

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-127540

|                   |                                     |
|-------------------|-------------------------------------|
| (1)               | REPORTABLE: YES / NO                |
| (2)               | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)               | REVISED: YES/NO                     |
| <u>30/03/2026</u> |                                     |
| DATE              | SIGNATURE                           |

In the matter between:

**AUBREY TAUNYANE**

Applicant

And

**EMFULENI LOCAL MUNICIPALITY**

First Respondent

**SHERIFF OF THE COURT**

Second Respondent

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**JUDGMENT**

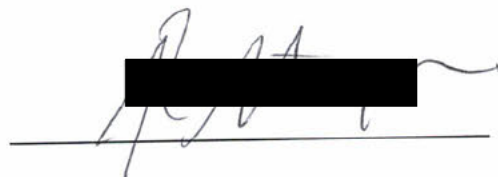
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**STRYDOM, J**

- [1] This is an urgent application for a stay of execution of a default judgment granted against the applicant. The application is opposed by the first respondent.

- [2] The first issue concerns condonation for the late filing of the answering affidavit. The answering affidavit was filed out of time, but the delay was minimal and adequately explained. There is no demonstrable prejudice to the applicant. In the exercise of my discretion, and in the interests of justice, condonation is granted.
- [3] I am satisfied that the matter is urgent. The execution process had commenced, including steps against the applicant's assets and bank account. The prejudice faced by the applicant is immediate and ongoing. The urgency was not self-created, and any delay in launching the application was not undue in the circumstances.
- [4] The first respondent raised several technical objections. That the applicant, through his legal representative, was less than precise in his preparation of the notice of motion is indeed so.
- [5] First, it was contended that the notice of motion is defective in that prayer 3 is incomplete. While it is so that the word "suspended" was omitted, it is clear from the context and the relief sought that the applicant seeks a stay of execution. This Court is entitled, specifically in urgent applications, to adopt a purposive approach to the notice of motion and to read in the missing word as part of the alternative and further relief sought.
- [6] Second, the use of the existing case number was criticised. This constitutes an overly technical approach. The present proceedings arise directly from the default judgment granted under the same case number. No prejudice has been demonstrated. In an urgent application, this issue should not determine the outcome of the matter.
- [7] These objections do not render the application defective.
- [8] I am satisfied that a rescission application had been filed prior to the launching of this urgent application. this matter. In any event, this Court retains a wide discretion under Rule 45A and its inherent jurisdiction to regulate its own process and prevent injustice.

- [9] The applicant must establish a basis for interim relief. The evidence demonstrates that a plea was delivered only one day late. Notwithstanding this, a default judgment was obtained. The explanation for the delay is reasonable, and the delay itself is minimal.
- [10] Furthermore, the applicant has demonstrated a bona fide dispute regarding the alleged overpayment of R708 069.28. The dispute involves complex calculations and cannot be resolved on the papers in these proceedings. Accordingly, there is a prima facie defence with prospects of success in the rescission application.
- [11] The execution process has already commenced and gives rise to a reasonable apprehension of irreparable harm. The balance of convenience favours preserving the status quo pending the determination of the rescission application.
- [12] In all the circumstances, I am satisfied that it is in the interests of justice to grant a stay of execution pending the outcome of the rescission application.
- [13] The following order is made:
1. The late filing of the first respondent's answering affidavit is condoned.
  2. The application is heard as one of urgency.
  3. The writ of execution and operation of the default judgment issued under case number 2025/127540 against the applicant are stayed until the final decision on the rescission application.
  4. Costs are reserved for determination in the rescission application.



**R. STRYDOM**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**

Heard on: 17, 18 & 20 March 2026

Delivered on: 30 March 2026

Appearances:

For the Applicant: Adv. L. Tshigomana

Instructed by: Mudzusi Molobela Inc

For the 1<sup>st</sup> Respondent: Adv. T. Mogase (Sebata)

With: Adv. T. Malungani

Instructed by: Seleka Attorneys