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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE:-YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE: 18 June 2026

SIGNATURE:

Case No. 91805/2016

In the matter between:

DE WET, KF N.O.

First Applicant

BURNS, TA

Second Applicant

COETZEE, C

Third Applicant

And

DIGICORE FLEET MANAGEMENT SA (PTY)

Respondent

LTD T/A C TRACK FLEET MANAGEMENT

In re:

**DIGICORE FLEET MANAGEMENT SA (PTY)
LTD T/A C TRACK FLEET MANAGEMENT**

APPLICANT

And

DE WET, KF N.O.

FIRST RESPONDENT

BURNS, TA

SECOND RESPONDENT

COETZEE, C

THIRD RESPONDENT

Coram: Millar J

Heard on: 8 June 2026

Delivered: 18 June 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12H00 on 18 June 2026.

JUDGMENT

MILLAR J

- [1] This is an application for leave to amend a plea. The amendment, which is the subject matter of this application, relates only to the second applicant (who is the second defendant in the main action), Ms. Burns. In respect of the first and third applicants, the late Mr. Burns and Ms Coetzee, the amendment to introduce the special plea was abandoned before the hearing. For convenience, I will refer to the applicants as the late Mr. Burns, Ms. Burns and Ms Coetzee respectively – where I refer to all 3, I will refer to them either as the applicants or the defendants. I will refer to the respondent, the plaintiff in the main action, as Digicore.
- [2] The factual matrix in this matter is uncontentious.
- [3] On 24 November 2016, Digicore issued Summons against the late Mr. Burns, Ms. Burns and Ms. Coetzee in the main action. When the Summons was initially issued, the late Mr. Burns was cited as having his *domicilium citandi et executandi* at 1[...] L[...] Road Ferryvale in Nigel, Gauteng. Ms. Burns was cited as having that address as her employment address as was Ms. Coetzee. Neither were cited with this address as their *domicilium citandi et executandi*.
- [4] The sheriff duly served the Summons on the late Mr. Burns at the *domicilium* address on 25 November 2016. When serving the Summons at this address, the sheriff was informed by the occupier of the premises (a certain Ms. van Rooyen), that none of the defendants were known at that address. Accordingly, while service was effected on the late Mr. Burns at that address because he had chosen it as his *domicilium* address, it was not served in respect of either Ms Burns or Ms. Coetzee.

- [5] This prompted Digicore on 30 November 2016, to amend its Summons to add as a further *domicilium citandi et executandi* for both the late Mr. Burns and Ms. Coetzee at 7[...] H[...] V[...] Street, Aloe Arcade, Nigel Gauteng. This address was also cited as the employment address of Ms. Burns.
- [6] On 1 December 2016, the sheriff effected service on Ms. Coetzee personally at the address referred to in paragraph [5] above. She also received service on behalf of the late Mr. Burns and undertook to hand a copy of the Summons to him. In respect of Ms. Burns, Ms Coetzee informed the sheriff that she was “*no longer employed at given address.*”
- [7] Accordingly, the factual position as of 1 December 2016, was that Summons had been served by the sheriff on the late Mr. Burns at 2 addresses reflected as being *domicilia citandi et executandi* and personal service had been effected on Ms. Coetzee. No service was effected on Ms. Burns.
- [8] While the Summons was with the sheriff for service on 1 December 2016, all three defendants had in the meantime on 30 November 2016 delivered a notice of intention to defend the action. The notice of intention to defend is clear and unequivocal insofar as it was entered on behalf of all 3 defendants and was served on Digicore’s attorneys.
- [9] Thereafter, in the absence of the timeous filing of a plea, on 22 February 2017, a notice of bar was served on the defendants. The notice of bar resulted in the delivery of a plea on 8 March 2017. This plea, like the notice of intention to defend, was clear and unequivocal in its representation that it was filed on behalf of all 3 defendants.
- [10] Pleadings thereafter closed and the matter advanced to trial. The action was set down for trial on 26 August 2024. On 14 August 2024, the defendants gave notice of their intention to amend their plea and because of the timing with

which the application had been brought, together with the contents of the application, the action was removed from the roll.

- [11] It has taken a further almost 2 years for this application (which was opposed from the very beginning) to wind its way to court.
- [12] The action was instituted pursuant to what were alleged to be breaches of various contracts which occurred between 17 December 2013 and 15 July 2014. It is accepted, having regard to the provisions of the Prescription Act,¹ to interrupt the running of prescription, it was necessary for Digicore to ensure that Summons was served on the defendants at the earliest by 16 December 2016 or at the latest, 14 July 2017.
- [13] The actual service that was effected is set out above. It is not in issue between the parties that notwithstanding the failure on the part of Digicore to serve on Ms. Burns, the Summons was brought to her attention, she was aware of the nature of the claim, she instructed attorneys to defend the action and subsequently, filed a plea.
- [14] The application to amend before this Court, seeks to withdraw the admission made by Ms. Burns in the plea. The amendments as set out in the notice of intention to amend dated 14 August 2024, provided for the “*deletion of the plea in its entirety*” and then the substitution of a new plea which then included special pleas in respect of each of the defendants.
- [15] The first special plea in respect of each of the defendants, seeks to place in issue whether service was ever effected on them. Regarding Ms. Burns, the first special plea which is sought to be introduced together with the withdrawal of the admission, is that Summons was never served on her and for that reason did not “*constitute an effective formal institution of the action against her.*”

¹ 68 of 1969.

- [16] The effect of this special plea together with the withdrawal of the admissions made, if allowed on amendment, would be to non-suit Digicore against Ms. Burns.
- [17] It is trite that whether an application for amendment is to be permitted, is a matter which is within the discretion of the Court. The general rule is that amendments are to be allowed unless the application has been made for some ulterior purpose or would, if allowed, cause an injustice to the other party which cannot be compensated by costs.² It must also be considered whether injustice or prejudice (which allowing the amendment may occasion, besides being cured by a costs order) would also put the other party back in the position they were in when the pleading was delivered.³
- [18] Furthermore, even if an amendment seeks to introduce a fundamental defence such as lack of jurisdiction or as in the present case, lack of service by the sheriff, subsequent conduct may well be regarded as acquiescence and for that reason also, the amendment could be refused.⁴
- [19] Turning now to the present matter. The plea was served on 8 March 2017, and it was only for the first time after all the preparations for trial set down for 24 August 2024, had been undertaken and costs relating thereto incurred, some 10 days before the hearing, that the defendants sought to amend their plea. This was just short of 7 years after the plea was first delivered.

² *Moolman v Estate Moolman* 1927 CPD 27.

³ *Amod v South African Mutual Fire and General Insurance Co Ltd* 1971 (2) SA 611 (N).

⁴ *Zwelibanzi Utilities (Pty) Ltd v TP Electrical Contractors CC* 2011 JDR 0249 (SCA) at para [9] quoting with approval *Lubbe v Bosman* 1948 (3) SA 909 (O) where it was held that “*where a defendant without having excepted to the jurisdiction, joins issue with the plaintiff in a Court which has material jurisdiction, but has no jurisdiction over defendant because he resides outside the jurisdiction of that Court, the defendant is deemed to have waived his objection and so as it were conferred jurisdiction upon the Court.*”

[20] It is not in issue that at the time that the appearance to defend the action was entered as well as when the plea was filed, that Ms. Burns knew that the sheriff had not served process upon her personally or at an address where she either resided or worked. The explanation provided by the late Mr. Burns on oath for this and confirmed by Ms. Burns was that:

“At the time that the Summons was served on me, I had vacated the property at 1[...] L[...] Road, Ferryvale, Nigel and had moved my residence to 9[...] I[...] Road, Ferryvale, Nigel and my business was located at 7[...] H[...] V[...] Street, Aloe Arcade, Nigel.

My move from 1[...] L[...] Road, Ferryvale, Nigel had taken place approximately 4 years prior to the date of service of the summons.

The Summons was served on me by leaving a copy with Santie Van Rooyen, at my erstwhile address where she now lives, 1[...] L[...] Road, Ferryvale, Nigel. Mrs Van Rooyen in turn contacted me and arranged for me to collect the Summons.

I acknowledge that contents of paragraph 2 of the Particulars of Claim were admitted in the extant Plea. I mistakenly thought at the time that they served the Summons on that address as it was the address I used when the initial negotiations began with the Plaintiff and my instructions may have been miscommunicated.

The Plea was prepared in haste under Notice of Bar by a junior counsel who was instructed by my attorney at the time. I can only assume that due to the stringencies of time that prevailed, the miscommunication occurred in respect of the correctness or otherwise of the contents of paragraph 2 of the Particulars of Claim.

...

...

The Summons was served on the second defendant by leaving a copy with the successor in occupancy at 1[...] L[...] Road, Santie Van Rooyen and she in turn arranged for the delivery of the Summons to me, which I delivered to the second defendant.

The Third Defendant had never resided at 1[...] L[...] Road, Ferryvale, Nigel, she was employed by me at 7[...] H[...] V[...] Street, Aloe Arcade, Nigel at the time when Summons was served on Santie Van Rooyen. . . and she received the Summons in the same way that the Second Defendant and I received the Summons by Santie Van Rooyen.”

[21] The explanation provided sets out clearly and unequivocally that the Summons was furnished to Ms. Burns and Ms. Coetzee after it had been given to the late Mr. Burns by Ms. van Rooyen. For purposes of the present application, it is accepted that this is the way in which the Summons came to the attention of Ms. Burns. The fact that the notice of intention to defend in respect of all 3 of the defendants was served on 30 November 2016, the day before the sheriff effected personal service on Ms. Coetzee is corroborative of this.

[22] The explanation for the delay, however, does not address at all, the period between 1 December 2016 and 22 February 2017 when the notice of bar was delivered. This is a period of almost 3 full months during which the defendant's attorneys of record were in possession of the Summons.

- [23] Furthermore, the reference to junior counsel having been briefed to prepare the plea after receipt of the notice of bar, is somewhat cryptic. There is no explanation given as to the scope of the brief and whether it included instructions to raise a special plea of non-service. It seems to me as a matter of common sense that had the instruction been given by Ms. Burns to her attorney that he would have conveyed this to counsel when the plea was settled. The absence of any confirmation by either the attorney or the counsel in this regard is indicative of the fact that no such instruction was ever given to counsel.
- [24] The 7-year period from the filing of the plea until 10 days before the trial is similarly unexplained. Had Ms. Burn's attorney been instructed to raise the special plea of non-service at any stage beforehand, it is likely that an explanation would have been proffered. In the application before me, there is simply no explanation.⁵
- [25] It seems to me, properly construed that the amendment to introduce the special plea and the significance of the non-service upon which it is predicated, was only considered shortly before the trial. It does not detract from the fact that the circumstances relating to the service of the Summons were not contentious, at least as between the defendants and their attorney, and were known at least from 30 November 2016.
- [26] A costs order cannot cure the prejudice to Digicore if this amendment is permitted. It received the appearance to defend from all three defendants which included Ms. Burns. It relied upon that appearance to defend as being reflective of the fact that Ms. Burns knew that it sought to enforce its claims against her.

⁵ *GMF Kontrakteurs (Edms) Bpk v Pretoria City Council* 1978 (2) SA 219 (T). See also *South British Insurance Co Ltd v Glisson* 1963 (1) SA 289 (D).

[27] The purpose of service is to bring the process that has been issued to the attention of the debtor. This occurred here.⁶ Digicore relied on the appearance to defend. It knew from the returns of service that it had not received personal service on Ms Burns and that the addresses that it had, did not represent her work or home address. Had it not received the appearance to defend, it would have been able to take steps to secure service, in the first instance and in respect of the first claim by no later than 16 December 2016 and in respect of the last claim by 14 July 2017.

[28] The delivery in combination of the notice of intention to defend together with the plea as well as the effluxion of time means that the withdrawal of the admission would result in irreparable prejudice to Digicore.⁷

[29] The failure at all by Ms Burns, to take the Court into her confidence with regards to the various periods of delay, spanning some 7 years, is to be deprecated. The application to amend, considered in this context, it was argued for Digicore, was made *mala fide*. I agree. The main action was at the proverbial “doors of the Court” when the application was brought, and it is now some 9 years later, and the matter is no closer to resolution.

[30] For the reasons set out above, I intend to dismiss the application. The costs will follow the result, with costs of counsel on scale C.

[31] In the circumstances, I make the following order:

⁶ *Investec Property Fund Ltd v Viker X (Pty) Ltd* (2016/07492) [2016] ZAGPJHC 108 (10 May 2016) at paras [7] – [19] and *Obiang v Janse van Rensburg* (714/2023) [2025] ZASCA 30 (31 March 2025) at para [28] and following.

⁷ *Heafield v Rodel Financial Services (Pty) Ltd* (11680/2012) [2022] ZAKZDHC 26 (15 June 2022) at para [32], referring to *South British Insurance Co Ltd v Glisson* 1963 (1) SA 289 (D) where it was stated: “Where, because of an admission in a plea, a party had not used rights that he had at the time when the pleadings were originally filed and the rights had since lapsed, then an amendment withdrawing the admission will not be allowed.”

- [31.1] The application for leave to amend is dismissed.
- [32.2] The first and third applicants are ordered to pay the respondent's wasted costs on scale C for the abandonment by them of the proposed first special plea which costs exclude the costs relating to the hearing on 8 June 2026.
- [33.3] The second applicant is ordered to pay the respondent's costs of the application on the scale as between party and party which costs are to include the cost of counsel on scale C.

A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 08 JUNE 2026

JUDGMENT DELIVERED ON: 18 JUNE 2026

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