IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A306/25

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 17/6/2026

SIGNATURE

In the matter between:

YUSUF JEENA Appellant

and

TESOR DYNAMIC SOLUTIONS (PTY) LTD First Respondent

PERCY MOHALE MODIKA Second Respondent

HUMEFENO JOY MORWANE Third Respondent

NEUKIRCHER J:

1] The appellant[1] sued the first and second respondents[2] in the Magistrate's Court

for the District of Tshwane Central, held at Pretoria (the court *a quo*), seeking damages arising from a motor vehicle collision that occurred on 12 October 2020. Despite finding that no negligence could be attributed to the appellant in respect of that collision, the court *a quo* granted an order of absolution from the instance in respect of the appellant's claim and made no order as to costs. It is against this order that the appellant has appealed.

2] It is important to note that none of the respondents took issue with the appeal and advanced no submissions at all regarding the relief sought by the appellant. They, in fact, specifically stated that the appeal was not opposed.

3] The first and second respondents[3] had filed a counterclaim in the court *a quo*. The third respondent[4] was later joined as the third defendant in the suit at the instance of the first and second respondents. The court *a quo* granted an order of absolution in respect of the counterclaim and again made no costs order.

4] According to the first and second respondents, they have also delivered a cross-appeal, but it is common cause that this was delivered late. They then filed an application for condonation for the late filing of its cross-appeal, which is opposed by

[1] The plaintiff in the court a quo
[2] The defendant in the court a quo
[3] A company
[4] The driver of the first respondent's motor vehicle

the third respondent who argued that the Notice of Cross-Appeal had yet to be served on her.

Background

5] As stated, the appellant sued the first and second respondents for damages in the amount of R135 021-58[5] plus interest and costs. The damages arose from a motor vehicle collision that occurred on 12 October 2020 at the intersection of Mnandi Drive and the R561 – Summit Road, Mnandi Agricultural Holdings.

6] The uncontroverted evidence *a quo* was that the appellant was the owner of a black BMW 3-series motor vehicle with registration number J[...] (the BMW). The BMW was registered in his name, had no outstanding debt and no third party had any interest in the vehicle. The eNatis document proving the ownership of the vehicle was part of the evidence bundle placed before court and was specifically pointed out to the court during the appellant's evidence and its authenticity and content were not disputed.

7] The appellant's evidence was that he was stationary at Mnandi Drive at a stop street. The third respondent skipped her stop street, collided with the second respondent[6] who was already in the middle of the intersection, and he then collided with the appellant. In my view, the court *a quo* therefore correctly found that no fault could be attributed to the appellant as regards the collision and he was thus entitled to be compensated in full for his damages. The learned magistrate also correctly accepted the evidence that the second respondent was driving the vehicle in the

[5] R130 021-58 for the repairs to his motor vehicle and R5 000 for the hire of a vehicle whilst his vehicle was being repaired

[6] Who was driving the vehicle owned by the first respondent

course and scope of his employment, which rendered the first respondent vicariously liable for the damages caused as a result of the accident.

8] As to the quantum of the appellant's damages, he called an expert[7] - an insurance claim adjuster who is generally tasked with providing clients with quotations for the repair of their damaged vehicles. The expert's expertise was not disputed. He testified that although the appellant had paid R130 021-58 for the BMW's repairs, the reasonable and market related value of those repairs was R125 140-36. None of his evidence was rebutted by the first and second respondents.

9] Although there was appearance on behalf of the first and second respondents at the trial, and although both the appellant and his expert were cross-examined by the respondent's attorney, their evidence remained unmoved and there was thus no notable inroad made into their evidence. No rebuttal evidence was presented by the first and second respondents at all. There was thus no evidence before the court *a quo* that would have disentitled the appellant to his damages.

10] After the appellant and his expert had finalised their evidence, the trial was postponed for the respondents' evidence to proceed. However, on the date that the matter was set down, there was no appearance for them. There does not appear to be anything in the record – at that stage – to explain their absence and the court a quo proceeded to give judgment without formally closing the respondents' case.

[7] Mr Mashiloane

11] Given the aforementioned facts, it is therefore unsurprising that that the court *a quo* found that the BMW was stationary at a stop street when the collision took place and "that no negligence can be imputed [to] the Plaintiff." In my view, this finding is correct on the evidence presented.

12] However, the court a quo then stated the following:

> "[48] It is trite that an owner or a person with a limited interest in respect of a motor vehicle is entitled to recover damages from a wrongdoer…The only evidence on this score is that the Plaintiff is the owner of the vehicle and that it was not financed. However, the registration certificate of the BMW was not produced and handed in court as an exhibit in the proceedings. Accordingly, I find that Plaintiff has failed to discharge the onus to prove that he is the owner of the BMW or has an interest which warrants protection."

13] In my view, the court materially misdirected itself both in respect of the facts presented and in law on this aspect. Firstly, there was direct, undisputed evidence before it in respect of the ownership of the BMW. This, in and of itself would, in my view be sufficient – especially in the absence of any evidence from the respondents at all – to convert the *prima facie* case established in evidence to conclusive evidence at the conclusion of the trial. Secondly, the eNatis ownership certificate was put into evidence by the appellant without objection from the respondents. The fact that it was not marked as an exhibit does not mean that a court is entitled to simply ignore that clear and uncontroverted evidence. All the evidence must be considered by the court when weighing whether the appellant has satisfied his onus on a preponderance of probabilities – the court a quo failed to do so.

14] In my view, when all the appellant's evidence is weighed vis-a-vis the merits of his case, the issue regarding the ownership of the BMW and the quantum of repairs to the BMW, judgement should have been granted in favour of the appellant, albeit with an amended quantum[8]. Given the above, the appeal must succeed with costs.

The cross-appeal

15] I turn now to the issue of the first and second respondents' cross-appeal. On 21 January 2026, the first and second respondents filed an application in which they seek condonation for their failure to note their cross-appeal within the prescribed time.

16] The cross-appeal is aimed at the following finding, and the resulting order of absolution with no costs, in respect of the first and second respondents' counterclaim:

> "[49] On the facts of this matter it is apparent that the third party's[9] degree of negligence surpasses that the Second Defendant. Had the third party been joined to the proceedings I would have apportioned` liability 90/10 in favour of Second Defendant."

17] The court *a quo* misdirected itself as the so-called "third party" had, in fact, been joined to the suit by way of a previous court order, as the third defendant. It is against the above finding that the first and second respondents aim their cross-appeal.

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[8] Which was indeed sought in the court a quo

[9] Actually, the third respondent – there was no "third party"

18] It is common cause that the cross-appeal had to be noted by 17 September 2025 in terms of Magistrate's Court Rule 51(6). It is common cause that it was only done on 20 November 2025.

19] According to the founding affidavit in the application for condonation, the reason for this delay is that the first and second respondents' attorney was new to the matter and needed to familiarize herself with the file. It appears that she only discovered that the trial had been finalised in the absence of her clients when the Notice of Cross-Appeal was served. She then states that she had "to resolve the matter in a speedy and cost effective manner" – what this means is not explained.

20] She also states that " it would be in the interest of justice to hear the application for condonation on the date of the appeal", that this " will ultimately ensure that there can be no delay in finalising the First Respondent's appeal" and that to grant condonation will not prejudice the appellant as the appeal can in any event proceed on the date on which it has been enrolled.

21] But one must bear in mind that, in seeking condonation, the first respondent must explain the entirety of the delay and must also explain the prospects of success on appeal. None of these requirements have been satisfied.

22] The explanation for the [ten-day] delay is flimsy at best. The attorney failed to explain when she took over the file, when she discovered that there was already a judgment and an appeal (to start with), when she drafted the cross-appeal, or when

she consulted with her client to obtain instructions to proceed with the cross-appeal. She also fails to deal with why the application for condonation was only delivered in January 2026. It is trite that when a party becomes aware of a need for condonation, the required application must be launched at the earliest instance. This was clearly not done.

23] She also failed to demonstrate that the Notice of Cross-Appeal was served on either the appellant or the third respondent. The third respondent appeared before us and raised this very point. There is no Notice of Cross-Appeal attached to the application for condonation to prove delivery. This was conceded by first and second respondents' counsel. Even were this court to accept that the appellant was served, there is no evidence to support service on third respondent and as the cross-appeal implicates the order granted against third respondent, the failure to serve the Notice of Cross-Appeal on her means that this *de facto* failure is an ongoing issue. The Notice of Cross-Appeal is thus five months late and there is no explanation for this failure at all.

24] A last issue that would plague the application for condonation is the first and second respondents' failure to deal with their prospects of success on appeal, either superficially or, at all.

25] All of these issues were conceded during the argument before us, and given these incurable defects, the application for condonation must fail.

Costs

26] As to costs, the third respondent argues that she was dragged to court by the first and second respondents solely because of the application for condonation filed by them – this was also the first time that she was notified of a purported cross-appeal that would implicate her. She argues that she should not be out of pocket because of the ill-considered actions of the first and second respondents. As the application for condonation is fatally defective, there is no reason that costs should not follow the result. In my view, costs on Scale B would be appropriate.

27] As to the remainder of the costs: the appellant has been successful in his appeal and is therefore entitled to costs. In my view these costs should be taxed in accordance with Scale B.

ORDER

1. The appeal succeeds with costs, which costs are to be taxed in accordance with Scale B.
2. Paragraph (a) of the order of the court a quo is set aside and is replaced with the following:

    "(a) Judgment is granted in favour of the plaintiff against the first defendant as follows:

        (i) Payment in the amount of R125 140-36.

        (ii) Interest thereon at the rate of 10,25% per annum as from date of service of summons to date of final payment.

        (iii) Payment of the sum of R5 000.

        (iv) Interest thereon at the rate of 10,25% per annum as from date of service of summons to date of final payment.

(v) Costs of suit."

3. Paragraph (c) of the order of the court a quo is amended to read as follows

"(c) No order as to costs in respect of the first and second defendants' ` claim in reconvention."

4. The first and second respondents' application for condonation dated 21 January 2026 is dismissed with costs, including the costs of the third respondent, and which costs shall be taxed in accordance with Scale B.

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B NEUKIRCHER
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree and it is so ordered

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N DAVIS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be _____.

For the appellant	:	Mr Tayob
Instructed by	:	Yousha Tayob Attorneys
For the first and second respondents	:	Adv Visser
Instructed by	:	Borman & Co Attorneys

For the third respondent	:	Mr Mosomanie
Instructed by	:	Mosomanie Inc
Matter heard on	:	30 April 2026
Judgment date	:	_____