



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 2025-121406

In the matter between:

STANDARD BANK OF SOUTH AFRICA LTD PLAINTIFF
(REGISTRATION NUMBER: 1962/000738/06)

and

TASHRIQ AHMED DEFENDANT

Coram: LEKHULENI J

Heard: 31 July 2026

Delivered: 27 August 2026

Summary: Application for summary judgment – Application filed late.
Condonation application - Defendant not raising a *bona fide* defence –
Application for summary judgment granted.

ORDER

1. The plaintiff's application for summary judgment is hereby granted in the following terms:

- a. Confirmation of the cancellation of the agreement between the parties.
- b. The defendant is directed to restore to the plaintiff possession of the vehicle, namely, 2020 Mercedes-Benz C200 A/T.
- c. The claim for damages, if any, is postponed *sine die*.
- d. Each party is ordered to pay its own costs of the summary judgment application.

JUDGMENT

LEKHULENI J:

Introduction

[1] This is an application for summary judgment in which the applicant (“the plaintiff”) seeks summary judgment against the respondent (“the defendant”). The plaintiff seeks an order directing the defendant to restore possession of the goods, a 2020 Mercedes-Benz C200 A/T, to the plaintiff and to retain all monies the defendant paid to the plaintiff. The plaintiff also seeks condonation for the late filing of its summary judgment application. In addition, the plaintiff seeks an order granting the plaintiff leave to apply for damages, if any, in an amount to be calculated by subtracting the vehicle's current market value and any applicable rebate of finance charges from the outstanding balance. The plaintiff also seeks the costs of the summary judgment application.

The facts

[2] The plaintiff's claim against the defendant arises from a written instalment sale agreement entered into between the plaintiff and the defendant in August 2020, in which the plaintiff sold to the defendant a 2020 Mercedes-Benz C200. The total costs of the agreement, including interest, costs, and charges, were R1 175 863.70, payable to the plaintiff in 72 consecutive monthly installments of R13 015.70, commencing on 01 October 2020, with the final payment of R252 749.00 scheduled for March 2027. Under the agreement, the plaintiff would remain the owner of the vehicle until the defendant had repaid all amounts owed to the plaintiff in terms of the agreement, whereupon ownership of the vehicle would pass to the defendant.

[3] The plaintiff issued summons against the defendant and pleaded that the defendant failed to pay the instalment amount due under the agreement on the due date. The plaintiff asserted that the defendant breached the terms and conditions of the agreement and further failed to remedy that breach within the time specified in the plaintiff's letter of demand to the defendant to do so. To this end, the plaintiff issued summons against the defendant, claiming cancellation of the instalment sale agreement and return of the vehicle. The defendant filed a notice to defend and later filed his plea.

[4] Subsequently, the plaintiff applied for summary judgment against the defendant to confirm the cancellation of the agreement and for the return of the vehicle. The plaintiff brought its application for summary judgment out of time. Accordingly, the plaintiff applied for condonation. In its application for condonation, the plaintiff stated that the summary judgment application was lodged out of time because the plaintiff gave the defendant time to remedy the breach, which ultimately delayed filing the summary judgment application.

[5] The defendant represented himself and prepared all the pleadings personally. However, at the hearing of this application, Mr Kassel appeared on behalf of the defendant and argued for the dismissal of the application on the grounds that it was filed out of time. Mr Kassel also sought to introduce an opposing affidavit resisting summary judgment signed by the respondent without an application for condonation. Ms Hirst, counsel for the plaintiff, opposed admission of the affidavit, contending that it would prejudice the plaintiff because it was only brought to their attention on the day of the hearing.

[6] In terms of Rule 27(3) of the Uniform Rules, the court may, on good cause shown, condone any non-compliance with the rules of court. Condonation of non-observance of court rules is not a mere formality. A party seeking condonation must satisfy the court that there is sufficient cause to excuse the non-compliance. Whether condonation should be granted is a matter of discretion that must be exercised in light of all the circumstances of the particular case. Moreover, the application for condonation must be *bona fide* and not made with the intention of delaying the other party's claim. An applicant for condonation should satisfy the court under oath that he has a *bona fide* defence.

[7] The defendant in this matter is not an ordinary unsophisticated person. From the papers filed, he was a magistrate and subsequently an attorney. He knew, or at least should have known, that he had to file a condonation application for the late filing of his opposing affidavit. He did not do so. As foreshadowed above, there is no application whatsoever for condonation for the late filing of the opposing affidavit; as a result, the respondent's opposing affidavit cannot be accepted.

[8] Even if this finding is incorrect, the defence raised in the purported affidavit is similar in substance to the defence presented in the plea. The defendant did not raise any defence on the merits in the purported affidavit but technical defences relating to non-compliance with s 129 of the National Credit Act 34 of 2005 (“NCA”) which are contained in his plea.

The defendant’s defence as pleaded

[9] As I will further demonstrate hereunder, the defendant does not have a *bona fide* defence. The defendant admits that he is in breach of the instalment sale agreement and that he has not paid in accordance with the agreement. In his plea, the defendant denies that the plaintiff is entitled to summary judgment or to summarily terminate the agreement and repossess the vehicle. The defendant asserts that the plaintiff failed to comply with the provisions of s 129 of the NCA. The defendant further averred that proper notice was not given, or alternatively, that the s 129 notice was defective because it was sent to the wrong address. The defendant asserted that the plaintiff has not afforded him a reasonable opportunity to bring the arrears up to date or to make suitable repayment arrangements as envisaged by the NCA.

[10] In the alternative, the defendant pleaded that, should the court find that the plaintiff is entitled to cancel the agreement, the defendant prayed that the court exercise its equitable discretion under the NCA by granting him a 60-day period to bring the arrears up to date instead of authorising repossession.

The plaintiff’s grounds for summary judgment

[11] The plaintiff refuted the defendant's defence and, in its affidavit in support of its application for summary judgment, averred that the defendant was

in default, lacked a *bona fide* defence to the plaintiff's action, and had delivered notice to defend the action instituted by the plaintiff solely for the purpose of delay. The plaintiff denied that it failed to comply with s 129 of the NCA and averred that proper notice in terms of s 129 was duly dispatched to the defendant personally at the chosen *domicilium* address in accordance with the provisions of the NCA. The notice was delivered on 4 July 2025 and served upon the defendant. The plaintiff pleaded that the defendant did not pay for the vehicle in terms of the agreement and was in breach thereof. The plaintiff prayed for summary judgment.

Discussion

[12] Before I can address the merits of the summary judgment application, I wish to pronounce on the condonation application for the late filing of the summary judgment application. This preliminary point was the main defence raised by the defendant at the hearing of this application. I deem it proper to consider this preliminary point first.

[13] The defendant entered his appearance to defend on 15 June 2025. The defendant subsequently failed to file its plea, and on 8 September 2025, the plaintiff served a notice of bar on the defendant. The defendant subsequently served and filed its plea on 8 September 2025. On 18 June 2026, the plaintiff proceeded to file its application for summary judgment against the defendant. However, due to improper service, the matter was postponed to 31 July 2026.

[14] Rule 32(2)(a) provides that within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person

who can swear positively to the facts. In *Pareto Ltd and Another v Kotze*,¹ Cloete J noted that Rule 27(1) of the Uniform Rules of Court, which permits a court to grant condonation on notice and good cause shown, specifically provides that it applies to all the rules of the High Court (thus including Rule 32). The Court further noted that Rule 27(2) permits condonation to be granted even if sought only after the expiry of a stipulated time period.

[15] Cloete J observed further that given the amendment to Rule 32 on 31 May 2019 (some 10 years after *Joob Joob*) to provide for summary judgment after delivery of a plea as opposed to a notice to defend, there seems to be a compelling argument to be made that a plaintiff should not be ousted on technicalities, particularly where a defendant fails to raise a triable issue in a plea, provided that the requirements of Rule 27 are met. The learned justice noted that this is consistent with the very purpose of the summary judgment procedure, namely, to avoid the delay and cost of going to trial where a defence lacking in substance (i.e., one which does not raise a triable issue) can be disposed of at an earlier stage.

[16] From the above dictum, it seems to me that the plaintiff must satisfy the requirements of Rule 27(3) before the late filing of a summary judgment application can be condoned. In terms of Rule 27(3), the court may, on good cause shown, condone any non-compliance with these rules. The requirement for good cause requires that an applicant provide an acceptable explanation and that, on the merits, the defendant show a *bona fide* defence that *prima facie* carries prospects of success.

[17] In the present matter, the plaintiff filed its application for summary judgment almost 9 months late. In the affidavit supporting the application for

¹ [2025] 4 All SA 450 (WCC) para 11.

summary judgment, the plaintiff incorporated a prayer for condonation for the late filing of the application. In support of its prayer for condonation, the plaintiff explained its engagement with the defendant before the summons was issued. The plaintiff did not explain what happened between the filing of the plea on 8 September 2025 and the filing of its application for summary judgment on 18 June 2026. The plaintiff is completely silent on the delay and only states that the defendant did not raise a *bona fide* defence.

[18] Rule 27(3) of the Uniform Rules gives the court a wide discretion. It is trite that courts should not encourage formalism in the application of the Rules of Court. An application for condonation is a procedural matter, and there is clear authority for the view that our courts lean in favour of the flexible rather than the rigid application of the Rules of Court.² The Rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts. However, the Rules of Court must be observed. Slackness and indolence must not be encouraged.

[19] In this case, the plaintiff did not aver as to what happened in the intervening period from the time the plea was filed until summary judgment was applied for in June 2026. This, in my view, shows tardiness on the part of the plaintiff. It appears the plaintiff did not take the application for summary judgment seriously. This application was filed and uploaded on court online in June 2026. No impediment was raised in the affidavit in support of the summary judgment application which might have prevented the plaintiff from filing its application on time.

² *Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654D.

[20] As stated in paragraph 6 above, in an application for condonation the applicant has the burden of showing (as opposed to merely alleging) the good cause that is required as a jurisdictional prerequisite to the exercise of the court's discretion.³ The person seeking condonation must at least furnish an explanation of the default sufficiently for the court to understand how it came about and to assess the conduct and motives.⁴ Where there has been an inordinate delay, the court requires the defaulting party to satisfy the court that condonation should be granted.⁵

[21] However, the inquiry into whether to grant or refuse condonation does not end there. It must be emphasised that the prospect of success, which is invariably linked to the merits of the matter, must also be considered when determining whether to grant condonation for noncompliance with court rules. In *Gumede v Road Accident Fund*, Van Rensen J, as he then was, found that whether condonation should be granted or not is a matter of discretion that must be exercised having regard to all the circumstances of the particular case.⁶

[22] The court considered the following factors identified by Holmes JA in *United Plant Hire (Pty) Ltd v Hills and Others* 1976 (1) SA 717 (A) at 720E - G which are to be taken into account in the exercise of such a discretion: (a) the degree of non-compliance; (b) the adequacy of the explanation for such failure; (c) the prospects of success; (d) the importance of the case; (e) the respondent's interest in the finality of the judgment; (f) the convenience of the Court; and (g) the avoidance of delays in the administration of justice. The court further noted that the list is not exhaustive.

³ *Dreyer v Norval & others* [2006] JOL 18574 (T) para 7.

⁴ *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd & Others* 2000 (3) SA 87 (W) at 93E-F para 12.

⁵ *Gool v Policansky* 1939 CPD 386 at 390.

⁶ *Torwood Properties (Pty) Ltd v South African Reserve Bank* 1996 (1) SA 215 (W) at 228B - F.

[23] Van Reenen J stressed that these factors are not individually decisive but are interrelated, and the one is weighted against the other so that the strength of one or more may compensate for the weakness of one or more of the others. Importantly, the court highlighted that the fate of the condonation application will depend on the applicant's chances of success in the main application. I agree with this proposition.

[24] In the present matter, it is common cause that the delay in filing the application for summary judgment is inordinate. However, the plaintiff has reasonable prospects of success on the merits of the summary judgment application. The defendant did not at all raise a *bona fide* defence to the plaintiff's claim. The defendant does not deny that he is indebted to the plaintiff as claimed in the summons. The defendant admitted that he fell into arrears with certain instalments and stated that such arrears were occasioned by circumstances beyond his control, including a loss of income due to not practicing as an attorney.

[25] The defendant pleaded that the plaintiff has not afforded him a reasonable opportunity to bring arrears up to date or to make suitable repayment arrangements as envisaged by the NCA. Simply, the defendant admits that he has breached the agreement and merely indicates that he requires more time to meet his obligations. The defendant made the last payment in December 2023. The defendant filed his plea in September 2025, and since then the defendant has been afforded several months to reinstate the agreement but has failed to do so. He was given ample opportunity to bring his arrears up to date.

[26] In the circumstances, the argument that the plaintiff failed to comply with the requirements of s 129 of the NCA is immaterial. The notice was duly

dispatched to the defendant. Moreover, the defendant is not a layperson. He was fully aware that he could refer the matter to a debt counselor or seek assistance to restructure his indebtedness. In my view, the mechanism envisioned in the NCA must protect a consumer but is not intended to scupper or frustrate a credit provider's efforts to enforce a legitimate claim when a defendant has remained in default for an egregiously long period and owes the plaintiff a substantial amount, with no effort made to settle the debt or arrears.

[27] The defendant is driving a Mercedes-Benz C200 that he is presently unable to afford. He has not paid the monthly instalments due under the credit agreement since 2023. To dismiss the plaintiff's application solely because it failed to comply with the Rules of Court by filing the application out of time, despite the absence of any *bona fide* defence, would, in my view, result in a gross injustice to the plaintiff and offend the interests of justice.

Conclusion

[28] The technical defence raised by the defendant does not constitute a *bona fide* defence. Consequently, the defendant has failed to raise any defence that meets the threshold required to resist summary judgment. I am satisfied that the defendant entered an appearance to defend solely for the purpose of delay. In the circumstances of this case, I consider it to be in the interests of justice to condone the late filing of the summary-judgment application. This approach, in my view, will serve to curb unnecessary costs that may otherwise be incurred in prosecuting a matter to trial where no triable issues exist and where the defence advanced by the defendant is devoid of merit.

[29] Finally, the plaintiff brought its application very late. In these circumstances, I hold that each party should bear its own costs in respect of the summary judgment application.

Order

[30] In the result, the following order is made:

- (a) The plaintiff's application for summary judgment is hereby granted in the following terms:
 - (i) Confirmation of the cancellation of the agreement between the parties.
 - (ii) The defendant is directed to restore to the plaintiff possession of the vehicle, namely, 2020 Mercedes-Benz C200 A/T.
 - (iii) The claim for damages, if any, is postponed *sine die*.
 - (iv) Each party is ordered to pay its own costs in the summary judgment application.

LEKHULENI JD
JUDGE OF THE HIGH
COURT

APPEARANCES

For the Plaintiff: Adv Hirst

Instructed by: Ismail & Dahya Attorneys

For the Defendant: Mr Kassel

Instructed by: Mr Kassel Sklaar & Cohen