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

Reportable

Case no: 2411/2025

In the matter between:

TIMAC AGRO SOUTH AFRICA (PTY) LTD

APPLICANT

(Registration number: 2011/005705/07)

and

F EN D STRYDOM BOERDERY CC

FIRST RESPONDENT

(Registration Number: 2010/073660/23)

DOUGLAS RUTHERFORD PATESON STRUDOM

SECOND RESPONDENT

(Identity Number: 8[...])

JACOBUS FREDERICK SCHOONRAADT STRYDOM

THIRD RESPONDENT

(Identity Number: 8[...])

Neutral citation: *Timac Argo South Africa (Pty) Ltd v F en D Strydom Boerdery CC and Others* (2411/2025) [2026] ZAFSHC 291 (19 May 2026)

Coram: MHLAMBI ADJP

Heard: 22 January 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 12h00 on 19 May 2026.

Summary: Contract – loan agreement – suretyship – notarial bond – authority to institute proceedings – ratification – condonation – late filing of

affidavits – points in *limine* – costs.

ORDER

- 1 Prayers 1-9 of the notice of motion are granted.
- 2 Each party is liable for its own costs in the proceedings of 4 December 2025.

JUDGMENT

Mhlambi ADJP

[1] The applicant sought an order from the court in the following terms:

‘THAT the 1st and 3rd respondents be ordered to pay the applicant, jointly and severally:

1.1. R 2 177 136,85 (TWO MILLION ONE HUNDRED AND SEVENTY-SEVEN THOUSAND ONE HUNDRED AND THIRTY-SIX RAND AND EIGHTY-FIVE CENT);

1.2. Compounded interest on the amount above calculated at a rate of 24% per annum from 30 April 2024 to the date of payment;

1.3. In the alternative to 1.2 supra, interest a tempore morae on the outstanding amount calculated at the prevailing rate in terms of the Prescribed Rate of Interest Act 55 of 1975 from 30 April 2024;

2. THAT the applicant be authorized to take possession of the movable assets listed in Special Notarial Bond [BN00229/2020] dated 22 JANUARY 2020, wherever and in whomsoever possession the assets may be found;

3. THAT if the applicant is unable to take possession of the movable assets in terms of

2. Above, that the Sheriff of the High Court be ordered and authorised to attach and take possession of the following assets listed in Special Notarial Bond [BN00229/2020] dated 22 JANUARY 2020 wherever and in whomsoever possession the assets may be found and to give the applicant possession of the assets:

3.1 AMADAS 2100 PEANUT COMBINE HARVESTER, 6 M WIDE
WITH VIN NUMBER 3[...], MODEL M9719;

3.2 6 ROW KMC PEANUT DIGGER/INVERTER, 6 METERS WIDE;

3.3 CASE 1480 HARVESTER;

3.4 JOHN DEERE 6M FLEX HARVESTER TABLE, 6 METERS WIDE;

3.5 AGRICO 8-METER DISC WITH 72 DISCS;

3.6 6 ROW JOHN DEERE PLANTER.

4. THAT the applicant be authorised to deal with the assets in 3. above in accordance with the provisions of Special Notarial Bond [BN00229/2020] dated 22 JANUARY 2020;
5. THAT the Sheriff of the Magistrate's Court, alternatively, the High Court for the district of Hoopstad be ordered and authorised to attach all of the 1st respondent's corporeal movable assets not listed in Special Notarial Bond [BN00229/2020] dated 22 JANUARY 2020 wherever and in whomsoever possession the assets may be found;
6. THAT the 1st, 2nd and 3rd respondents be ordered to assist the Sheriff in terms of 5. above by providing the Sheriff, upon request, with a list of corporeal movable assets and the location of the assets and to allow the Sheriff to attach the corporeal movable assets of the 1st respondent;
7. THAT, in the event that the 1st, 2nd and / or 3rd respondents fail to comply with 5. and / or 6. above, the applicant be authorised to approach the
8. Court on the same papers duly supplemented for appropriate relief against the respondent(s);
9. THAT the 1st and 3rd respondents be ordered to pay, jointly and severally, the costs of this application on an attorney-and-client scale.'

[2] The respondents opposed the application and raised four points in *limine*, namely:

- (a) that the deponent to the founding affidavit lacked the authority to depose to the affidavit and to institute the legal proceedings;
- (b) that the founding affidavit was defective in its commissioning;
- (c) that the application was irregularly enrolled on the unopposed roll; and
- (d) that the relief sought was not amended.

[3] It is common cause that the applicant, which distributes fertiliser and related products, and the first respondent, a commercial farming and agricultural enterprise, have had a transactional relationship since November 2018. Periodically, the applicant sold and delivered fertiliser and related products to the first respondent on payment terms. The first respondent's reciprocal payment obligation was consistently deferred for an agreed period.

[4] On or about 30 April 2023, at Hoopstad or Centurion, the applicant, duly represented by an authorised agent, and the first respondent, duly represented by

the third respondent, entered into a written agreement, a copy of which was annexed to the founding affidavit. In terms of the agreement, the applicant undertook to sell and supply fertiliser and ancillary goods to the first respondent during the 2023-2024 season, as and when the first respondent placed orders.

[5] The third respondent completed and signed a credit application form, a copy of which was annexed to the founding papers. Paragraph 4 in Section F stated the following:

‘The terms and conditions of Timac Agro South Africa form an integral part of the credit application. By virtue of signing the credit application, the terms and conditions of Timac Agro South Africa are agreed to.’

The first respondent admitted its indebtedness to the applicant for goods sold and delivered for the 2023-2024 season. On 13 May 2024, the third respondent signed an acknowledgment of debt acknowledging indebtedness to the applicant in the amount of R 3 321 220.00 for fertiliser, he purchased from the creditor during the 2023-2024 season, the full outstanding amount of which was still due. He undertook to pay the debt on or before 20 June 2024.

[6] On 10 October 2023, at Hoopstad, the third respondent signed written suretyship agreements that complied with s 6 of the General Law Amendment Act 50 of 1956, under which the third respondent bound himself to the applicant as surety and co-principal debtor, in *solidum* with the first respondent, for the due and punctual performance and payment by the first respondent of all debts and obligations of whatsoever nature that the first respondent owed at the time of the agreement or in future. The suretyship agreement was entered into in connection with the applicant's sale and delivery of goods to the first respondent.

[7] Regarding the suretyship agreements, the first and third respondents were jointly and severally liable to the applicant for payment of R 3 184 708.78, together with further interest and costs. The applicant caused a General and Special Notarial Covering Bond [BN0229/2020] to be registered in the Deeds Office in Bloemfontein. The first respondent gave the notarial bond as security for the payment of capital

and interest and declared that it would specially bind the movable assets set out in the Notice of Motion to and in favour of the applicant.

[8] The applicant correctly noted that the first and third respondents were liable in *solidum* under a written suretyship agreement. The first respondent's failure to settle the outstanding debt entitled the applicant to act under the notarial bond. The respondents failed to allege any facts in the answering affidavit that, if accepted, would constitute a legally valid defence to the relief claimed by the applicant.

[9] In their answering affidavit, the respondents stated that at the time of deposing to the founding affidavit, the deponent had no authority to institute the proceedings or to depose to the founding affidavit on behalf of the defendant. The founding affidavit was deposed to on 5 May 2025 in Pretoria. The resolution purporting to authorise the deponent was adopted only after the application was launched, and the founding affidavit was signed on 2 July 2025. A resolution adopted after the institution of the proceedings cannot retrospectively validate the lack of authority at the time of deposing to the founding affidavit, and it did not give the deponent the authority to institute the application.

[10] The founding affidavit was commissioned by the deponent's spouse, in direct contravention of the regulations governing the administration of an oath or affirmation promulgated under Government Gazette Notice R1258 of 29 July 1972. The affidavit was therefore irregular and invalid. Regulation 7(1) prohibits a commissioner of oaths from administering an oath if the deponent is the commissioner's spouse. A commissioner shall not administer an oath or affirmation relating to a matter in which he has an interest. In their heads of argument, the respondents argued that the application suffered at least two fatal flaws and should be dismissed with costs. However, they did not abandon the remaining defences and/or legal arguments raised in the answering affidavit.

[11] Regarding the third preliminary point about the irregular enrollment on the unopposed roll of 9 October 2025, the respondents stated that they filed the notice of intention to oppose the application on 3 June 2025. Due to ongoing settlement negotiations between the parties, no opposing affidavit was filed, and the applicant

received various payments in partial settlement of its claims against the respondents. The applicant was fully aware of the opposition and the ongoing settlement negotiations, yet improperly enrolled the matter on the unopposed roll to the prejudice of the respondents. This constituted an abuse of process because the applicant's legal representatives had not yet responded to two previous letters.

[12] The fourth preliminary point regarding the failure to amend the relief sought centered on the common cause that the applicant received various payments from Hinterland for a session over the first respondent's maize harvest. The applicant did not disclose in its affidavit either the session over the harvest or the payments from Hinterland, which partially satisfied the alleged indebtedness to the court. Despite receiving the payments, the applicant had not amended its notice of motion or the relief sought to reflect the currently outstanding reduced balance. This was misleading and irregular, and the application, in its current form, was defective.

[13] In reply, the applicant denied that the application was fatally defective for lack of proper authority when the proceedings were instituted. The applicant stated that he deposed to the founding affidavit as the person who could lawfully serve as a witness in the applicant's case. As a witness, he need not be authorised to depose to an affidavit. He did not institute the proceedings. The applicant did.

[14] Regarding the incorrect attestation, the applicant attached the reattested affidavit to the replying affidavit. The reattested affidavit is identical to the founding affidavit signed on 5 May 2025. It was reattested before a different commissioner of oaths, not the one who originally acted. Given that there was no prejudice to the respondents, the applicant would request the court at the hearing to accept the reattested affidavit on the basis that it would be in the interests of justice.

[15] The applicant contended that the respondents' third and fourth special pleas, namely irregular enrolment on the unopposed roll and failure to amend, lacked merit. A special plea is raised at the outset of legal proceedings and, if decided in favour of the party raising it, may dispose of the entire case or a substantial portion of it. The respondents' complaints in paragraphs six and seven of the answering affidavit were nonsensical, legally irrelevant, and, at best, academic. They were not

dispositive of the application and could not be raised as points in *limine* by the respondents.¹

[16] Relying on *Ganes v Telecom Namibia Ltd*,² the applicant submitted that there is a fundamental distinction between the opponent's authority to execute the affidavit and the litigant's authority to institute or prosecute legal proceedings. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution and prosecution of the proceedings that must be authorised. In *Nestle (South Africa) (Pty) Ltd v Mars Incorporated*³ (*Nestle*), the Supreme Court of Appeal rejected a challenge to the respondent's authorisation, stating that even if the proceedings had not been authorised at the outset, the party had ratified their commencement by the time the application was heard.

[17] In the present case, the applicant responded to the respondents' notice under rule (7)(1) on 14 July 2025, providing the first, second, and third respondents with the applicant's mandate, signed and dated on 2 July 2025, authorising the institution of these proceedings and instructing attorneys to act on its behalf, as well as the applicant's Resolution of the Board of Directors, signed and dated on 2 July 2025, authorising the deponent to act as employee representative and to depose to the founding affidavit on its behalf.

[18] The applicant raised the question of whether, at the time these proceedings were instituted, the applicant had authorised Bothma to give instructions to attorneys, and whether the necessary formalities in this regard had been complied with at that stage. The respondents contended that the applicant had not authorised Bothma to instruct attorneys to institute these proceedings on the applicant's behalf, and that, in terms of *Nestle*, Bothma's unauthorised actions could have been retrospectively ratified by the applicant. However, this was not done.

¹ *Emalahleni Local Municipality v Lehlaka Property Development (Pty) Ltd* [2023] ZASCA 138; [2024] 1 All SA 1 (SCA).

² *Ganes and Another v Telecom Namibia Ltd* [2003] ZASCA 123; [2004] 2 All SA 609 (SCA); 2004 (3) SA 615 (SCA); (2004) 25 ILJ 995 (SCA) para 19.

³ *Nestle (South Africa) (Pty) Ltd v Mars Incorporated* [2001] ZASCA 76; [2001] 4 All SA 315 (A); 2001 (4) SA 542 (SCA; 2001 BIP 130 (SCA) para 11.

[19] The applicant ratified Heymans and Co Incorporated Attorneys' past conduct generally, and HP Haymans specifically, only retroactively on 2 July 2025. The respondents submitted that, in the case of authority, particularly where artificial persons such as companies are involved, a case must be made at the outset and established in the founding affidavit. Consequently, the application remained fatally defective and should be dismissed with costs.

[20] The respondents argued that the applicant attempted to remedy the defective commissioning of the Founding Affidavit by attaching the reattested Founding Affidavit to the replying affidavit. However, on 9 October 2025, when the matter was postponed to 4 December 2025, the applicant was ordered to file its replying affidavit on or before 23 October 2025. The replying affidavit was delivered only on 30 October 2025 and was therefore filed out of time. The applicant has not sought condonation for the late filing of the replying affidavit, and it is well established that, unless and until the court condones the late delivery of an affidavit, it is not properly before the court. In these circumstances, the replying affidavit is not before the court, and the applicant's attempted reattestation of the Founding Affidavit is ineffectual.

[21] In its supplementary heads of argument and oral address, the applicant noted that the respondents' answering affidavit, due on 24 June 2025, was delivered more than three months late, on 2 October 2025, and only after the applicant exercised its procedural rights under rule 6(5)(f) and enrolled the application on the unopposed roll for 9 October 2025. The applicant referred to *Pangbourne Properties Limited v Pulse Moving CC and Another*,⁴ where the Court held that neither party was required to bring a substantive application for condonation, as all papers were before the court and the matter was ready to be dealt with.

[22] Paragraphs 18 and 19 of the said judgment read as follows:

⁴ *Pangbourne Properties Limited v Pulse Moving CC and Another* [2010] ZAGPJHC 121; 2013 (3) SA 140 (GSJ).

[18] ... In the matter under consideration all the papers are before me and the matter is ready to be dealt with. To uphold the argument that the replying affidavit and consequently also the answering affidavit fall to be disregarded because they were filed out of time will be too formalistic and an exercise in futility, and will leave the parties to commence the same proceedings on the same facts *de novo*.

[19] There is no allegation of prejudice to any party nor have I been referred to any such prejudice if the matter is to be disposed of on its merits despite the late filing of the answering and replying affidavits. The failure of the respondents to utilise the provisions of Rule 30 regarding the setting-aside of irregular proceedings strengthens my view that neither party was prejudiced by the late filing of the affidavits. It is in the interests of justice that the affidavits be taken into account and that this matter be finalised and unnecessary additional costs be avoided. Insofar as it may be necessary and within my discretion to allow the late filing of the answering affidavit and the late replying affidavit, I do so in order to decide the merits of the dispute between the parties unfettered by technicalities.'

[23] The applicant contended that the respondents had the remedy under rule 30 to set aside the replying affidavit as an irregular step because it was delivered out of time. A party may waive its right to object to late filing. Relying on *Ardnamurchan Estates (Pty) Limited v Renewables Cookhouse Wind Farms 1 (RF) (Pty) Ltd and Others*,⁵ the applicant argued that, by analogy, the respondents failed to do so. The court is entitled to regard the affidavit as part of the papers.

[24] The respondents have no defence on the merits, as they acknowledge their indebtedness to the applicant in a reduced amount. The amount reflected in the notice of motion is the reduced amount, having taken into account the amounts received, with the initial amount being R 3 184 708.78. The special pleas have no substance and were raised merely to delay the matter.

[25] The successful party is entitled to the costs. The parties are *ad idem* that no costs order be made in relation to the proceedings of 4 December 2025, and that each party is liable for its own costs.

[26] Consequently, I order as follows:

⁵ *Ardnamurchan Estates (Pty) Limited v Renewables Cookhouse Wind Farms 1 (RF) (Pty) Ltd and Others* [2020] ZAECGHC 132; [2021] 1 ALL SA 829 (ECG) paras 46-49 and 53.

- 1 Prayers 1-9 of the notice of motion are granted.
- 2 Each party is liable for its own costs in the proceedings of 4 December 2025.

J J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the appellant:	DD Swart
Instructed by:	Salley's Attorneys, Bloemfontein
For the respondent:	HJ Van Der Merwe
Instructed by:	Badenhorst Attorneys, Bloemfontein.