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

Case Number: 022358/2025

(1) REPORTABLE: YES/~~NO~~

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

(3) REVISED: YES/~~NO~~

DATE: 10/03/26

SIGNATURE

In the matter between:

**INTELLO CAPITAL (PTY) LTD**

**APPLICANT**

and

**SAHARA FREIGHT SOUTH (PTY) LTD**

**FIRST RESPONDENT**

**ALTA BURGER**

**SECOND RESPONDENT**

**ARNOLD STEYNBERG**

**THIRD RESPONDENT**

***Delivered,-** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines, The date for hand-down is deemed to be \_\_\_\_\_*

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**JUDGMENT**

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MAUBANE, AJ

## *Introduction*

[1] The applicant approached this court on 11 February 2026, requesting the court grant judgment in its favour against the second and third respondents, respectively, for payment of an amount of R 2 768 170.45 (two million seven hundred and sixty-eight thousand one hundred and seventy rand and forty-five cents) jointly and severally, the one paying the other to be absolved.

[2] Both the second and third respondents, on the same papers filed in court, made an application for condonation for the late filing of answering affidavits.

## *Background*

[3] The applicant is Intello Capital (Pty) Ltd, a private company with registration number 2025/126109/07, duly registered in terms of the laws of the Republic of South Africa with its registered address at 3[...] S[...] Drive, Route 2[...] C[...] Park, Irene, Centurion, Gauteng.

[4] The first respondent is Sahara Freight South (Pty) Ltd, with registration number: 2014/277437/07, a private company with limited liability, currently in liquidation.

[5] The second and third respondents are as cited in the notice of motion, and for convenience and brevity, it is not necessary to mention their respective addresses.

[6] The applicant approached the court requesting an order for payment of an amount of R 2 768 170.45 against the second and third respondents respectively.

[7] According to the applicant, on 12 December 2022, it entered into a written agreement facility with the first respondent for a loan for the above stated amount.

[8] The terms and conditions of the loan were:

- a. Facility working capital - R 2 000 000,
- b. Total facility amount - R 2 561 781, includes interest and fees,
- c. Daily interest: 0.133%,
- d. Repayment period: 6 months,
- e. First instalment: 28 December 2022,
- f. Monthly interest instalment: pro rata instalment of R 46 867 on 28 December 2022, R 86 630 for the following 5 months. (Instalment includes monthly service fee),
- g. Settlement date: 12 June 2023,
- h. Settlement amount: R 2 101 764.00(Includes fees and last interest portion of R 38 514),
- i. Payment terms: interest instalment via debit order, final settlement via electronic fund transfer,
- j. Facility fee: R 57 500 incl. VAT,
- k. Admin fee: R 5750 incl. VAT, and,
- l. Monthly service fee: R 100.

[9] On the same day the loan agreement was concluded, the first respondent signed and concluded an acknowledgement of debt in favour of the applicant.

[10] The second and third respondents, also on the same day of conclusion of the loan agreement, signed as sureties and indemnity of the first respondent's

indebtedness to the applicant.

[11] It is common cause that the first respondent was liquidated on 21 May 2024.

[12] According to Cipro and information uploaded on the Caselines, the second and third respondents were directors of the first respondent.

[13] Since the first respondent is liquidated, the applicant pursued and claimed against the second and third respondents as sureties and co-principal debtors for the payment of all sums due or become due to the applicant arising out of the loan agreement entered into between the applicant and the first respondent. It is noted in the surety and indemnity signed by both the second and third respondents that they are bound to pay the debt jointly and severally, the one paying the other to be absolved.

[14] At the commencement of the hearing of this matter, counsel for the respondents addressed and requested the court to first consider the application for condonation of the late filing of the respondents' answering affidavits. In the interests of justice and concession made by the applicant's counsel, it was decided that they be granted the opportunity to argue for such condonation, thereafter, both parties proceed to argue the main application.

### *Condonation*

[15] In her answering affidavit, the second respondent submitted to the court that she is residing in Wellington, Western Cape, and it was difficult for her and the third respondent, who resides in Pretoria, to meet, discuss and answer the applicant's application. She conceded that her answering affidavit was delivered out of time, but however, the applicant was not prejudiced by late filing.

[16] The third respondent submitted to the court that he was in the process of moving his company offices from Parkview Mall to Menlyn Main office complex, and was unable to properly peruse and consider the affidavit prepared by

his attorney, and was further not prepared to sign any affidavit without properly perusing, considering, and discussing the correctness of the contents with his attorney. Because he and the second respondent reside far apart, (in different provinces), it was difficult for both to meet and discuss with their attorney for preparation and compilation of the answering affidavits.

[17] He acknowledges that his answering affidavit was filed out of time, but that did not prejudice the applicant.

*Legal principle*

[18] At the outset, the court must visit the provisions of Rule 27 of the Uniform Rules of Court, which state:

**"27 Extension of time and removal of bar and condonation**

1. In the absence of an agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

2. Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.

3. The court may, on good cause shown, condone any non-compliance with these rules.

4. . . . "

The courts have a discretion in granting condonation, and such discretion is based on the nature of the delay, the degree of non-compliance, the explanation for it, any prejudice caused, and the applicant's prospects of success in the main case.

[19] In *Grootboom v National Prosecuting Authority and Another*,<sup>1</sup> the court held that:

"[20] ... It is axiomatic that condoning a party's non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has a discretion on whether to grant condonation.

[23] It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the noncompliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default".

[20] "good cause shown" as stated in Rule 27(3), entails a responsibility on the part of the applicants (second and third respondents) to place a justifiable cause to the delay that served as a bar to the timeous filing of their answering affidavits. As stated in Johannesburg *Metropolitan Municipality v Mayetsa*<sup>2</sup> the court held that applying for condonation must satisfy justifiable factors relating to:

- i. The cause of the delay,
- ii. The degree of delay,
- iii. What could have contributed to it,
- iv. Prospects of success, and,

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<sup>1</sup> 2014 (2) SA 68 (CC) at paras 20 and 23

<sup>2</sup> (5797/2022 [2025] ZAGPJHC 233 (5 March 2025) at par 7.

v. Will there be any prejudice suffered by the other party if condonation is *granted*.

[21] In *Van Wyk v Unitas Hospital*,<sup>3</sup> the court held that:

"[20] ... the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and the cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation of the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.

[22] An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And what is more, the explanation must be reasonable."

[22] In *James Brown and Harmer (Pty) Ltd v Simmons, NO*,<sup>4</sup> the court held that:

"It is in the interest of the administration of justice that the well-known and well-established general rules regarding the number of sets and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted. Where, as in this present case, an affidavit is tendered in motion proceedings both late and out of its ordinary sequence, the party tendering it is seeking not a right, but an indulgence from the Court: he must both advance his explanation of why the affidavit is out of time and satisfy the Court that, although the affidavit is late, it should, having

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<sup>3</sup> 2008 (4) BCLR 442 (CC) at paras 20 and 22.

<sup>4</sup> 1963 (4) SA 656 (A) at 660D-F.

regard to all the circumstances of the case, nevertheless be received".

[23] There are a myriad of authorities dealing with the application of Rule 27 and all these are laboured on the principles and administration of justice. The rules are to be observed, and failing which, there should be a reasonable explanation shown on good cause why indulgence should be granted.

[24] Holmes J, in *Melane v Santam Insurance Co Ltd*,<sup>5</sup> held that:

"In deciding whether sufficient cause has been shown, the basic principles 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 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. 0 importance of the issue and strong prospects of success may tend to compensate for a long delay."

[25] Now, turning to the respondents' matter, it is apparent that the answering affidavits were filed more than 43 days after the filing of the notice of intention to oppose the applicant's Notice of Motion. The respondents were supposed to have filed their answering affidavits 15 days after filing their notice of intention to oppose the applicant's application.

[26] They advanced reasons that since the second respondent is staying outside the province, they did not have time to meet and consult with their

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<sup>5</sup> 1962 (4) SA 531 (A) at 532C-D.

attorneys. The third respondent further submitted that his company was relocating from Parkview Mall to Menlyn main office. They both conceded that they were late in filing their answering affidavits. They both submitted to the court that their late filing of the answering affidavits did not prejudice the applicant. They further submitted to the court that it was not necessary to make a substantive application for condonation as that could be done from the bar.

[27] The explanation furnished by both respondents falls short of covering the entire duration of the delay. It took them more than a month to file their answering affidavits. They failed to explain fully the cause of the delay. Their explanation of the cause of delay is unreasonable. They did not tender an explanation as to why they assert that their opponent will not suffer prejudice if condonation is granted.

[28] Turning to whether the respondents have prospects of success opposing the main application if condonation is granted, the court has analyzed the application itself and the respondents' evidence. The applicant submitted to the court that it entered into a loan agreement with the first respondent. The second and third respondents were directors of the first respondent. The first respondent was liquidated. The second and third respondents acted as surety and co-principals of the first respondent, which signed an acknowledgement of debt. The respondents submitted that the applicant misrepresented itself at the time of entering into an agreement that it was a credit provider, duly registered, and should they have known that it was not a credit provider, duly registered, they would not have entered into the loan agreement.

[29] I have examined all the applicant's documents, inter alia, the facility agreement, acknowledgement of debt and sureties and indemnities of the respondents' and it is stated nowhere that the applicant is a registered credit provider. Given the facility agreement, the acknowledgement of debt and surety and failure of the respondents to service the loan, I am of the affirmation that the respondents failed to convince the court that a condonation should be granted. Over and above, there is a lack of full explanation as to the reason for the delay. They do not have a bona fide defence. I am not going to go further to espouse their defence to the main application. I need to state that this court should refuse

to grant indulgence against the flimsy reasons advanced by the respondents.

[30] In a nutshell, the respondents' application for condonation of late filing of their answering affidavits is dismissed.

[31] Regarding the applicant's application, I am convinced that a proper case has been made and the following order is made:

1. The second and third respondents to pay the applicant, jointly and severally, the one paying the other to be absolved, an amount of R 2 768 170.45.
2. The second and third respondents to pay the applicant, on the aforesaid amount, interest at the rate of 0.133% per day from 12 December 2022, until date of final payment, both days inclusive.
3. The respondents to pay the costs of the application on attorney and own client scale, including costs of counsel at scale C.

**M C MAUBANE**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

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|--------------------|--------------------------|
| DATE OF HEARING:   | 11 FEBRUARY 2026         |
| DATE OF JUDGMENT   | 10 MARCH 2026            |
| For the Applicant: | ADV A LOUBSER            |
| Instructed by:     | CILLIERS & GIDENHUYS INC |

|                |                   |
|----------------|-------------------|
| For the        |                   |
| Respondents:   | ADV J SHEEPERS    |
| Instructed by: | BENNECKE THOM INC |