



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no 2024/009702

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 23 April 2026

In the matter between:

HUMBULANI FREDDY MANENZHE
NORHA MOHLAOLA MANENZHE

First Applicant (in leave to appeal)
Second Applicant (in leave to appeal)

and

SPARTAN SME FINANCE (PTY) LTD

Respondent (in leave to appeal)

JUDGMENT: LEAVE TO APPEAL

DU PLESSIS J

Introduction

[1] This is an application for leave to appeal against the whole of the judgment and order granted on 20 February 2026. The main application was brought by Spartan SME Finance (Pty) Ltd (Spartan, the applicant in the main application) for payment of R6 787 203,98, together with interest and costs on the attorney-and-own-client scale, arising from guarantees executed by the respondents in the main application and a written acknowledgement of debt. The parties will be referred to as they were in the

main application. The matter was enrolled on the opposed motion roll on 18 February 2026.

[2] When the matter was called there was no condonation application for the late filing of the answering affidavit, as had been required by an order of court granted on 24 April 2024 by agreement between the parties. I indicated that, in the absence of such condonation, there was in substance no answering affidavit properly before the court. Counsel for the respondents then applied from the bar for a postponement, which I refused. I treated the answering affidavit as not properly on record and granted judgment on the founding papers.

[3] The respondents now seek leave to appeal. Their grounds can be grouped into three issues: the refusal of a postponement, the treatment of the answering and supplementary affidavits, and the correct approach on the merits.

[4] Leave to appeal may only be given where the appeal would have a reasonable prospect of success, or where some other compelling reason exists for it to be heard. Section 17(1)(a) of the Superior Courts Act¹ has raised the threshold: a mere possibility of success, an arguable case, or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that another court would come to a different conclusion.² The respondents accepted this at the hearing, but submitted that they have met the test. For the reasons that follow, they have not.

The postponement

[5] The refusal for postponement did not rest on a single late step treated mechanistically. The difficulty lay in the cumulative pattern of non-compliance, centred on a consent order which the respondents disregarded for almost two years.

[6] On 24 April 2024 Mia J, by agreement between the parties, ordered the respondents to file their answering affidavit together with a substantive condonation application for its late filing by 16 May 2024. The order stipulated that, failing such

¹ 10 of 2013.

² *MEC for Health, Eastern Cape v Mkhitha* 2016 JDR 2214 (SCA) para 17.

compliance, the respondents would not be entitled to file any further affidavits. The respondents thus expressly undertook to regularise their late answering affidavit by a substantive condonation application.

[7] The respondents uploaded an answering affidavit dated 16 May 2024, but no condonation application was ever filed. Not in May 2024, and not in the twenty months that followed. The order has never been varied or set aside. It remains binding.

[8] The subsequent conduct reinforced the picture. Heads of argument were filed only after the applicant successfully compelled them to do so in November 2025. The respondents did not cooperate in preparing a joint practice note. They filed a supplementary answering affidavit and an application to admit it, even though the April 2024 order expressly prohibited them from filing further affidavits in the absence of condonation. Despite repeated notice of the applicant's stance in its replying affidavit and heads, no explanation for non-compliance was placed before the court on affidavit.

[9] A postponement is an indulgence. An applicant must show good cause, including a full explanation for the circumstances giving rise to the request, the steps taken to avoid it, and the prejudice to all parties and to the administration of justice.³ The respondents placed no explanation under oath before the court. The request for a postponement was made orally from the bar, only after the court pointed out that there was no condonation application as required by the April 2024 order.

[10] In these circumstances, the refusal of a postponement was a proper exercise of the discretion. The respondents' prejudice flows from their own failure, through successive sets of attorneys, to comply with a binding order and the rules. The applicant's prejudice, namely a substantial commercial claim left unresolved for years despite diligent prosecution, is obvious. There is no sound basis to conclude that another court would exercise the discretion differently.

³ *Myburgh Transport v Botha* 1991 (3) SA 310 (Nm) at 315F–G.

Supplementary answering affidavit

[11] The approach is consistent with *Grootboom v National Prosecuting Authority*,⁴ where the Constitutional Court warned against the “monotonous” disregard of rules and directions and emphasised that condonation and related indulgences are not for the asking, particularly where there is no proper explanation.

[12] Counsel for the respondents correctly accepted that no condonation application for the late answering affidavit was ever brought. The submission was that this should not have been dispositive, because the answering affidavit had been uploaded, the applicant had replied to it, and the court should, in the interests of justice, have either treated it as properly on record or at least have adjudicated the interlocutory application for leave to file the supplementary answering affidavit.

[13] This overlooks the terms of the April 2024 order. That order did not merely “direct” the filing of a condonation application. It expressly prohibited the filing of any further affidavits if condonation was not sought by 16 May 2024. The prohibition took effect when the respondents chose to file an answering affidavit without the required condonation, and it remained in force on the day of hearing. The order had not been varied or set aside.

[14] A court is bound to give effect to orders that are in force. A party who seeks to be relieved from the operation of such an order must apply for appropriate relief. The respondents never did so. They did not seek to vary or rescind the April 2024 order, nor did they bring the condonation application that was the court-ordered ticket to their opposition.

[15] On a proper reading of the April 2024 order, two consequences follow. First, the answering affidavit, filed without the required condonation, was not properly before court. Second, the supplementary answering affidavit was itself filed in breach of the prohibition on further affidavits. An interlocutory application to admit a supplementary

⁴ 2014 (2) SA 68 (CC) para 34–35.

affidavit cannot cure the absence of the answering affidavit it purports to supplement, and cannot override a subsisting court order.

[16] The respondents relied on the principle that courts are reluctant to penalise litigants for their attorneys' defaults. That principle is accepted. But as the Appellate Division held in *Saloojee and Another NNO v Minister of Community Development*,⁵ and as the Constitutional Court confirmed in *Ferris v FirstRand Bank Ltd*⁶ and *Turnbull-Jackson v Hibiscus Coast Municipality*,⁷ there is a limit beyond which the negligence or indifference of a legal representative will be imputed to the litigant.

[17] This is such a case. Two successive firms of attorneys, over a period of almost two years, did not take the single step that the April 2024 order required. The order itself was annexed to the answering affidavit; the respondents thus knew of it. The applicant repeatedly raised the non-compliance in its replying affidavit and in its heads of argument. Yet no condonation application was ever brought, and no explanation under oath was proffered. To hold that the respondents can nevertheless rely on their attorneys' defaults would be precisely the indulgent approach *Saloojee*, *Ferris* and *Turnbull-Jackson* caution against.

[18] There is accordingly no reasonable prospect that another court would find that the answering affidavit, or the supplementary affidavit, was properly before me, or that they should have been treated as such despite the respondents' persistent and unexplained non-compliance with a binding order.

The merits

[19] Once it is accepted that there was no answering affidavit properly before court, the merits fall to be determined on the applicant's founding papers. The applicant based its claim on the written facilities, the guarantees, the acknowledgement of debt and a certificate of balance dated 31 December 2023 reflecting the outstanding amount of R6 787 203,98.

⁵ 1965 (2) SA 135 (A) at 141H–142B.

⁶ 2014 (3) SA 39 (CC) para 25.

⁷ 2014 (6) SA 592 (CC) para 25–26.

[20] In *Rossouw v FirstRand Bank Ltd t/a FNB Home Loans*⁸ the Supreme Court of Appeal confirmed that, where parties have contractually agreed to a certificate of balance mechanism, a certificate signed by the creditor is prima facie proof of the debtor's indebtedness, and the debtor bears the evidential burden to show that the amount is incorrect

[21] The respondents contend that they had defences of payment, calculation errors and a possible counter-claim, relying on the supplementary answering affidavit and the forensic report. But those contentions were never properly placed before court because the affidavits themselves were not properly on record.

[22] On the uncontested facts, the applicant established its claim. There is no reasonable prospect that another court would interfere with the order on the merits.

Compelling reasons

[23] The respondents also rely on section 17(1)(a)(ii) of the Superior Courts Act, contending that there are "compelling reasons" to grant leave to appeal, including alleged constitutional implications for their right of access to courts.

[24] The issues raised in this matter do not involve any novel question of law. They concern the application of settled principles: the binding nature of court orders, the requirements for condonation and postponement, the limits of reliance on attorney negligence, and the evidential effect of a contractual certificate of balance. There is no compelling reason to grant appeal.

Order

[25] The following order is made:

1. The application for leave to appeal is dismissed with costs.

⁸ 2010 (6) SA 439 (SCA) para 47.


WJ du Plessis

Judge of the High Court Gauteng Division,
Johannesburg

Date of hearing:

20 April 2026

Date of judgment:

23 April 2026

For the applicant:

PL Carstensen SC instructed by
Matojane Malungana Inc

For the respondent:

M Reineke instructed by Claassen Inc