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



CASE NUMBER: 2024-138628

DATE: 27 JULY 2026

(1) REPORTABLE: YES/NO

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

(3) REVISED

..... DATE 28 July 2026

SIGNATURE

In the matter between:

M[...] I[...] F[...]
(Identity Number: 6[...])

Applicant

and

J[...] I[...] F[...]
(Identity Number: 3[...])

Respondent

In re, the main action:

J[...] I[...] F[...]
(Identity Number: 3[...])

Plaintiff

and

M[...] I[...] F[...]
(Identity Number: 6[...])

Defendant

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 28 July 2026.

JUDGMENT

DU PLESSIS, AJ

INTRODUCTION

1.

- 1.1. This is an opposed application in terms of Rule 27 of the Uniform Rules of Court for the upliftment of a notice of bar. The applicant, Ms M[...] I[...] F[...], is the defendant in the main action. She was barred from delivering her plea and now seeks to be relieved of that bar so that she may deliver a plea and counterclaim. The respondent, Ms J[...] I[...] F[...], is the plaintiff in the main action. She opposes the application and, for her part, seeks condonation for the late delivery of her answering affidavit.
- 1.2. The parties are related. The applicant is married to the respondent's son, and the respondent is therefore the applicant's mother-in-law. The applicant and her husband are themselves embroiled in divorce proceedings, and it is common cause that the present dispute is bound up with that divorce. That familial backdrop explains much of the acrimony evident in the papers, but it does not alter the questions of principle that fall to be decided.
- 1.3. The matter was argued before me on 27 July 2026. Both parties stood by their heads of argument as filed. Three questions arise: first, whether the respondent's late answering affidavit should be condoned; second, whether the applicant has shown good cause for the upliftment of the bar; and third, the costs of the application, having regard to the conduct of both parties. I deal with each in turn, after setting out the background and the applicable principles. Save for a single authority to which the respondent referred me from the Bar, and to which I return, I have confined myself to the authorities placed before me by the parties.

THE MAIN ACTION

2.

- 2.1. The respondent issued a combined summons on 28 November 2024. Her claim, as pleaded, is founded upon an oral agreement allegedly concluded between the parties during 2008, in terms of which the respondent would fund the construction of a cottage on the applicant's property and contribute towards the bond registered over that property, in exchange for a right to reside on the property for the remainder of her life. The respondent alleges that she paid R678 994.00 towards the construction and a further amount towards the bond, that the applicant breached the agreement and she claims payment of R678 994.00 and R630 000.00 — some R1.3 million in total — together with interest at 11.75% per annum and costs on the attorney-and-client scale. The claim is framed, in the alternative, in enrichment and under the Aquilian action.
- 2.2. The applicant's intended defence, as foreshadowed in her founding affidavit and draft plea, is that no such oral agreement was ever concluded; that the payments relied upon were made pursuant to an arrangement between the respondent and her son (the applicant's husband), as an advance against, or part of, his inheritance; that the amounts are in any event disputed; and that a substantial portion of the construction was funded by the applicant and her husband. The applicant further foreshadows a counterclaim, premised on the contention that the respondent is in unlawful occupation of the applicant's property, as a result of which the applicant is unable to let the cottage and has suffered a loss of rental. I express no view on the merits of any of this; I record it only because the strength of a proposed defence is relevant to the enquiry that follows.

THE DEFAULT AND THE EXPLANATION FOR IT

3.

- 3.1. The summons was served personally on the applicant on 3 December 2024. She instructed her then attorneys, Clarinda Kügel Attorneys, to defend the action, and a notice of intention to defend was delivered on 13 December 2024. The applicant's plea fell due on 11 February 2025. On her version, she believed throughout that her attorneys were attending to the matter and that a plea would be, and had been, delivered.
- 3.2. On 4 February 2025 the applicant terminated the mandate of her erstwhile attorneys — her dissatisfaction arising principally from their handling of the divorce, in which they were also instructed — and she requested her file and her account. On 4 March 2025 the respondent's attorneys served a notice of bar on the erstwhile attorneys, calling for delivery of the plea by 11 March 2025. On the same day, 4 March 2025, the erstwhile attorneys signed a notice of

withdrawal as attorneys of record for the applicant. That notice of withdrawal was served on the respondent's attorneys and received by them on 7 March 2025 (CaseLines 005-1 to 005-2), and it recorded the applicant's personal email address (m[...]) and her residential address as the address at which she was thereafter to be served. The applicant did not deliver a plea and became ipso facto barred on 11 March 2025.

3.3. The applicant's explanation for the default rests on the conduct of her erstwhile attorneys, and it must be stated at the outset that her account is, in one respect, inaccurate. Her founding affidavit asserts that the erstwhile attorneys did not deliver a notice of withdrawal; the record at CaseLines 005 shows that they did, on 4 March 2025, received on 7 March 2025. To that extent her affidavit overstates the position, and I take the inaccuracy into account. But the substance of her complaint is a different one, and it is not answered on the papers: that the notice of bar — served on attorneys whose mandate she had already terminated — was never brought to her attention, and that she remained unaware that she had been barred until 22 to 23 May 2025. What the notice of withdrawal does establish, and what tells against the respondent, is that from 7 March 2025 the respondent's attorneys knew both that the applicant was unrepresented and where she was personally to be served. Notwithstanding that knowledge, the respondent proceeded on 24 April 2025 to request default judgment, and enrolled the matter for 29 August 2025. The pending default judgment was disclosed to the applicant's newly-instructed attorneys only after those attorneys made contact by email on 22 May 2025 (annexure MF14).

3.4. The intervening period is taken up largely with the applicant's attempts to obtain her file and account from the erstwhile attorneys, which she says were withheld pending payment. She followed up on 24 February, 7 March, 11 March and 13 March 2025; received an account on 27 March 2025; and settled it on 23 April 2025, having borrowed the money from a colleague. Her new attorneys, Van Heerden & Krügel, received the file on or about 6 May 2025 and consulted with her on 19 May 2025, at which point — the plea and the main action being conspicuous by their absence from the file — the true state of affairs began to emerge. Between 22 and 23 May 2025 the new attorneys made contact with the respondent's attorneys (annexure MF14) and were told that the applicant had been barred "*for some time*". A notice of appointment was filed on 28 May 2025; a letter seeking consent to the upliftment of the bar was delivered on 4 June 2025; consent was refused, without reasons, on 17 June 2025; and the applicant instructed her attorneys to proceed on 25 June 2025. After a period during which counsel was ill, the application was deposed to and finalised on 18 July 2025, and issued and served in early August 2025 — shortly before the date on which default judgment was to be sought, with the result that the application for default

judgment, enrolled for 29 August 2025, was removed from the roll.

THE RESPONDENT'S LATE ANSWERING AFFIDAVIT

4.

- 4.1. The respondent delivered a notice of intention to oppose on or about 13 August 2025. Her answering affidavit fell due on 2 September 2025 but was delivered only at the beginning of November 2025 — approximately two months out of time. In her answering affidavit the respondent seeks condonation. Her explanation is that her daughter, who assists her in communicating with her attorneys, notified them that she would be overseas; that her attorneys mistakenly understood this to mean that the respondent herself would be unavailable and diarised the file for after her “*return*”; and that the delay was a *bona fide* oversight. At the hearing, the applicant’s counsel indicated that the applicant did not oppose the respondent’s condonation, and the respondent’s counsel confirmed that the affidavit might be accepted. The condonation is therefore, in the event, unopposed. It remains, however, a matter that I am entitled to weigh, and do weigh, in assessing the respondent’s conduct and her insistence upon strict compliance by the applicant.

THE APPLICABLE PRINCIPLES

5.

- 5.1. Rule 27 permits the court, on good cause shown, to extend or abridge time limits and to condone non-compliance with the Rules. A party in default of a pleading is barred under Rule 26, and the bar may be lifted only on application showing good cause. The parties are agreed that the touchstone is “*good cause*”, and their respective lists of authorities substantially overlap on the content of that standard.
- 5.2. The classic statement is that of the Appellate Division in Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A), on which both parties rely. There the court held:

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive ... save of course that if there are no prospects of success there would be no point in granting condonation. ... What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay.”

And the respondent's interest in finality must not be overlooked."

- 5.3. The requirement of a full explanation, covering the entire period of the delay, was underscored by the Constitutional Court in Van Wyk v Unitas Hospital and Another 2008 (2) SA 472 (CC), which requires an explanation that is full, that covers the entire period, and that is reasonable. The respondent's authorities make the same point: in Independent Municipal and Allied Trade Union obo Zungu v SA Local Government Bargaining Council and Others [2013] JOL 30060 (LC) it was held that the mere listing of significant events, without an explanation for the time that lapsed between them, does not place a court in a position to assess the explanation — it amounts to no more than a recordal of dates. And in Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others [2013] 2 All SA 251 (SCA) the relevant factors were listed as the degree of lateness, the explanation for the delay, the prospects of success, the respondent's interest in finality, the convenience of the court and the avoidance of unnecessary delay.
- 5.4. As to what an applicant for the upliftment of a bar must show, the content of "*good cause*" is conveniently gathered in the authorities relied upon by the applicant. In A.M v S.M.M (45707/2021) [2023] ZAGPJHC 965 (25 August 2023) and Ingosstrakh v Global Aviation Investments (Pty) Ltd and Others 2021 (6) SA 352 (SCA) it was held that good cause entails a reasonable and acceptable explanation for the default, a demonstration that the party is acting *bona fide*, and a *bona fide* defence which *prima facie* carries some prospect of success. In Smith NO v Brummer NO 1954 (3) SA 352 (O) the explanation must be sufficiently full to enable the court to understand how the default really came about and to assess the party's conduct and motives, and the application must not be made merely to delay. In Madinda v Minister of Safety and Security 2008 (4) SA 312 (SCA) "*good cause*" was said to look to all those factors bearing on the fairness of granting relief between the parties and the proper administration of justice, including the prospects of success, the reasons for and sufficiency of the explanation, the *bona fides* of the applicant, and any contribution by other persons or parties to the delay.
- 5.5. The threshold for the *bona fide* defence is not a demanding one. In Body Corporate v Bassonia Four Zero Seven CC 2018 (3) SA 451 (GJ) it was held that the defendant need show only that the defence is not patently unfounded and that it is based on facts, set out in outline, which if proved would constitute a defence. The court does not, at this stage, decide the merits.
- 5.6. The respondent, for her part, correctly emphasises the limits of an explanation founded on the failures of a litigant's legal representatives. In Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) the good-cause enquiry was authoritatively restated, and a wholly unacceptable explanation may be decisive whatever the

prospects. In Saloojee and Another v Minister of Community Development 1965 (2) SA 135 (A) the court warned:

“There is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations ad misericordiam should not be allowed to become an invitation to laxity. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why ... the litigant should be absolved from the normal consequences of such a relationship ...”

- 5.7. That principle was applied more recently in Ntintili v City of Johannesburg Metropolitan Municipality (788/2015) [2024] ZAGPJHC 676 (15 July 2024), where the court held that the negligence of an attorney cannot always excuse a failure to discharge the mandate to prosecute the client’s case. And in Shaikh v South African Post Office Ltd and Others (DA 4/09) [2013] ZALAC 18 (19 July 2013) the court observed that where a litigant attributes delay to the conduct of attorneys, a confirmatory affidavit from at least one of them is to be expected, and that its absence points to a want of *bona fides*.
- 5.8. These strands are not in tension. The court retains a discretion, to be exercised on an objective conspectus of all the facts and in fairness to both sides. A litigant may not hide behind an attorney as a matter of course; but where the explanation, taken as a whole, enables the court to understand how the default came about and is not a mere device to delay, and where it is coupled with a *bona fide* defence of substance, good cause may be established notwithstanding imperfections in the explanation. I approach the facts on that footing, and — as fairness requires — without indulgence towards negligence on either side.

CONDONATION FOR THE LATE ANSWERING AFFIDAVIT

6.

- 6.1. Although the condonation is now unopposed, I record my assessment of it, because it must be measured against the very standard the respondent invokes against the applicant. The answering affidavit was some two months late. The explanation — a diarising error by her attorneys, born of a miscommunication about her daughter’s travel — is meagre. It is not supported by any particulars of the travel relied upon, and the confirmatory affidavit foreshadowed in the affidavit was, on the papers before me, not delivered. Measured against Van Wyk and against the respondent’s own authority in IMATU obo Zungu, the explanation is thin and does not cover the period of the delay with any precision. There is, moreover, a real irony in a litigant who insists upon strict compliance with the Rules seeking, in the same breath,

to be excused from them.

- 6.2. Nevertheless, the applicant does not oppose the indulgence, and applying Melane and weighing the matter in fairness to both sides I am satisfied that condonation should be granted. The delay occasioned no real prejudice: the applicant was afforded, and took, a full opportunity to reply. Refusing condonation would not advance finality, since the main action must in any event be determined; it would instead decide the application on a one-sided record. The interests of justice are best served by having the application determined on all the papers. The thinness of the explanation and the respondent's own want of diligence are matters that sound in costs, and in the weight to be given to her demand for strict compliance, rather than in the refusal of the indulgence. Condonation is accordingly granted, but the respondent earns no costs for it, and her posture as a champion of strict compliance is considerably weakened by it.

UPLIFTMENT OF THE BAR

7.

The explanation for the default

- 7.1. The respondent's criticisms of the applicant's explanation are not without force, and I do not accept the explanation uncritically. Three criticisms in particular have merit. First, the applicant's reliance on her inability to pay her erstwhile attorneys, as the reason she could not obtain her file, is undermined by her own annexure "*MF12*": that account is headed "*divorce*" and bears a file reference (PF0093) different from the reference for this matter (PF0099). This was ventilated in argument. The applicant's counsel submitted that the account nonetheless relates to the same proceedings, but was unable to explain the discrepancy in the file reference; the respondent maintained that it may relate to a different matter. The discrepancy was thus not resolved, and to that extent the "*file-was-withheld*" strand of the explanation remains unconvincing. Second, there is no confirmatory affidavit from the erstwhile attorneys, whose conduct lies at the heart of the explanation; that absence is a real deficiency, of the kind cautioned against in *Shaikh*. Third, parts of the timeline reflect less urgency than one would expect of a litigant facing default judgment — though, as I explain below, that criticism is materially blunted once the full record is considered.
- 7.2. These are proper considerations, and I take them into account. A litigant bears ultimate responsibility for the conduct of her case, and Saloojee and Ntintili rightly caution against allowing sympathy to become an invitation to laxity. Had the applicant's explanation rested on the fee dispute alone, or on a bare assertion that her attorneys had let her down, it may well have failed.

- 7.3. But the explanation does not rest there, and when the full record is considered the default, and the applicant's continued ignorance of it, are substantially attributable to the conduct of others — including the respondent's own attorneys. Three matters are telling. First, although the erstwhile attorneys did withdraw, the notice of bar served upon them on 4 March 2025 was not shown to have been conveyed to the applicant, who on the probabilities remained unaware that she had been barred until her new attorneys ascertained it on 22 to 23 May 2025. Second, and importantly, the respondent's attorneys received the notice of withdrawal on 7 March 2025 and from that date knew that the applicant was unrepresented and held the address at which she was to be served. Yet, instead of serving the ensuing steps upon her, they requested default judgment on 24 April 2025, enrolled it, and disclosed the pending default judgment to the applicant's new attorneys only after those attorneys initiated contact on 22 May 2025. A litigant kept in the dark in this way, and against whom default judgment is pursued without service although her address is known, cannot fairly be visited with the ordinary consequences of inaction. Third, Madinda makes “*any contribution by other persons or parties to the delay*” relevant to good cause; here that contribution — by the erstwhile attorneys and by the respondent's attorneys alike — is substantial. It is this feature that distinguishes the present matter from Saloojee and Ntintili, in each of which the default lay at the door of the litigant's own passivity and her own attorney's neglect, and not, as here, in part at the door of the opposing party.
- 7.4. Applying the objective conspectus required by Melane, and the standard in Smith NO v Brummer, the explanation — though imperfect, inaccurate as to the notice of withdrawal, and unconvincing as to the fee dispute — is, taken as a whole, sufficiently full to enable me to understand how the default really came about. I am not persuaded that the application is a device to delay within the meaning of Smith; the applicant's persistent efforts to retrieve her file, and the fact that she moved to regularise her position once the true state of affairs emerged, are inconsistent with mere stratagem. The explanation meets the threshold, and such weaknesses as it has fall to be weighed against the strength of the proposed defence, to which I now turn.

The bona fide defence

- 7.5. The applicant's defence clears the threshold set in Body Corporate v Bassonia and Ingosstrakh with room to spare. Her primary defence is a denial that the oral agreement sued upon was ever concluded. A denial of the very agreement on which the claim is founded is, if established at trial, a complete defence; it is neither shadowy nor illusory. To that she adds a positive version — that the payments were made pursuant to an arrangement between the respondent and the applicant's husband, as an advance against or

part of his inheritance — and a dispute of the amounts. These are averments of fact which, if proved, would answer the claim.

- 7.6. The respondent's heads characterise the defence as "*illusory*" and "*legally misdirected*", and submit that bare denials and allegations of excipiability cannot do duty for a plea. There is a short answer. In her answering affidavit the respondent elected not to engage the merits of the defence at all, treating them as irrelevant to the present application. The consequence is that the applicant's account of her defence stands substantially uncontroverted on these papers. A defence that denies the existence of the contract, and offers an alternative explanation for the payments, is not met by declining to answer it and then describing it as illusory. The respondent's submissions that the contentions of excipiability are misplaced, and that the counterclaim could be pursued in a separate action, may have some technical merit; but they do not touch the core defence, and the fragmentation of a single dispute — itself closely tied to the pending divorce — into separate actions is neither convenient nor just. I am satisfied that the applicant has a bona fide defence with prospects that are, at the least, not patently unfounded.

The authority of *Oertel v Kok*

- 7.7. In argument, Mr Elliott, for the respondent, referred me to *Oertel v Kok and Others* (097739/23) [2025] ZAGPPHC 93 (31 January 2025) as authority for the refusal of the application. With respect, it does not avail the respondent; if anything, it tells the other way. In *Oertel* the defendants were barred and sought the upliftment of the bar under Rule 27. The court found their explanation for the default — pressure of business and the relocation of offices — to be unacceptable, held that they had been lax and had not respected the rules, and observed that they had placed no plea, and no clearly articulated bona fide defence, before the court. And yet, notwithstanding both an unacceptable explanation and the absence of any pleaded defence, the court uplifted the bar, holding that in the interest of justice the defendants ought to be afforded the opportunity to defend the action.
- 7.8. Two consequences follow. First, if the bar was to be lifted in the interest of justice in *Oertel*, where the explanation was rejected and no defence was before the court, then the case for upliftment is stronger here, where the applicant has advanced a substantive defence going to the very existence of the agreement sued upon. Second, *Oertel* adopted the good-cause formulation in *Smith NO v Brummer NO* — an authority on which the applicant also relies — including the consideration that any prejudice to the opposing party may be compensated by an appropriate order as to costs. To that extent *Oertel* reinforces, rather than undermines, the applicant's case. The single respect in which it assists the respondent is on costs: there the barred party, though partly successful, was ordered to pay the costs because its own default and conduct had

occasioned the application. I return to that question below; it does not bear on whether the bar should be lifted.

Prejudice, finality and access to court

- 7.9. The competing prejudice must then be weighed. If the bar stands, the applicant is shut out from defending a claim of some R1.3 million which she squarely disputes, and default judgment in that amount will follow. That is the closing of the doors of the court against a litigant with a genuine defence, and it implicates the right of access to court under section 34 of the Constitution. Against that, Mr Elliott stressed that his client is elderly — 89 years of age and, as he put it, in her ninetieth year — and has a strong interest in the finality and expeditious resolution of her claim. I do not discount that interest; the age of a litigant is a proper consideration, and it justifies holding the applicant to an expedited timetable for her plea. But advanced age is not, without more, a sufficient answer to the applicant's right to defend a disputed claim of this magnitude; and the force of the respondent's complaint of delay is blunted by the fact that the delay is in part of her own attorneys' making, and that default judgment was pursued against the applicant without service upon her though her address was known. As Smith NO v Brummer, applied in Oertel, recognises, prejudice of the kind pressed here can be substantially met by an appropriate order as to costs and by a strict timetable. The Melane balance falls in favour of upliftment.
- 7.10. I therefore conclude that the applicant has shown good cause, and the bar will be uplifted on terms that protect the respondent against further delay.

COSTS AND THE CONDUCT OF THE PARTIES

8.

- 8.1. Both parties sought punitive costs. The applicant asked that the respondent pay the costs on the attorney-and-client scale, contending that the opposition was unreasonable, malicious and vexatious. The respondent asked that the application be dismissed with costs on the attorney-and-client scale. Neither request can be granted and it is appropriate to say why, because the conduct of both parties bears on the order I make.
- 8.2. The starting point is that costs ordinarily follow the result (Myers v Abramson 1951 (3) SA 438 (C)), a rule from which the court departs only for good reason. But the "result" here is that a defaulting litigant has been granted an indulgence. Where a party comes to court to be relieved of the consequences of a default, the court has a discretion, recognised in Sampson v Union and Rhodesia Wholesale Ltd 1929 AD 468, either to refuse the costs of opposition, to make them costs in the cause, or to grant them, according to whether the opposition was justified; and the relevant

considerations include prejudice occasioned by delay (Gool v Policansky 1939 CPD 386), whether the default was a *bona fide* mistake, and whether a genuine dispute exists between the parties (Schafer v Memel Municipality (2) 1933 OPD 173). As Oertel illustrates, a party seeking the indulgence may be ordered to pay the costs even where partly successful.

- 8.3. The applicant's charge that the opposition was malicious and vexatious is not made out. The respondent raised at least one substantial and well-founded point — the discrepancy exposed by annexure "MF12", which remained unresolved even in argument — and a legitimate concern about the absence of a confirmatory affidavit from the erstwhile attorneys. A plaintiff confronted by a defaulting defendant's imperfect explanation is entitled to put that defendant to the proof; doing so is not vexatious. The applicant's prayer for attorney-and-client costs is refused.
- 8.4. The respondent's prayer for a punitive order falls away with the dismissal of her opposition, and would in any event have failed. A litigant who has herself delivered an answering affidavit two months out of time, on a thin explanation, and who refused consent to an indulgence without furnishing any reasons, is in no position to seek the court's special disapproval of her opponent.
- 8.5. What remains is to give effect, in the costs order, to the conduct of both sides. The applicant is the party in default and seeks an indulgence; a litigant in that position is not ordinarily entitled to be paid for obtaining it, and Oertel and Sampson show that she may even be ordered to pay. Her explanation was, as to the fee dispute, unconvincing, and, as to the notice of withdrawal, inaccurate — features that might ordinarily have attracted a costs order against her. But the respondent's conduct disentitles her to that benefit. Her attorneys, knowing from 7 March 2025 that the applicant was unrepresented and holding her address, pressed for default judgment without serving her, and refused consent to the upliftment; and the respondent herself delivered her answering affidavit two months late. In these circumstances it would be unjust to order the applicant to pay the costs of an application that the respondent's own conduct did much too precipitate, and equally inappropriate to reward the applicant's imperfect and partly inaccurate explanation with an order in her favour. The just and equitable order, which marks the shortcomings on both sides without rewarding either, is that each party pays its own costs. I considered, in reliance on Oertel, directing the applicant to pay the costs as the party seeking the indulgence; but Oertel is distinguishable, for there the wasted costs flowed from the barred party's own unreasonable persistence and there was no comparable contribution by the opposing party, whereas here the respondent's conduct substantially contributed to the litigation.

ORDER

9.

In the result, I make the following order:

- 9.1. The respondent's non-compliance with the Rules in respect of the late delivery of her answering affidavit is condoned.
- 9.2. The notice of bar served on the applicant on 4 March 2025 is uplifted.
- 9.3. The applicant is directed to deliver her plea, and counterclaim (if any), within 15 (fifteen) days of the date of this order.
- 9.4. Each party is to pay its own costs of the application.

DU PLESSIS AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Date of hearing: 27 July 2026

Date of judgment: 28 July 2026

For the applicant:

Adv B Bergenthuin, instructed by Van Heerden & Krügel Attorneys, Pretoria.

For the respondent:

Mr K R Elliott of Elliott Attorneys Inc, Pretoria.