

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: A2025/086471DATE: 2026-04-29

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES NO

(3) REVISED



SIGNATURE

Date 29 April 2026

10 In the matter between

PHALENG PODILE

Appellant

and

EU KITCHEN PTY LTD

Respondent

J U D G M E N T E X T E M P O R E

20 **WILSON J (with whom Wentzel J agrees):** This is an appeal against a decision of the Magistrates' Court in which a claim for the refund of an amount paid under a contract for the installation of a walk-in wardrobe was dismissed.

The appeal against that dismissal and the granting of a counterclaim for the balance of the purchase price was enrolled before us today, 29 April 2026. Last week, correspondence was uploaded to CaseLines in which the respondent's attorney addressed an e-mail to the

appellant's attorney asserting that the appeal has now lapsed. The respondent brought an application to declare the appeal lapsed.

The application was not attached to the correspondence uploaded to CaseLines. It was, we are told, issued under a different case number and was uploaded to CourtOnline. CaseLines is the interface with the court documents used when a matter is argued in court. CourtOnline is the secure archive of material filed with the
10 Registrar. It is not generally used to access documents during argument, because it does not allow documents to be marked-up or searched easily. A directive issued by this court when the roll for today was published directed the parties to ensure that all relevant documents were made available to the court on CaseLines and in hardcopy. This was not done.

When the matter was called today, Ms Putzier, who appeared for the respondent, confirmed that the application to declare the appeal lapsed will be persisted with. Mr
20 Shongwe, who appeared for the appellant, quite understandably asked for an opportunity to file an answering affidavit in that application. Mr Shongwe furthermore suggested that the matter proceed on the basis that the appeal could be heard on its merits today. The application to declare the appeal lapsed could then, he

suggested, be run in parallel, with pleadings being exchanged after the appeal is heard on the merits, and, presumably, a further hearing in future on that question.

That approach is inappropriate, and we will not accept Mr. Shongwe's suggestion.

The first question in this appeal is whether the appeal is properly before us. That question is not ripe for decision today, precisely because the application to declare the appeal lapsed is not before us, and the appellant has not
10 been given a reasonable opportunity to file an answering affidavit in that application. In addition, there will have to be a reply, heads of argument, and perhaps oral argument in the application. None of that has been done.

If the appeal has lapsed, then the merits do not arise. The question of whether the appeal has lapsed must therefore be determined first. It follows that neither the application to have the appeal declared lapsed, nor the appeal itself are ripe for hearing before us today. The appeal will accordingly have to be postponed, *sine die*, and
20 re-enrolled when it is ripe.

The question now is what costs order, if any, we should make. The respondent avers that the appeal lapsed on the 15 September 2025. But it did not bring the application to have the appeal declared lapsed until 20 April 2026. That is in itself a lengthy delay worthy of censure.

However, the principal reason why we are inclined to award attorney and client costs against the respondent is that no steps whatsoever have been taken place the court in possession of the application to have the appeal declared lapsed. If the respondent was inclined to conceal the application from the court, it could have done no better than it did. It issued the application under a different case number and uploaded the application to CourtOnline when the respondent knew or ought to have known that access to the papers was required in hardcopy and on CaseLines. I do not, of course, suggest the respondent sought to conceal the application from us, but that is the effect of its conduct. That is also worthy of censure, because it wasted a great deal of judicial time taken in preparing for this appeal. We have read a significant record and we were ready to decide the appeal on the merits today. We would not have prepared on the merits had we been informed that the application to declare the appeal lapsed had been filed, and had we been placed in possession of it.

It was suggested by Ms Putzier that the primary fault for the postponement lies with the appellant, given that the appellant did not respond immediately to the correspondence directed to her legal representatives on 20 April. While it would have been better if the appellant's legal representatives had replied immediately to that

correspondence, the basis for the order we shall presently make is not to reward the appellant's representatives, but to indicate the court's displeasure with the conduct of the respondent in this case.

It is simply not acceptable to proceed as the respondent has done. That is, to delay several months before bringing an application that should have been brought on or soon after 15 September 2025, and then to fail to take the obvious steps necessary to draw the
10 application to the court's attention.

For all those reasons, we make the following order:

1. The appeal is postponed *sine die*.
2. The respondent is to pay the wasted costs on the scale as between attorney and client.



WILSON, J
JUDGE OF THE HIGH COURT
29 April 2026

