

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 2024-050062

(1) REPORTABLE: ~~YES~~/ NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: YES/NO

20 March 2026

DATE

SIGNATURE

In the matter between:

WILLEM JACOBUS VENTER NO

FIRST PLAINTIFF

KAREN FOURTEIN NO

SECOND PLAINTIFF

RUEBEN KRISHNA VENGADESAN NO

THIRD PLAINTIFF

CHRISTINA MARIA VERSTER NO

FOURTH PLAINTIFF

AMANDA LINDOKUHLE VILAKAZI NO

FIFTH PLAINTIFF

[The First to Fifth Plaintiffs are cited in their capacities as the joint liquidators of Agri Oil Mills (Pty) Ltd (in liquidation), registration number: 2009/020481/07]

and

MAGISTRATE M HARICHAND

FIRST DEFENDANT

ELBE LELANIE WESSELS

SECOND DEFENDANT

This judgment is handed down electronically by circulating to the parties or their legal representatives by email and by uploading the judgment onto CaseLines. The date and time for hand down of the judgment are deemed to be 16:00 on 20 March 2026.

JUDGMENT

MATLAPENG A.J

INTRODUCTION

- [1] This application concerns the upliftment of a Notice of Bar delivered in terms of Uniform Rule 27.¹
- [2] The Applicant bid an indulgence from this Court permitting him to deliver a Plea, notwithstanding that the Applicant became automatically barred after failing to Plea within the prescribed period as per the Notice of Bar that was delivered in terms of Rule 26.²
- [3] It is so that the Respondent oppose the application and content that the Applicant has failed to demonstrate good cause, furthermore that the explanation for the default is unsatisfactory and lastly that the failure to comply with the rules of Court is the product of negligence on the part of the Applicant's legal representatives.

¹ CaseLines: Founding Affidavit E001-5 para 3.

² CaseLines: Founding Affidavit E001-5 para 4.

- [4] It is so that this matter raises a question that frequently arises in civil litigation:
To what extent should a litigant be relieved from the consequences of the negligence of his legal representatives?

FACTUAL BACKGROUND

- [5] The Respondents, acting in their capacity as the joint liquidators of Agri Oil Mills (Pty) Ltd (In liquidation), instituted action proceedings against *inter alia* the Applicant.
- [6] The Summons were served on 8 May 2024 and the Notice of Intention to Defend was served on 27 June 2024.³ Subsequent to that, there were a series of Notices exchanged between the parties which included Notices in terms of Rule 35(12), Notice in terms of Rule 28 which culminated into an amendment to the Summons on 8 August 2024.⁴
- [7] It is so that the Notice of Bar was served on the Applicant on 9 September 2024⁵ and the 5 (Five) days for the delivery of the Plea, expired on 16 September 2024.
- [8] It is also so that the Notice of Bar, required the Applicant to deliver his Plea within 5 (Five) days failing which, he would be *ipso facto* barred from delivering a Plea.

³ CaseLines: Answering Affidavit E003-52 paras 7.1-7.3.

⁴ CaseLines: Answering Affidavit E003-52 paras 7.4-7.7.

⁵ CaseLines: Answering Affidavit E003-52 paras 7.8-7.9.

[9] It is so that the Applicant subsequently changed his legal representatives and the present legal representatives only came on record in November 2024.⁶

[10] The present application, is to uplift the bar and this application was launched during December 2024.

[11] The explanation advanced by the Applicant in the Founding Affidavit is summarised as follows:

11.1 That the current legal representatives were unaware of the Notice of Bar had been served;⁷

11.2 That the current legal representative had received only limited documentation when coming on record and representing the Applicant;⁸

11.3 That there was confusion due to the change of attorneys.⁹

[12] In sum, the Applicant contends that the default was not wilful and that the Applicant should not be prejudiced by the conduct of his legal representatives.

⁶ CaseLines: Answering Affidavit E003-55 para 14.

⁷ CaseLines: Founding Affidavit E001-5 para 4.

⁸ CaseLines: Founding Affidavit E001-7 para 10.

⁹ CaseLines: Founding Affidavit E001-8 para 19.

[13] The Applicant further contends that the Respondents' legal representatives, did not alert the current legal representatives to the existence of the Notice of Bar, during discussions between the legal representatives at the time.

THE RESPONDENTS CASE

[14] The Respondents submit that the explanation is contradicted by the documentary evidence which is on record¹⁰ and in particular content that firstly, the Notice of Bar forms part of the correspondence exchange between the legal representatives secondly that the Applicant has failed to produce confirmatory affidavits¹¹ from the previous attorneys confirming the version presented by the Applicant and lastly that the explanation amounts to no more than an attempt, to escape the procedural consequences of negligence.¹²

[15] In *National Director of Public Prosecutions vs Zuma 2009 (2) SA 277 (SCA)* Harms DP stated:

[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal dispute based on common cause facts. Where a litigant relies on the conduct or knowledge of third parties, confirmatory affidavits are required to establish those facts. The absence

¹⁰ CaseLines: Answering Affidavit E003-64 para 46.

¹¹ CaseLines: Answering Affidavit E003-65 para 51.

¹² CaseLines: Answering Affidavit E003-66 para 54.

in the present matter is telling and it leaves the Court with no evidence upon which to accept the explanation advanced by the Applicant.”

[16] It is so that Rule 26, provides that a party who fails to deliver a pleading within the prescribed period of time, may be placed under bar from delivering the same.

[17] Once a party is barred, the defaulting party is precluded from delivering the pleading unless the bar is uplifted with leave of the Court.

[18] This upliftment, constitutes an indulgence from the Court which indulgence, is exercised judicially.

[19] In the matter of *C Silber vs Ozen Wholesalers (Pty) 1954 (2) SA 345 (A)* at the Court held as follows:

[24] The appellate division held that an application an Applicant seeking such indulgence, must show sufficient cause for the default and satisfy the Court that the application is made bona fide and the requirements include a full and satisfactory explanation for the delay, bona fide conduct, and a defence with prospect of success.”

[20] In the matter of *Euitange Transitional Council vs. South African Revenue Service* the Supreme Court of Appeal, emphasises that Courts require a full, detailed, and accurate account for the causes of the delay.¹³

¹³ 2004 (1) SA 292 SCA para 6.

[21] Where such explanation is lacking, condonation should be refused.

Knowledge of the Notice of Bar

[22] The gravamen of the Applicant's case, is that the current legal representative, was unaware that a Notice of Bar had been served. That explanation is contradicted by the documentary evidence filed on record.

[23] The correspondence exchanged, contained the Notice of Bar which was received by the current legal representative. More pointed, Annexure AA7 contained correspondence from Marcell Fourie on behalf of the Respondents and dated 11 November 2024, to the Applicant's legal representatives, the following is recorded:

"Dear Marilise

Thank you for your email below.

I have gone through the liberty of inviting you to the Court Online case file, you should now have access to all the filed documents. In any event, kindly attached the requested documents. The exception was erroneously filed as a notice.

Kind Regards

Marcell Fourie

Attorney.

[24] The Notice of Bar, was therefore available within the communications relied upon by the Applicant as well as on Court Online. In sum, the assertion that the current legal representative was unaware of the Notices, cannot therefore be accepted by this Court.

[25] During oral submissions, the Applicant made an assertion that unfamiliarity with CaseLines/Court Online should be in his favour as it has not been introduced in the Western Cape where he is from.

[26] Furthermore, reliance was also placed on the fact that the invitation to Court Online, was made to the personal assistant and not him personally so he had no access to Court Online.

[27] Those submissions are unconvincing because, a personal assistant is an extension of his or her employer and, placing blame on a personal assistant who has also not provided a confirmatory affidavit, is unhelpful to the Court in assessing the merits of the submissions.

[28] As an officer of the Court, it is your duty to familiarise yourself with the practices of the divisions which you practice as well as the divisions which you shall from

time to time. Furthermore, that is one of the reasons why corresponding attorneys are there, to assist.

[29] The Legal Practice Council's Code of Conduct ("The Code"), also places a special duty on legal practitioners.

[30] The Code, imposes a duty upon all legal practitioners to remain reasonably abreast of the developments in matters in which they act.

[31] This necessarily includes the obligation to read correspondence received in the cause of litigation.

[32] Clause 18 of the Code, deals with specific provisions relating to conduct of attorneys and states that an attorney shall:

"18.14 perform professional work or work of a kind commonly performed by an attorney with such a degree of skill, care or attention, or of such a quality or standard, as may reasonably be expected of an attorney."

[33] It is so that a legal representative who fails to read correspondence, cannot rely upon that failure as an explanation for their procedural default and not acting in the best interest of their client.

[34] It is so that the Applicant current legal representatives, attempt to attribute responsibility to the previous attorneys, this submission, is misconceived as an attorney who assumes conduct of a matter, must firstly familiarise themselves

with all the pleadings, correspondence and procedural steps that must be followed when assuming their role as a legal representative.

[35] The responsibility, in this Court's opinion, cannot be delegated to a predecessor legal representatives and to permit such reasoning, would create an unacceptable precedent whereby litigants can escape the consequences of procedural default, simply by changing legal representatives.

[36] A further difficulty, arises from the absence of confirmatory affidavits from the previous legal representatives of the Applicant. The Applicant in these proceedings, relies heavily upon the alleged conduct of the previous legal representatives and yet, there are no confirmatory affidavit in support of the assertions made by the Applicant.

[37] That explanation, rests largely upon hearsay and the Courts have repeatedly emphasised that where a party relies on information of third parties, confirmatory affidavits should be produced.

[38] The absence of such confirmatory affidavits, undermines the credibility of the Applicant's version.

[39] A striking feature of the Applicant's case, is that the explanation for the procedural non-action, is entirely on the conduct of the previous legal representatives.

[40] However, the explanation advanced is internally inconsistent and unsupported by confirmatory affidavits from the a legal representative whose conduct is relied

upon “a full, detailed and accurate account of the causes of the delay so as to enable the Court to understand clearly the reasons and to assess the responsibility for it.”

[41] In the present matter, no such explanation has been provided by the Applicant and instead, the explanation largely rests on assertions that the current legal representative was unaware of the Notice of Bar, the file was incomplete and lastly that the former legal representative, failed to provide sufficient information. These assertions are contradicted by the documentary evidence.

[42] In the matter of *Wightman T/A JW Construction vs Headfour (Pty) Ltd 2008 (3) SA 371 (SA)* and at para 13, the Supreme Court of Appeal held as follows:

“A real, genuine and bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed.”

[43] It is so that the Applicant has failed to do so. The explanation proffered by the Applicant, does not seriously address the existence of the Notice of Bar contained in the correspondence. Instead, the explanation relies on speculation and unconfirmed allegations.

[44] It is so that the rules of Court, are not mere technicalities and they exist to ensure the orderly and efficient administration of justice. In the matter of *Colyn vs Tiger*

Food Industries Ltd t/a Meadow Feed Mills (Cape) 2003 (6) SA 1 (SCA) and at para 11 the Court stated thus:

“...With that as the underlying approach the courts generally expect an applicant to show good cause (a) by giving a reasonable explanation of his default; (b) by showing that his application is made bona fide; and (c) by showing that he has a bona fide defence to the plaintiff’s claim which prima facie has some prospect of success...”

[45] The explanation advanced by the Applicant, in the present matter falls far short of that standard. Large portions of the relevant timeline, remain unexplained by the Applicant.

[46] Even if one entertains the contents of the Plea, it contains bare denials and a no answer to the case made by the Respondents.

[47] The Applicant, ultimately seeks to avoid the consequences of procedural default by attributing blame to his legal representatives. It is so that while courts are often reluctant to penalise litigants for the negligence of their legal representatives, the principle cannot be applied without limit.

[48] In the matter of *Salojee and another NNO vs Minister of Community Development 1965 (2) SA 135 (A)* at 141B-C the Appellate Court neatly summarised the above and stated that:

“There is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence.”

[49] The Court further held that condonation cannot be granted where the explanation amounts to nothing more than negligence on the part of the attorney.

[50] In sum, the present case falls squarely within that principle stated above.

[51] In the matter of *Ferris vs FirstRand Bank Limited 2014 (3) SA 39 (CC)* at para 13 the Court held as follows regarding condemnation:

“...Condonation cannot be had for the mere asking.”

[52] Having regard to the pleadings as a whole, the following conclusions emerge firstly, the Notice of Bar, formed part of the correspondence received by the Applicant's legal representative secondly, the explanation that the legal representative was unaware of the Notice of Bar is implausible thirdly, the explanation relies heavily on hearsay evidence unsupported by confirmatory affidavits from the former legal representatives and lastly, in these circumstances, that explanation cannot be accepted by this Court.

ORDER

[53] The application is dismissed with costs on a party and party Scale B.



MT Matlapeng
Acting Judge of the High Court, Gauteng
Division, Pretoria.

Appearances

Applicant's Counsel:

Adv de Beer SC

Applicant's Attorneys:

Cluver Markotter Inc

Respondents Counsel:

J Scheepers

Respondents Attorneys:

Van Greunen & Associates

