applicant will suffer delay. In addition, the matter has taken up a place on the roll that could have gone to deserving, compliant litigants. Judicial resources are strained as it is. To allow respondents to manufacture postponements through non-compliance with the rules adds further strain and causes delays in the finalisation of cases. It will also erode public confidence in the judicial system.

[24] It has been held by the Supreme Court of Appeal in *Take and Save Trading CC and Others v Standard Bank of SA Ltd*¹⁵ that judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure that abuse is curtailed by, in appropriate situations, refusing to grant a postponement.¹⁶ This was said in relation to the practice of some practitioners to withdraw shortly before a hearing in the hope that the case will be postponed on account of the fact that the litigant is then unrepresented. In my view, the principle applies with equal force to the present case.

[25] The applicant has made out a proper case in its founding papers for the provisional winding-up of the respondent and has complied with the relevant statutory requirements. In the result, I granted the order set out at the commencement of this judgment.


N J HORN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

¹⁵ 2004 (4) SA 1 (SCA).

¹⁶ At para [3].

For the Applicant: W G Pretorius
Instructed by Brooks Braadvedt Inc

For the Respondent: A J Reyneke
Instructed by MSU Inc

Date of hearing: 2 March 2026

Date of judgment: 6 March 2026