


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 45297/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
21/05/2026	
DATE	SIGNATURE

In the matter between:

ADV W BURGER N.O. OBO RINDAU MAMABOLO

Applicant

and

ROAD ACCIDENT FUND

Respondent

EX-TEMPORE JUDGMENT

Mahosi, J

[1] The applicant seeks an order striking out the respondent's defence on the grounds that it failed to comply with this court's order dated 18 September 2025, which directed the respondent to arrange a date for a pre-trial conference within 10 days.

The applicant contends that the respondent only emailed proposed dates on 18 May 2026, and that the email was sent to an incorrect email address. The respondent thereafter sent the dates to the correct email address on the day before this hearing.

[2] It is common cause that the respondent did not comply strictly with the time period set by the court order. The respondent admits that its first attempt, sent on 18 May 2026, was addressed to the wrong email address due to an administrative error. Upon realising the mistake, the respondent re-sent the proposed dates to the applicant's correct email address on the day prior to this hearing.

[3] Striking out a defence is a drastic remedy. It deprives a party of its right to be heard and should only be granted where the non-compliance is wilful, contumelious, or where there is clear prejudice to the other party that cannot be remedied by any other means. A mere delay or technical misstep, particularly one that is later corrected, does not automatically warrant the ultimate sanction.

[4] The respondent's conduct is undoubtedly unsatisfactory and falls short of the standard expected of a litigant. However, two factors weigh against striking out its defence. The first is that the respondent made an effort to comply by sending proposed dates on 18 May 2026, albeit to the wrong address. The error appears to be an oversight rather than a deliberate strategy to frustrate the applicant or the court process. The second is that the applicant received the correct email with the proposed dates before this hearing. The applicant has not demonstrated any concrete prejudice flowing from the delay that a suitable cost order cannot cure. The pre-trial conference can still be arranged without unduly delaying the trial.



[5] Striking out the defence would be disproportionate in these circumstances. The overriding objective of just, speedy, and inexpensive litigation is better served by allowing the matter to proceed on the merits, while penalising the respondent for its laxity through a punitive costs order.

Order

[6] Accordingly, the following order is made:

1. The matter is removed from the roll.

2. The respondent must pay the costs of this application on the attorney-and-client scale.

D. Mahosi
Judge of the High Court
Gauteng Division, Johannesburg

Heard: 21 May 2026

Delivered: 21 May 2026.

Appearances

For the applicant: Advocate N. Pather

Instructed by: Sonya Meistre Attorneys

For the respondent: Ms. T Tivana for State Attorney, Johannesburg

