

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Appeal Case Number: A81/2024

Case no: 65703/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES

DATE: 5 March 2026

SIGNATURE OF JUDGE:

In the matter between:

STANDARD BANK OF SOUTH AFRICA
(Reg no: 1962/000738/06)

APPLICANT

and

ANDREW DAVID BARCLAY
(Identity Number: 6[...])

FIRST RESPONDENT

BEVERLEY JANE BARCLAY
(Identity Number: 6[...])

SECOND RESPONDENT

In re:

The appeal of:

ANDREW DAVID BARCLAY

FIRST APPELLANT

(Identity Number: 6[...])

BEVERLEY JANE BARCLAY

SECOND APPELLANT

(Identity Number: 6[...])

And

STANDARD BANK OF SOUTH AFRICA

RESPONDENT

(Reg no: 1962/000738/06)

In re:

STANDARD BANK OF SOUTH AFRICA

PLAINTIFF

(Reg no: 1962/000738/06)

and

ANDREW DAVID BARCLAY

FIRST DEFENDANT

(Identity Number: 6[...])

BEVERLEY JANE BARCLAY

SECOND DEFENDANT

(Identity Number: 6[...])

JUDGMENT

Klopper, AJ

INTRODUCTION:

[1] This is an application in terms of which the Applicant seeks the following relief:

“1 That it be declared that the Respondents’ (Andrew David Barclay and Beverley Jane Barclay) appeal, to the full court of this Honourable Court, has lapsed in terms of rule 49(6)(a) of the Uniform Rules of this Honourable Court;

2 *That the Respondents be ordered to pay the Applicant's wasted costs of the appeal, in terms of rule 49(6)(a) of the Uniform Rules of Court;*

3 *That the Respondents be ordered to pay the Applicant's cost of this application;*

4 *Further and/or alternative relief."*

LITIGATION HISTORY:

[2] The Applicant was the plaintiff in the court *a quo* and issued summons against the Respondents based on the enforcement of a home loan agreement on the basis that the Respondents have breached the terms of the loan agreement.

[3] The Respondents were the two defendants in the court *a quo*.

[4] Following a plea filed by the Respondents, the Applicant applied for summary judgment during July 2021.

[5] On 6 September 2021, summary judgment was granted against the Respondents in favour of the Applicant.

[6] On 26 October 2021, the Respondents filed an application for leave to appeal together with an application for condonation for the late filing of the application for leave to appeal.

[7] On 13 November 2023, Justice Bam J, granted the Respondents leave to appeal to the full court of this division.

[8] On 5 December 2023, the Respondents, as Appellants, filed their notice of appeal.

[9] On 4 April 2024, the Registrar issued a notice to the parties, giving notice of the allocation of a date for the hearing of the appeal to be 8 October 2025. However,

on 5 April 2024, the Registrar appears to have issued a further notice, which reads as follows:

“Kindly note that the APPEAL DATE OF 08 OCTOBER 2025 IS NO LONGER AVAILABLE AND THE APPEAL IS REMOVED FROM THE ROLL.

No Proper Heads of Argument

No Proper Practice Note

No Application for an Appeal Date

No Records

No Security for cost in terms of Rule 49(13)

All this above is also not uploaded onto CaseLines therefore the appeal date does not exist for the 08 October 2025....”

APPLICANT’S CASE:

[10] The Applicant contends that the Respondents have failed to advance or prosecute the appeal after they filed their notice of appeal in terms of Rule 49(2).

[11] In addition, the Applicant contends that the Respondents also failed to seek condonation for the non-compliance with the rules of court in this regard.

[12] In accordance with Rule 49(6)(a) of the Uniform Rules of Court, in the absence of any application for an appeal date, the appeal shall be deemed to have lapsed.

[13] In the premises the Applicant is entitled to an order declaring that the appeal have lapsed and, in addition, in terms of Rule 49(6)(a), for an order for the Applicant’s wasted cost.

THE RESPONDENTS’ CASE:

[14] The First and Second Respondents contend that after leave to appeal was granted, their former attorneys applied for a hearing date within the 60 days stipulated in the Rules.

[15] The Respondents stated that *“a date was allocated, but apparently the appeal date was withdrawn”*.

[16] With regards to their failure to advance the appeal, the Respondents contended that:

16.1. Their current attorney of record attended to court on 21 October 2024 to enquire as to the state of affairs but was informed by the Registrar that the appeal file was empty and that the date allocated for the hearing was, unbeknownst to them, withdrawn during the month of April 2024;

16.2. Upon receipt of the initial notice, they were under the impression that the appeal would progress in the normal course and as such their failure to pursue the appeal was not wilful;

16.3. They have instructed their attorneys of record to re-apply for a hearing date and to the extent necessary an application for condonation due to the late filing thereof.

[17] Accordingly, the application should be dismissed with cost and condonation be granted for the late application for a hearing date of the appeal.

APPLICABLE LEGAL PRINCIPLES:

[18] Uniform Rule 49(6)(a) and (b) reads as follows:

“(6)(a) Within 60 days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal and if the appellant fails to do so as a respondent may within 10 days after the expiry of the said period of 60 days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no application is made by either party the

appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs.

(b) The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed.”

[19] This rule underscores the importance of timely prosecution of appeals. Non-compliance means that the appeal automatically lapses, and such a lapse does not require judicial intervention.

[20] The court, to which the appeal is made, may reinstate an appeal which has lapsed. This is at the discretion of the appeal court, which exercises its discretion judicially upon due consideration of the relevant facts.

ANALYSIS:

[21] The Respondents claim to have instructed their attorneys of record to “*re-apply for a hearing date and to the extent necessary an application for condonation due to the late filing thereof.*” However, the Respondents provided no documentary evidence in support of this notion.

[22] The Respondents also failed to provide any documentary evidence in support of the notion that they initially applied for a hearing date within the sixty days stipulated in Rule 49(6)(a).

[23] In accordance with Rule 49(6)(a) it is clear that in the absence of an application for a date for the hearing of the appeal and/or cross-appeal, the appeal shall be deemed to have lapsed *ex lege*.

[24] Where an application for a hearing date is not made within sixty days, the appeal lapses automatically by operation of the Rule and any application for reinstatement must be brought before the Court to which the appeal is made in accordance with the provisions of Rule 49(6)(b). This is at the discretion of the Appeal Court, which exercises its discretion judicially upon consideration of the facts.

[25] It is evident from the notice issued by the court dated 5 April 2024,¹ that the Respondents failed to comply with the provisions of Rule 49(6)(a) of the Rules of Court. The Respondents failed to provide any evidence to the contrary. On the basis of the above, I am satisfied that a proper case is made for the relief sought.

ORDER:

[26] Accordingly, I make the following order:

26.1. That the First and Second Respondents' appeal, to the Full Court, has become lapsed *ex lege* in terms of Uniform Rule 49(6)(a);

26.2. That the First and Second Respondents are ordered to pay the Applicant's wasted costs of the appeal, in terms of rule 49(6)(a) of the Uniform Rules of Court, to be taxed on scale B;

26.3. That the First and Second Respondents be ordered to pay the Applicant's cost of this application, to be taxed on scale B.

**JA KLOPPER
ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

This Judgment was handed down electronically by circulation to the Plaintiff's legal representatives and the Defendants by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be on 5 March 2026.

Appearances

¹ See annexure "RA1" to Applicant's replying affidavit: CaseLines: H77

Counsel for the Applicant: Adv R Raubenheimer

Instructed by: Vezi De Beer Inc

Appearance for Respondents: Adv I Kruger

Instructed by: Madelein Kruger Attorneys

Date of Hearing: 5 November 2025

Date of Judgment: 5 March 2026