

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-134489

1. REPORTABLE: NO	
2. OF INTEREST TO OTHER JUDGES: NO	
3. REVISED: NO	
<u>23 June 2026</u>	 [Redacted]
DATE	SIGNATURE

In the matter between:

SOUTH AFRICAN SECURITISATION PROGRAMME (RF) LTD

Applicant

and

BOTEBO- TSEBO SECONDARY SCHOOL

First Respondent

DEPARTMENT OF EDUCATION: GAUTENG

Second Respondent

**MEMBER OF THE EXECUTIVE COUNCIL
DEPARTMENT OF EDUCATION: GAUTENG**

Third Respondent

In re:

SOUTH AFRICAN SECURITISATION PROGRAMME (RF) LTD

Plaintiff

and

BOTEBO- TSEBO SECONDARY SCHOOL

First Defendant

DEPARTMENT OF EDUCATION: GAUTENG

Second Defendant

MEMBER OF THE EXECUTIVE COUNCIL

DEPARTMENT OF EDUCATION: GAUTENG

Third Respondent

Neutral Citation: *South African Securitisation Programme v Botebo- Tsebo Secondary School & Department of Education Gauteng and Member of the Executive Council Department of Education (134489-2024) [2026] ZAGPJHC ----- (23 June 2026)*

Coram: Khaba AJ

Heard: 28 April 2026.

Delivered: 23 June 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 23 June 2026.

Summary: Condonation under section 3(4) of the Institution of Legal Proceedings Against Certain Organs of State 40 of 2002 — good cause established by short delay (one to four months), reasonable explanation (attempts at amicable resolution), No unreasonable prejudice where respondent fails to lay a factual basis — bare denial on motion proceedings insufficient — parol evidence rule excludes alleged oral assurances — *In duplum* rule inapplicable to accelerated future rentals — application granted.

ORDER

1. The application for condonation is granted.
2. The applicant's non-compliance with section 2 and 3 of the Institution of Legal Proceedings Against Certain Organ of State Act 40 of 2002 is hereby condoned in terms of section 3(4)(a) and (b) of the Act.
3. The applicant is granted leave, in terms of Act 40 of 2002, to continue with the action under the abovementioned case number.
4. The respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, on a party and party scale, scale B, including costs of counsel to be taxed on scale B.

JUDGMENT

KHABA AJ:

Introduction:

- [1] This is an opposed application for condonation launched in terms of section 3(4) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002. The applicant seeks an order condoning its failure to deliver the notice contemplated in section 3(2) of the Institution of Legal Proceedings Against Certain Organs of State to the second and third respondents within six months

from the date on which the relevant debts became due. The application is vigorously opposed by the respondents.

The factual and contractual background:

- [2] The applicant is the South African Securitisation Programme (RF) Ltd, a public company with limited liability duly incorporated under the laws of the Republic of South Africa, and the cessionary in title of four written master rental agreements ("the agreements") originally concluded between the first respondent and Sunlyn (Pty) Ltd.
- [3] The first respondent is Botebo-Tsebo Secondary School, a public school duly registered and constituted in accordance with the South African Schools Act 84 of 1996. It is a no-fee-paying school, a fact that features prominently in the respondents' opposition. The second respondent is the Gauteng Department of Education, and the third respondent is the Member of the Executive Council for that department. The second and third respondents are organs of state as defined in the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 (*"the Act"*).
- [4] The factual matrix is largely common cause. Between 30 June 2021 and 12 July 2022, the first respondent and Sunlyn concluded four separate written master rental agreements. In terms of these agreements, Sunlyn rented to the first respondent various items of equipment, including a PABX system, an LTE router, an alarm system, and a CCTV system. The rental periods were 60 months for each agreement, with monthly rentals ranging from R2 699.00 to R4 000.00, exclusive of value-added tax. The agreements contain standard terms, including provisions that the risk in the goods passes to the first respondent upon signature, that the first respondent is responsible for insuring the goods through its own broker, and that in the event of breach, Sunlyn (or its

cessionary) is entitled to claim immediate payment of all future rentals for the full rental period and to take possession of the goods.

[5] The rights, title, and interest in and to the agreements were subsequently ceded, sold, and transferred to the applicant. The first respondent does not seriously dispute the validity of these cessions.

[6] It is common cause that the first respondent has withheld all payments due under the agreements since February 2024. The applicant's particulars of claim in the main action reflect that as of 04 September 2024, the first respondent was in arrears in the following amounts:

- a. Claim A (first agreement): R44 293.32 (arrears) and a total accelerated claim of R161 483.94;
- b. Claim B (second agreement): R31 392.36 (arrears) and a total accelerated claim of R149 316.42;
- c. Claim C (third agreement): R66 508.08 (arrears) and a total accelerated claim of R313 339.28;
- d. Claim D (fourth agreement): R65 841.13 (arrears) and a total accelerated claim of R319 776.58.
- e. The total combined claim in the main action is R943 916.22, plus interest and costs.

[7] The first respondent's explanation for withholding payment is that all the leased equipment was stolen from its premises during a burglary in August 2023. The first respondent alleges that it was assured at the time the agreements were concluded that the equipment would be covered by comprehensive insurance,

and that the applicant or its predecessor was responsible for that insurance. Because the applicant has allegedly failed to assist in recovering or replacing the stolen equipment, the first respondent contends that it is justified in withholding all further payments. This defence is squarely contradicted by the express terms of the written agreements, which I shall address later.

The proceedings before court:

[8] The applicant issued combined summons on 20 November 2024. The summons was served on the second and third respondents on 27 November 2024 and on the first respondent on 15 January 2025.

[9] Prior to the issuance of the summons, on 07 October 2024, the applicant caused a notice in terms of section 3(2) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002, 'the statutory notice', to be served upon the second and third respondents by the Sheriff. The statutory notice, at paragraph 7, included the following express statement:

"We confirm that the Plaintiff's aforesaid required notice does not fall within the 6 (six) month period required and hereby request that you indicate whether the Plaintiff must apply for condonation, failing which, the Plaintiff will accept that you accept the notice and that no condonation will be required."

[10] The respondents did not respond to this invitation. They neither indicated that condonation was required nor requested the applicant to launch an application for condonation. Instead, they remained silent for several months.

[11] On 10 December 2024, the respondents served a notice of intention to defend, together with a notice in terms of Uniform Rule 35(12) and (14) requesting certain documents. The applicant replied thereto on 05 February 2025.

[12] On 11 March 2025, the respondents delivered their special plea and plea over, raising for the first time the applicant's non-compliance with section 3 of the Institution of Legal Proceedings Against Certain Organs of State. The special plea provides, in relevant parts, as follows:

"2. The defendant withheld making payment for all four Master Rental Agreements (the Agreements) to the plaintiff since in and around February 2024 and the date of the institution of these legal proceedings."

"3. The prescribed notice as contemplated in terms of section 3 of Act 40 of 2002 was not served on the defendants within six (6) months from the date on which the debt became due being, August 2024. In these circumstances, the plaintiff is precluded from instituting this action."

[13] It was only in response to this special plea that the applicant launched the present condonation application on 17 June 2025. The respondents filed an answering affidavit on 17 July 2025, and the applicant filed a replying affidavit on 25 July 2025.

The relief sought and grounds of opposition:

[14] The applicant seeks the following order:

- a. The application for condonation is granted.
- b. The applicant's non-compliance with sections 2 and 3 of Act 40 of 2002 is hereby condoned in terms of section 3(4)(a) and (b) of Act 40 of 2002.
- c. The applicant is granted leave, in terms of Act 40 of 2002, to continue with the action under the above case number.

- d. The respondents are to pay the costs of this application on a party and party scale, scale B, including the costs of counsel on scale B.

[15] The respondents oppose the application and seek its dismissal with costs on scale C, or alternatively on an attorney-and-client scale, on the following grounds.

- a. The applicant has not shown 'good cause' for its failure to deliver the statutory notice timeously. The explanation provided is insufficient, and the delay in seeking condonation (from the date the notice was served on 07 October 2024 to the launch of this application on 17 June 2025) is unreasonable.
- b. The respondents have suffered unreasonable prejudice as a result of the applicant's non-compliance. This prejudice is said to be twofold: (i) the respondents have incurred unnecessary legal costs to defend the main action; and (ii) the arrears have increased due to the delay, and the applicant has not applied the *in duplum* rule to cap the interest.
- c. The applicant has no reasonable prospects of success in the main action because the first respondent was justified in withholding payment after the equipment was stolen and the applicant failed to honour an alleged insurance obligation.
- d. The applicant did not engage in meaningful attempts to resolve the dispute before resorting to litigation.

[16] I now turn to consider these grounds, the applicable legal principles, and why the respondents' opposition cannot succeed.

The legal framework for condonation under the Institution of Legal Proceedings Against Certain Organs of State:

- [17] Section 3(4)(b) of the Institution of Legal Proceedings Against Certain Organs of State provides:

“(b) The court may grant an application referred to in paragraph (a) if it is satisfied that—

- (i) the debt has not been extinguished by prescription;
- (ii) good cause exists for the failure by the creditor; and
- (iii) the organ of state was not unreasonably prejudiced by the failure.”

- [18] This statutory provision must be interpreted and applied in a manner that gives effect to the Constitutional right of access to courts as enshrined in section 34 of the Constitution of the Republic of South Africa, 1996.

- [19] The authority on the interpretation of section 3(4)(b) is explained in *Madinda v Minister of Safety and Security*¹. In *Madinda*, the court set out several foundational principles:

“The phrase ‘if [the court] is satisfied’ in s 3(4)(b) has long been recognised as setting a standard which is not proof on a balance of probability. Rather it is the overall impression made on a court which brings a fair mind to the facts set up by the parties.”

“Good cause for the delay’ is not simply a mechanical matter of cause and effect. The court must decide whether the applicant has provided acceptable reasons for nullifying, in whole, or at least substantially, any culpability on his or her part which attaches to the delay in serving the notice timeously. Strong merits may mitigate fault; no merits may render mitigation pointless”²

¹ (153/07) [2008] ZASCA 34; 2008 (4) SA 312 (SCA) at para 8

² Ibid at para 12.

[20] The assessment of good cause is a holistic exercise, taking into account the length of the delay, the explanation offered, the prospects of success in the main action, the applicant's bona fides, and any contribution by the respondent to the delay. The three requirements in section 3(4)(b) are not watertight compartments they interact.

[21] A strong showing on merits may compensate for a less-than-perfect explanation, and vice versa. However, as was emphasized in *Kutoane v Minister of Police and Others*³ the court held as follows:

"It is trite that, for condonation to succeed, the court must be satisfied independently in respect of each of the three requirements, without the strength of one requirement compensating for the failure of another to have met the standard required"⁴

[22] This means that all three conditions must be met, but the standard of satisfaction is a holistic, contextual one.

[23] A further important principle was stated in *Minister of Public Works v Roux Property Fund (Pty) Limited*⁵, where the court held as follows:

It is trite that as a party seeking condonation is seeking a court's indulgence, a full explanation for non-compliance must be given, and the explanation must be reasonable enough to excuse the default"⁶

[24] The purpose of this requirement is to enable the court to understand how the default really came about and to assess the applicant's conduct and motives.

³ (17387/19) [2024] ZAGPJHC 529 (31 May 2024).

⁴ Ibid at para 9.

⁵ (779/2019) [2020] ZASCA 119 (1 October 2020)

⁶ Ibid at para 27.

The Legal Framework:

The requirements of prescription section 3(4)(b)(i):

- [25] It is common cause between the parties that the applicant's claims have not been extinguished by prescription. The summons were issued on 20 November 2024 and served on the first respondent on 15 January 2025, well within the three-year prescriptive period prescribed by the Prescription Act 68 of 1969. The respondents conceded this point in their heads of argument and in the joint practice note. The applicant therefore satisfies the first requirement without difficulty.

Good cause section 3(4)(b)(ii) – A comprehensive analysis:

The length of the delay and the applicant's explanation:

- [26] The first step in assessing good cause is to determine the length of the delay. The respondents contend that the statutory notice ought to have been served by August 2024, but was only served on 07 October 2024, a delay of approximately eight months. This calculation is inaccurate and misleading. As demonstrated in the applicant's founding affidavit, the first respondent's breach occurred on different dates for each agreement.

- a. In respect of Claim A, the last payment was received on 25 March 2024, and the arrears arose in April 2024. The six-month period would have expired on 25 September 2024.
- b. In respect of Claim B, the last payment was received on 25 January 2024, with the six-month period expiring on 25 July 2024.

- c. In respect of Claims C and D, the last payments were received on 25 December 2023, with the six-month periods expiring on 25 June 2024.

- [27] Thus, the statutory notice served on 07 October 2024 was approximately two weeks late in respect of Claim A, and approximately two to three months late in respect of Claims B, C, and D. The delay is not eight months; it is, at most, between one and four months. This is a relatively short delay. As the court in *Madinda* observed, the length of the delay is a factor, but it must be weighed against the explanation.
- [28] The applicant's explanation, as set out in the founding affidavit of Mr. Andries Petrus Vorster, the Senior Litigation Manager at Sasfin Bank Ltd, is that after the first respondent fell into arrears, Sasfin attempted an amicable settlement. The first respondent alleged theft of the equipment as the reason for non-payment. Despite Sasfin's attempts to investigate the alleged theft and any insurance claim, the first respondent remained uncooperative, and Sasfin could not obtain any information. Consequently, Sasfin elected to proceed with legal action against the first respondent in September 2024, because the first respondent had failed to settle the arrears and rectify its breach.
- [29] The respondents' answering affidavit, deposed to by Mr. Macdonald Maphakela, the Senior Legal Admin Officer of the second respondent, denies these allegations, but the denial is a bare denial, lacking any confirmatory affidavit from the first respondent's principal, Mr. Langa Ndaba, who would have had personal knowledge of the interactions with Sasfin. The answering affidavit merely denies the allegations, states that no settlement offer was received, and

that the respondents are willing to enter into a reasonable settlement agreement and otherwise puts the applicant to the proof of its allegations.

- [30] These bare denials are insufficient to raise a genuine dispute of fact on motion proceedings. The Supreme Court of Appeal held in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*⁷ the court held as follows:

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they are not true or accurate but, instead of doing so, rests his case on bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say ‘generally’ because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. The is thus a serious duty imposed upon a legal advisor who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.”

⁷(66/2007) [2008] (3) SA 371 (SCA) at para 13.

[31] The respondents have not placed any evidence before court to contradict the applicant's detailed account. They have not provided any correspondence or a confirmatory affidavit from Mr. Ndaba in support of their version. In these circumstances, I accept the applicant's explanation as true. The applicant's conduct in attempting to resolve the matter amicably before resorting to litigation is not only reasonable but also commendable. Litigants should be commended for exploring alternative dispute resolution mechanisms to reduce the burden on judicial resources. The applicant should not be penalised for doing so.

The delay in bringing the condonation application:

[32] The respondents also contend that the applicant took from 07 October 2024, the date of service of the statutory notice, to 17 June 2025, the date of the launch of this application, to seek condonation. This submission is misconceived. As the SCA held in *Madinda*, the 'subsequent delay' in bringing a condonation application is not an element of 'good cause' under section 3(4)(b)(ii). The court in *Madinda* held as follows:

"One other factor in connection with 'good cause' in s 3(4)(b)(ii) is this: it is linked to the failure to act timeously. Therefore, subsequent delay by the applicant, for example in bringing his application for condonation, will ordinarily not fall within its terms. Whether a proper explanation is furnished for delays that did not contribute to the failure is part of the exercise of the discretion to condone in terms of s 3(4), but it is not, in this statutory context, an element of 'good cause'. This is a distinction which the learned judge did not draw or maintain, and I think he was wrong not to do so.⁸

⁸ Ibid (153/07) [2008] ZASCA 34; 2008 (4) SA 312 (SCA) at para 14.

- [33] In any event, the applicant has provided an adequate explanation for the timing. The respondents did not respond to the invitation in paragraph 7 of the statutory notice, did not indicate that condonation was required, and instead allowed the applicant to proceed with the litigation. It was only on 11 March 2025, when the respondents delivered their special plea, that the applicant learned that condonation was being insisted upon. The applicant acted with reasonable diligence, launching this application on 17 June 2025, approximately three months thereafter. The delay is not unreasonable, particularly given the need to prepare a comprehensive founding affidavit and annexures.

The applicant's prospects of success in the main action:

- [34] The respondents contend that the applicant has no prospects of success because the first respondent was justified in withholding payment after the equipment was stolen, and because the applicant "or its predecessor" allegedly undertook to insure the equipment.

- [35] This argument is unsustainable for the reasons that follow.

- [36] First, the written agreements are clear and unambiguous. Clause 9 of the standard terms provides:

"Should you elect that Sunlyn does not insure the goods then you shall insure the goods yourself for their replacement cost with a registered insurer or through a broker of your own choice for as long as you have them and advise the insurance of our ownership and our rights in and to the goods."

- [37] The schedules to the agreements contain no election for Sunlyn to insure the goods. The necessary inference is that the first respondent elected to insure the goods itself. Indeed, the first respondent's principal, Mr. Ndaba, signed the "authority to commence and certificate of acceptance" for each agreement, which includes an acknowledgment that the goods are not the subject matter of any other financial agreement or encumbrance, but says nothing about insurance being provided by Sunlyn.
- [38] Secondly, the parol evidence rule precludes oral evidence that contradicts, varies, or adds to the terms of a written agreement. Where parties have reduced their agreement to writing, that writing is presumed to contain the whole contract, and extrinsic evidence is inadmissible to contradict or modify its terms. Clause 9 is a complete and express term. The alleged oral assurance regarding insurance directly contradicts that term and is accordingly inadmissible.
- [39] Thirdly, even if the equipment was stolen, the agreements expressly provide that the first respondent remains liable for all rental payments. Clause 25 provides that if goods are lost or stolen and not recovered within 21 days, the agreement terminates in respect of those goods, but the insurance proceeds are to be paid to the owner and credited to the rental balance. Clause 27 further provides that the first respondent remains liable for any outstanding balance after the insurance proceeds are applied. The first respondent cannot simply cease payment altogether.
- [40] Fourthly, the applicant's prospects are strengthened by the fact that the first respondent's defence is raised in the answering affidavit by an official of the second respondent, not by the first respondent itself. The first respondent has not filed a confirmatory affidavit. This is a significant omission. A party relying on

a defence personal to it must provide the necessary factual foundation under oath. The deponent need not be the party itself but must have personal knowledge of the facts, which the official of the second respondent did not possess. Accordingly, the absence of a confirmatory affidavit from Mr. Ndaba leaves the respondents' version without the requisite evidentiary foundation.

- [41] This is a factor that weighs heavily in favour of granting condonation. As *Madinda* teaches, that strong merits may mitigate fault in the delay.

The respondents' contribution to the delay and their bona fides:

- [42] The applicant's statutory notice of 07 October 2024 expressly invited the respondents to state whether condonation was required. The respondents did not respond, instead allowing the applicant to proceed with the litigation and incur the costs of issuing and serving the summons. It was only after the applicant had done so that the respondents raised the issue of condonation in their special plea.
- [43] This conduct is, with respect, opportunistic. It is not the conduct of a party that genuinely believes it has suffered prejudice. It is the conduct of a party seeking a technical defence to avoid liability on the merits. The State Attorney, representing the respondents, is an experienced litigator. It would have been a simple matter to respond to paragraph 7 of the statutory notice by stating: 'The respondents do not accept the late notice, please apply for condonation.' The failure to do so, and the subsequent five-month silence, create a strong inference that the respondents were not genuinely concerned about the late notice but were instead lying in wait to raise a technical bar.

[44] I am mindful that the notice of intention to defend and the Rule 35(12) notice were filed on 10 December 2024, and that the Rule 35(12) notice specifically requested “a copy of the notice in terms of section 3 of Act 40 of 2002”. The applicant provided that notice. At no point did the respondents indicate that they were insisting on condonation. In my view, the respondents’ conduct amounts to a waiver of their right to rely on the late notice, or at the very least, it estops them from now objecting. However, it is unnecessary to decide that point, as I have already found that good cause exists.

The conclusion on good cause:

[45] Taking into account all the factors, including the relatively short delay, the reasonable and full explanation, the strong prospects of success on the merits, the applicant’s *bona fides*, and the respondents’ contribution to the delay, through their silence and failure to respond to the invitation in the statutory notice, I am comfortably satisfied that the applicant has established ‘good cause’ as required by section 3(4)(b)(ii).

The unreasonable prejudice (Section 3(4)(b)(iii):

[46] The respondents allege that they have suffered unreasonable prejudice in two respects: (i) they have incurred unnecessary legal costs; and (ii) the arrears have increased, and the applicant has not applied the *in duplum* rule.

[47] These allegations are examined in the light of the principle stated in *Madinda*⁹:

⁹ (153/07) [2008] ZASCA 34; 2008 (4) SA 312 (SCA)

"The third leg of s 3(4)(b) required the applicant to satisfy the court that the respondent had not been unreasonably prejudiced by the failure to serve the notice timeously. This must inevitably depend on the most probable inference to be drawn from the facts which are regarded as proved in the context of the motion proceedings launched by an applicant. The approach to the existence of *unreasonable* prejudice (not simply any level of prejudice, an aspect which the judgment of the court *a quo* blurs) requires a common sense analysis of the facts, bearing in mind that whether the grounds of prejudice exist often lies peculiarly within the knowledge of the respondent. Although the onus is on the applicant to bring the application within the terms of the statute, a court should be slow to assume prejudice for which the respondent itself does not lay a basis"¹⁰

- [48] The incurring of legal costs is a normal and inevitable part of litigation. If the statutory notice had been served in a timely manner, say, in July or August 2024, and the respondents had persisted in their refusal to pay as they have, the applicant would still have issued summons, and the respondents would still have had to defend the action. They would have incurred legal costs in any event. The respondents have not identified a single additional cost that they incurred solely because the notice was served two weeks to four months late. The purpose of the Institution of Legal Proceedings Against Certain Organ of State Act 40 of 2002 is to ensure that organs of state receive adequate notice to investigate claims and, if appropriate, to settle them. The respondents do not claim that they lost the ability to investigate the theft or the alleged insurance arrangement. They do not claim that any witness has become unavailable or that any document has been lost. In short, they have not laid a factual basis for any prejudice at all, let alone unreasonable prejudice.

The increased arrears and the in duplum rule:

- [49] The respondents' argument on this point is fundamentally misconceived. The applicant's claim is not for the accumulation of interest on a simple debt. The

¹⁰ Ibid at para 21

applicant is exercising its contractual right, arising from the first respondent's breach, to seek accelerated payment of all future rentals for the full 60-month term of each agreement. The accelerated claim is a fixed amount calculated as of the date of breach. It does not increase simply because the applicant delayed serving the statutory notice or issuing the summons by a few months. The claim for future rentals is not interest, it is capital or liquidated damages agreed upon in the contract.

[50] The *duplum* rule, as articulated by the Constitutional Court in *Paulsen and Another v Slip Knot Investments 777 (Pty) Limited*¹¹ provides that "interest ceases to accrue when the accumulated unpaid interest equals the outstanding capital". This rule applies to interest on a debt, not to capital, liquidated damages, or accelerated future rentals. The respondents' reliance on the *in duplum* rule is therefore misplaced.

[51] In the event, the applicant's claim for the interest on arrear rental constitutes a distinct component of the relief sought. The applicant has furnished a certificate of balance statements that clearly delineate the principal arrears, accelerated future rentals, and late charges. The respondents have failed to show that the interest charged exceeds the capital amount, nor have they established any violation of the *in duplum* rule.

[52] The allegation that the applicant deliberately delayed serving the notice to increase the arrears is unsupported by any evidence and is inconsistent with Sasfin's undisputed attempts to resolve the matter amicably.

¹¹(CCT 61/14) [2015] ZACC 5; 2015 (5) SA 509 (CC) (24 March 2015) at paragraph [42].

The conclusion on unreasonable prejudice:

- [53] The respondents have failed to establish a proper factual basis for any prejudice, let alone unreasonable prejudice. The respondents' complaints about legal costs and increased arrears are without legal or factual basis. I am therefore satisfied that the respondents were not unreasonably prejudiced by the applicant's failure to serve the statutory notice timeously. The third requirement of section 3(4)(b) is met.

The respondents' additional contentions:

- [54] Before concluding, it is necessary to address two further arguments raised by the respondents in their heads of arguments.

The alleged duty of the applicant to assist with the theft claim:

- [55] The respondents argue that the applicant had a duty to assist the first respondent in recovering or replacing the stolen equipment, and that the applicant's failure to do so justifies withholding payments. The short answer is that the written agreements impose no such duty. Clause 9 places the duty to insure on the first respondent. Clause 25 gives the owner (the applicant) the right to the proceeds of any insurance claim, but it does not require the applicant to pursue a claim on the first respondent's behalf. The first respondent was free to claim from its own insurer. There is no evidence that it did so, or that it provided the applicant with any claim documents. In the absence of any contractual duty, this argument is unsustainable.

The allegation of no prior attempts at resolution:

- [56] The respondents deny that the applicant made any attempt to resolve the matter before resorting to litigation. However, this denial, is contradicted by the applicant's detailed evidence, which I accept as true. Furthermore, the respondents' answering affidavit states that they are "willing to enter into a reasonable settlement agreement." Such a willingness necessarily implies an acknowledgement that a dispute exists and is capable of being settled, and that the applicant's claim is not without some merit. Had the respondents genuinely believed that the applicant had no claim whatsoever, they would not have expressed a willingness to settle. This concession accordingly further undermines their opposition.

The interest of Justice and the Constitutional Imperative:

- [57] The underlying the statutory framework of the Institution of Legal Proceedings Against Certain Organs of State is the constitutional imperative of section 34 of the Constitution, which guarantees everyone the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court. This right must not be unduly restricted by procedural requirements. Condonation applications must be approached with a view to facilitating access to justice, not to creating technical barriers.
- [58] In this case, the applicant seeks to enforce a substantial claim of nearly one million rand. The respondents are organs of state, but they are not immune from contractual liability. The first respondent entered into these agreements voluntarily, received the equipment, and used it for a period. The first respondent now seeks to avoid its obligations on technical grounds, namely 'the

late notice' and on a defence of an alleged insurance undertaking that is contradicted by the plain language of the written agreements.

- [59] The refusal of condonation would shut the applicant out of court entirely, depriving it of the opportunity to have its claim adjudicated on the merits. The respondents have shown no appreciable prejudice that would justify such a drastic outcome, and the interests of justice overwhelmingly favour granting condonation.

Costs:

- [60] The applicant has been successful and seeks a costs order on a party-and-party scale, scale B, including the costs of counsel on scale B. The respondents seek costs on scale C, or alternatively, on an attorney-and-client scale. No basis exists for such a punitive order. The ordinary rule that costs follow the result applies, and there is no reason to depart from the standard scale. A party-and-party costs order on scale B is accordingly appropriate and fair.
- [61] I accordingly order that the respondents pay the costs of this application jointly and severally, the one paying the other to be absolved, on a party-and-party scale, scale B, including the costs of counsel on scale B.

Order:

- [62] In the premises, the following order is made:
1. The application for condonation is granted.
 2. The applicant's non-compliance with section 2 and 3 of the Institution of Legal Proceedings Against Certain Organ of State Act 40 of 2002 is

hereby condoned in terms of section 3(4)(a) and (b) of the Act 40 of the Act.

3. The applicant is granted leave, in terms of Act 40 of 2002, to continue with the action under the abovementioned case number.
4. The respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, on a party and party scale, scale B, including the costs of counsel to be taxed on scale B.



KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the Applicant:

Adv. JG Botha

Instructed by:

ODBB Attorneys

For the Respondents:

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Instructed by:

The Office of the State Attorney,
Johannesburg

Date of Hearing:

28 April 2026

Date of Judgment:

23 June 2026