THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: Yes☐/ No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 22 June 2026 [redacted]

Case no 2024-086338

In the matter between:

LILLIAN MOLOI N.O.	First Applicant
LILLIAN MOLOI	Second Applicant
and	
RAMARATA JACOB MOLOI	Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This default judgment application (in terms of Rule 31(2)(a) of the Uniform Rules of Court) was enrolled on my opposed motion roll for reasons that will become evident soon. The matter turns on whether the respondent has a procedurally valid defence on record that precludes the granting of default judgment. The answer is not so straightforward, due to the somewhat untidy procedural history.

[2] The claim arises from an agreement of sale concluded in respect of the immovable property situated in Nigel. In terms of the agreement, the respondent paid a deposit of R18 000 on 9 January 1999 and thereafter made monthly payments of R2 000 from February 1999 to 31 August 2002. He, however, failed to pay the full purchase price, and allegedly also breached the agreement by failing to pay the rates, taxes, water and services levied on the property. As a result, the applicants allege that as a result they have become liable to the municipality for R223 912.93 as of 15 March 2024.

[3] Since the procedural history informs the crux of the dispute, it is necessary to set it out in some detail. The key question is at what point the respondent was properly before the court.

[4] The applicants served the respondent with summons in August 2024. On 28 January 2025, the respondent, represented by Legal Aid South Africa, served a notice of intention to defend on the applicants' attorneys, without filing it with the Registrar of the Court. The notice, however, had the incorrect case number. That error was brought to the attention of the respondent's attorneys, and the corrected notice was served on the applicants' attorneys on 26 February 2025. Neither, however, was filed with the Registrar of the Court.

[5] On 3 April 2025, the applicant served a notice of bar on the respondent in terms of Rule 26, and called on him to deliver a plea within five days. On 10 April 2025, the respondent served a notice in terms of Rule 23(1), and thereafter a notice of exception and a Rule 30 notice on 21 May 2025.

[6] The respondent only properly filed his notice of intention to defend on 15 July 2025, which was followed by the applicant's supplementary affidavit for default judgment. Only thereafter did the respondent file his notice of exception and a notice in terms of Rule 30. The matter was then enrolled on the opposed motion roll.

The applicants' case

[7] The applicants submit that the respondent was required to deliver a plea only once a properly filed notice of intention to defend was on record. Since no such notice had been filed when the notice of bar was served, the bar may itself have been premature. Be that as it may, the respondent thereafter took further procedural steps (a Rule 23 notice, a notice of exception, and a Rule 30 notice) without a valid notice of intention to defend in place. Those steps, the applicants submit, presuppose a proper entry into the proceedings and cannot be relied upon in their absence.

[8] When the respondent eventually filed a notice of intention to defend on 15 July 2025, he did so without seeking condonation or explaining the delay. The applicants submit that the late filing does not retrospectively regularise the proceedings or cure the consequences of the prior non-compliance.

[9] As for the exception, the applicants acknowledge that there are divergent views on the effect of a Rule 23 notice or exception served in response to a notice of bar. However, the respondent failed to prosecute the exception, and the applicants submit that an undetermined exception cannot serve as an indefinite procedural shield against default relief. Relying on *Cassimjee v Minister of Finance*,[1] they submit that an unreasonable and unexplained delay in prosecuting proceedings may constitute an abuse of process.

The respondent's case

[10] The respondent's case is that the notice of intention to defend was served on the applicants, while acknowledging that it was defective due to the incorrect case number. Still, the respondent submits that the applicants became aware that the matter was now defended. This qualified the respondent to put forward his defence. Relying on Rule 19(4), the respondent further submits that a party shall not, by reason of the delivery of a notice of intention to defend, be deemed to have waived a right to object to any irregularity in the proceedings. The respondent further pointed out that such a notice is a step that can be set aside by Rule 30(1), if deemed irregular, which

[1] [2012] ZASCA 101.

the applicant chose not to do. Relying on *Herbstein & Van Winsen, The Civil Practice of the High Courts of South Africa* (5th ed),[2] the respondent points out that there rests no obligation on a party to set aside an irregular step, but that an irregular step cannot merely be treated as a nullity, nor can an objection to an irregular step only be raised at the hearing. The respondent further submits that a defendant may, in terms of Rule 19(5), deliver a notice of intention to defend even after the expiration of the periods set out in the Rule, provided that default judgment has not been granted.

[11] Moreover, the respondent submits that they filed a notice of exception, and an exception does not lapse.[3] If the applicants were aggrieved by the respondent's failure to prosecute the exception, they could have applied to compel enrolment and, if refused, apply to strike it out.

Discussion

[12] The decisive question is whether the preconditions for default judgment under Rule 31(2)(a) are satisfied. They are not, and the application must fail on this basis alone.

[13] Rule 31(2)(a) authorises default judgment where a defendant is in default of delivering a notice of intention to defend, or of a plea after having been barred. Neither condition is met here. A notice of intention to defend was filed on 15 July 2025. Rule 19(5)[4] provides that a notice of intention to defend may be delivered even after the expiration of the period prescribed in Rule 19(1), provided that default judgment has not yet been granted. No condonation is required for the late filing.[5] Since default judgment had not yet been granted as of that date, the respondent has been properly before this Court since 15 July 2025.

---

[2] Page 735.

[3] SB v Storage Technology Services (Pty) Ltd [2021] ZAWCHC 210 par 29.

[4] Rule 19(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

[5] D.R. *Harms Civil Procedure in the Superior Courts* (Durban: LexisNexis) at para B19.11.

[14] The remaining questions concerning the procedural regularity of the steps taken before July 2025, the status of the exception, and whether delay in prosecuting it constitutes an abuse of process, arise only if the first finding is wrong. I deal with them for completeness.

[15] It is so that the procedural steps taken between April and May 2025, namely the Rule 23(1) notice, the notice of exception and the Rule 30 notice, were all served at a time when no notice of intention to defend had been filed with the Registrar. A party who has not filed a notice of intention to defend has not properly entered the proceedings, and steps taken in that posture are irregular. Those earlier steps therefore carry no weight.

[16] The position changes, however, once the notice of intention to defend was validly filed. The respondent, however, filed the notice of exception and a notice in terms of Rule 30 after the notice of intention to defend was filed. This was done after the respondent had properly entered the proceedings. That exception did not lapse merely because it was not enrolled.[6] Once filed, the applicant was left with to options: apply to have it enrolled or put the respondent on terms to enrol it, failing which it would be struck.[7] Neither course was taken; the exception remains.

[17] That leaves the abuse-of-process argument. The applicants rely on *Cassimjee v Minister of Finance*,[8] for the proposition that unreasonable delay in prosecuting proceedings may warrant the court's intervention. *Cassimjee* concerned a case with a decades-long delay. The delay referred to in that case is deliberate or reckless, calculated to prevent accountability. The delay on these facts does not reach that threshold. The respondent's legal representation changed during the course of proceedings. He was previously represented by Legal Aid South Africa, an institution often under-resourced. This is not wilful or calculated obstruction. The exception was also filed shortly before the matter was enrolled on the unopposed roll, and therefore does not reach the level of abuse of *Cassimjee*.

---

[6] *SB v Storage Technology Services (Pty) Ltd* [2021] ZAWCHC 210 par 29.

[7] *SB v Storage Technology Services (Pty) Ltd* [2021] ZAWCHC 210 par 32 -33.

[8] [2012] ZASCA 101.

[18] More fundamentally, default judgment is a remedy for a defendant who has truly abandoned the litigation. This is not the case here. The respondent has consistently signalled an intention to contest this claim since January 2025. It was not always perfect, but notices were served, the applicants' attorney engaged, he filed an exception, and appeared at the hearing. By no means has he signalled that he is not interested in defending the claim. To deprive him of his opportunity to defend, with a valid notice of intention to defend and an exception pending, would not be in line with the principles underpinning default judgment.

[19] The respondent's procedural history is by no means an example of how litigation should proceed. The notice of intention to defend was filed under the wrong case number, then there was a substantial lapse in time before a valid notice was filed. The applicants have been subjected to unnecessary delays and expenses in prosecuting a claim that originated in 1999. The respondent must therefore either prosecute his exception or deliver a plea. Should the respondent fail to do either, the applicant must use the available procedural mechanisms to advance the case to finality.

Conclusion

[20] The notice of intention to defend filed on 15 July 2025 is valid, and the respondent is properly before this court. The exception filed after the notice of intention to defend was filed has not lapsed. The preconditions for default judgment are not satisfied. The application for default judgment is therefore dismissed.

[21] As to costs: the respondent's procedural inertia prompted the applicants to bring this application, but the applicants overreached in seeking a default judgment in the face of a valid notice of intention to defend and a pending exception. Neither party is without fault. In the circumstances, the costs of this application be costs in the cause.

Order

[22] The following order is made:

1. The application for default judgment is refused.

2. The costs of this application are costs in the cause.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division, Johannesburg

Date of hearing:	14 April 2026
Date of judgment:	22 June 2026
For the applicant:	W van den Heever instructed by O'Donoghue & Marais Inc
For the respondent:	J Magayi instructed by Magayi Attorneys Inc