

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2704/2025

In the matter between:

**TRANSNET SOC LTD /
TRANSNET FREIGHT & RAIL**

APPLICANT

and

D[...] S[...] M[...]

FIRST RESPONDENT

O[...] P[...] M[...]

SECOND RESPONDENT

In re:

D[...] S[...] M[...]

FIRST PLAINTIFF

O[...] P[...] M[...]

SECOND PLAINTIFF

and

**TRANSNET SOC LTD /
TRANSNET FREIGHT & RAIL**

DEFENDANT

Neutral citation: *Transnet Soc Ltd / Transnet Freight & Rail v M[...] & Another*
(2704/2025) [2026] ZAFSHC 262 (28 April 2026)

Coram: MPAMA AJ

Heard: 16 April 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for

hand-down is deemed to be 14:30 on 28 April 2026.

Summary: Upliftment of bar – rule 27 of the Uniform Rules of Court – good cause – delay – non-compliance – interests of justice – s 34 of the Constitution – right of access to courts – costs.

ORDER

- 1 The application for the upliftment of bar is granted.
- 2 The applicant is granted leave to take the next procedural step within five court days from the date of this order.
- 3 The applicant is to pay the costs of this application on scale C of rule 67A.

JUDGMENT

Mpama AJ

[1] This is an application brought in terms of rule 27 of the Uniform Rules of the Court (the rules) for an order uplifting the bar and granting the applicant leave to serve and file its plea. The relief sought arises from the applicant's non-compliance with prescribed time limits under the rules and the indulgence requested is directed at regularising the pleadings so that the matter may proceed in accordance with due process.

[2] The applicant is Transnet SOC LTD, a public company incorporate in terms of the Legal Succession to the South African Transport Services Act 9 of 1989, read with the Companies Act 61 of 1973 with its registered address situated at 150 Commissioner Street, Carlton Centre, Johannesburg, Gauteng. The first respondent is D[...] S[...] M[...], a major female residing at 4[...] T[...] Street, Batho Location, Mangaung, Bloemfontein. The second respondent is O[....] P[...] M[...], a minor born of the first respondent and the deceased, Mr M[...] D[...] M[...], residing at 4[...] T[...] Street, Batho Location, Mangaung, Bloemfontein.

[3] The applicant's conduct throughout these proceedings has been characterised by a consistent and demonstrable pattern of dilatory behaviour. On 25 May 2025, the first and second respondents (the respondents) issued summons against the applicant. The said summons was served upon the applicant on 28 May 2025 and on 24 June 2025, the applicant filed its Notice of Intention to Defend. Following the filing of Notice of

Intention to Defend, a Notice of Exception was delivered on 24 July 2025. In response thereto the respondents filed the Notice to Oppose the Exception, the applicant, however failed to pursue the Exception any further. Consequently, on 12 September 2025, the respondents served and filed a Notice of Bar against the applicant.

[4] On 20 September 2025, a notice in terms of rule 30 was filed by the applicant. The bar came into operation on 22 September 2025 and the applicant did not follow up the rule 30 Notice. On 02 February 2026, the applicant served the present application on the respondents and on 03 February 2026 duly filed same with the court. On 09 February 2026, the respondents notified the applicant of their intention to oppose the said application. The matter was set down for hearing. The respondents duly filed their heads of argument within the prescribed time limits. In contrast, the applicant only filed its heads of argument on the eve of the hearing. The applicant's heads of argument were accompanied by an application for condonation for the late filing thereof.

[5] In its application for condonation, the applicant avers that the delay in filing its heads of argument was occasioned by difficulties experienced by its attorney in securing counsel to attend to the matter. The applicant further contends that the omission to file the heads of argument was only brought to the counsel's attention two days prior to the hearing, whereupon the heads of argument were prepared and filed with the court the following day. In response to the application for condonation, the respondents submitted that they were not, in principle opposed to the relief sought. They accordingly indicated that the court may, in the exercise of its discretion, condone the applicant's non-compliance with the rules.

[6] Having considered the application for condonation, it is my view that in the interests of justice it should succeed and the applicant's late filing of heads of argument is accordingly condoned.

[7] Reverting to the main application, the applicant's founding affidavit in support of the application has been disposed to Ms Bilankulu, an attorney presently seized with the main trial. She avers that on 30 June 2025, the attorney previously responsible for the matter within the office terminated employment. Following the departure of the attorney originally handling the matter no single practitioner was specifically assigned to the case, instead the file was attended to by various attorneys within their office. She,

herself, commenced employment with the firm on 22 October 2025. Between 22 October and 18 November 2025, she was in the process of acclimating to her new duties.

[8] She further shares that on 24 July 2025, the applicant filed its Notice of Exception to which the respondents duly delivered their response. The applicant was expected to set the Exception down by 15 August 2025, which did not occur. She submits however that the period between 28 July and 15 August 2025 cannot be regarded as a delay as an interim procedural step had been taken during the time. On 12 September 2025, the applicant was served with a Notice of Bar and in response, filed a Notice in terms of rule 30. On 22 September the bar came into operation. On 18 November 2025, the respondents filed an application for default judgment. On 25 November 2025, she engaged the respondents' attorneys of record with a proposal to have the bar uplifted simultaneously tendering the costs occasioned by application for default judgment on an attorney and client scale. She was advised 07 January 2026 that the proposal has been rejected.

[9] In addition, the Service Level Agreement between the applicant and the applicant's attorneys of record expired on 09 December 2025. Consequently, the said attorneys were unable to render any legal service to the applicant pending the renewal of the agreement. A new Service Level Agreement was concluded on 29 January 2026 and the attorneys' office only resumed work on the file from 30 January 2026 and lodged this application on 20 February 2026. Lastly, she stated that the respondents will not be prejudiced if the application is granted and the applicant offers to pay the respondents' costs of the application for default judgment.

[10] Mr Mokhomo, the respondents' attorney deposed to an answering affidavit. In their opposition, the respondents categorically deny that no legal practitioner had been assigned to the case. He avers that subsequent to the expiry of the period within which the applicant was entitled to file an exception, he telephoned the offices of the applicant's attorneys. He was directed to Mr Mahlasela, having been informed that he was seized with the matter. However, Mr Mahlasela was not available. Thereafter, he addressed a letter to the applicant to which the applicant failed to respond.

[11] As a consequence of the applicant's conduct on 12 September 2025 the

respondents proceeded to serve a Notice of Bar upon the applicant. There was no response and the applicant was barred from filing its plea. On 19 September 2025, he was telephoned by the applicant's attorney and cautioned that should the respondents fail to uplift the Notice of Bar, the applicant would proceed to bring an application in terms of the rule 30 to set aside an irregular step and that the respondents would be liable for costs. Indeed, on 24 September 2025 the applicant filed its rule 30 Notice.

[12] On 15 October 2025, he was once again telephoned by the applicant's attorney reiterating the earlier warning regarding the Notice of Bar and reminding the respondents that a cost order could be sought against them in the event of non-compliance. On 21 October 2025, a brief discussion was held between the applicant's attorney and respondents' attorney during which the respondents were requested to uplift the bar. On 23 October 2025, the respondents advised that the request was refused. The applicant had not served the contemplated rule 30 application. Consequently, the applicant was notified that default judgment proceedings would be instituted. Thereafter, the applicant launched this application on 03 February 2026.

[13] During oral submissions, the applicant conceded that its conduct in the handling of the court processes was very reckless, it further acknowledged that the respondents' claim arises from damages allegedly caused by a collision between the applicant's train and the motor vehicle driven by the deceased who was married to the first respondent. Notwithstanding, it was argued that the applicant seeks an opportunity to ventilate its defence before court and that no prejudice will be suffered by the respondents should the Notice of Bar be lifted and insofar as any prejudice may arise, such prejudice can be adequately cured by an award of costs in favour of the respondent. On the contrary, the respondents contended that the applicant failed to establish a proper case for the uplifting of the bar, the respondents would suffer prejudice because, since the service of summons, the applicant has taken no steps for a period approaching a year. The respondents have a right to the expeditious resolution of this matter.

[14] Rule 27 provides as follows:

'1 In the absence of 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 maybe 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 the rules.

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

[15] An applicant who seeks to have a bar removed must show good cause. This requires an affidavit dealing with the merits setting out the defence. It is not necessary that the affidavit should set out in full everything that is relied upon by the applicant to establish his defence, but he must show that he has a good defence - mere belief that he has a good defence is insufficient. See: D R Harms *Civil Procedure in the Superior Courts* Issue 55 (2019) at B-180.

[16] In *Smith NO v Brummer NO and Another* 1954 (3) SA 352 at 353, it was said:

'In an application for the removal of bar the Court has a wide discretion which it will exercise in accordance with the circumstances of each case. The tendency of the Court is to grant such an application where (a) the applicant has given a reasonable explanation of his delay; (b) the application is *bona fide* and not with the object of delaying the opposite party's claim; (c) there has not been a reckless or intentional disregard of the Rules of the Court; (d) the applicant's action is clearly not ill-founded and (e) any prejudice caused to the opposite party could be compensated by an appropriate order as to costs.'

A full explanation of the default must thus be given to enable the court to assess the explanation.

[17] The deficiencies in the applicant's conduct are manifest. It is not necessary to encumber this judgment with a comprehensive recital thereof; however, for purposes of illustration, the following instances are noted. The applicant has failed to provide a satisfactory explanation as to why, having filed a rule 30 Notice, no further steps were taken to pursue the matter. Furthermore, no response was furnished to the respondent's correspondence requesting confirmation of whether the exception was still being pursued. No justification has been advanced as to why the practitioners seized

with the matter after the resignation of the practitioner who was assigned the file did not ensure the filing of the requisite pleadings. These examples are indicative rather than exhaustive, as the applicant's shortcomings. The fatal flaw in the applicant's application lies in the fact that the application is entirely silent on the merits. The applicant elected not to respond to the allegations advanced by the respondents, nor did it disclose any bonafide defence.

[18] The respondents' particulars of claim allege that the motor vehicle driven by the first respondent's husband was hit by applicant's train whilst driving his motor vehicle and killed. The respondents further stated that applicant's driver was the sole cause of the accident alternatively, the applicant failed to erect adequate signage to warn motorists of the railway crossing, alternatively the driver of the train failed to take reasonable steps to avoid or prevent the harm, in that he operated the train at an excessive and inappropriate speed.

[19] Section 34 of the Constitution of the Republic of South Africa, 1996, guarantees every person the right of access to courts, which encompasses the opportunity to ventilate one's case before a court. I acknowledge that the conduct of the applicant has occasioned delays in the progression of the matter, notwithstanding, in my view, the interests of justice, may in certain circumstances, warrant the granting of relief even in respect of an application that is otherwise devoid of merit. Having regard to the nature of the allegations advanced by the respondents against the applicant in the main trial, it is my considered view that the interests of justice dictate that the applicant be afforded an opportunity to present and defend its case before court.

[20] The general principle is that a successful litigant is ordinarily entitled to an award of costs. However, having regard to the applicant's conduct which has occasioned unnecessary inconvenience to the respondents, I find it appropriate to depart from the general rule and award costs in favour of the respondents.

[21] I accordingly make the following order:

- 1 The application for the upliftment of bar is granted.
- 2 The applicant is granted leave to take the next procedural step within five court days from the date of this order.

3 The applicant is to pay the costs of this application on scale C of rule 67A.

L MPAMA
ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant: F L Mashiya
Instructed by: Mokhomo Attorneys,
Bloemfontein

For the respondents: P G Chaka
Instructed by: Poswa Incorporated,
Bloemfontein.