



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: 3977/2025

In the matter between:

**LESEDI LA BOTSHABELO MINING
SUPPORT SERVICES (PTY) LTD**

APPLICANT

And

**OKAYENG TRADING AND PROJECTS
(PTY) LTD**

FIRST RESPONDENT

RITTAH MMADITSHIDI

SECOND RESPONDENT

STATION COMMISSIONER:

COMMANDER, SOUTH AFRICAN

POLICE SERVICE: PHOKENG

THIRD RESPONDENT

Date heard: 14 May 2026

Delivered: 26 August 2026

Coram: Reddy J

Summary: Objection to the enrolment of an opposed application- grounded in the applicant's failure to file heads of argument for the hearing date- the absence of any application for condonation- non-compliance is found to be material and unexplained- forms part of a broader pattern of procedural default in related litigation between the same parties- point in limine is upheld- section 34 of the Constitution and the litigation history between the parties- application is

postponed, on strict condition rather than struck from the roll or postponed *sine die*- costs are awarded against the applicant on the scale as between attorney and client.

JUDGMENT

REDDY J

Introduction

[1] This matter does not serve before me for the determination of the interim interdict sought by the applicant. The issue that now arises is a point *in limine*, an objection to enrolment of the application as advanced by the first and second respondents. The respondents contend that the application, enrolled for hearing as an opposed motion on 14 May 2026, is not ripe for hearing. The basis for that contention is the applicant's material and substantial non-compliance with the Practice Directives of this Division governing opposed motion proceedings.

The parties

[2] The parties may conveniently be described at this stage. The applicant is Lesedi La Botshabelo Mining Support Services (Pty) Ltd (Lesedi), a private company registered in terms of the company laws of the Republic of South Africa. The first respondent is Okayeng Trading and Projects (Pty) Ltd (Okayeng). The second respondent is Ms Rittah Mmaditshidi (Mmaditshidi), cited as Okayeng's director or authorised representative. The third respondent is the Station Commissioner: Commander, South African Police Service: Phokeng (the Commissioner), cited nominally in an official capacity. The Commissioner refrained from participating in the contest.

Background facts

[3] Lesedi conducts business in chrome processing. It constructed a chrome washing plant on the Rietvlei property, referred to in this application as the Chrome Wash Plant. During 2024, Lesedi approached Mmaditshidi for funding to assist with the plant's construction. That funding, ultimately quantified at R3 000 000 was advanced in tranches.

[4] The parties thereafter concluded what is described as the Liability Agreement, executed during April and May 2025, recording Lesedi's acknowledgement of liability for the funding advanced. A dispute has since arisen as to the interpretation of the repayment and forfeiture provisions of that agreement. It culminated in Okayeng and Mmaditshidi asserting operational and administrative rights over the Chrome Wash Plant, which prompted Lesedi to launch the present application. What needs to be underscored is that the merits are to be determined at a hearing in due course. It is logical to deduce that the present ruling is confined to the point *in limine*.

The litigation history

[5] Lesedi has previously approached this Court for relief arising from this dispute. The litigation history ventilates the following. On 19 September 2025, Maodi AJ struck the application from the roll for lack of urgency. Costs were reserved in the cause. On 3 October 2025, Masike AJ again struck the re-enrolled application from the roll. Each party was directed to pay its own costs on that occasion.

[6] A related dispute has travelled an equally difficult procedural road. Under case number 5481/2025, arising from the same underlying dispute, Masike AJ struck a further application from the roll on 17 October 2025 for Lesedi's non-

appearance. Costs were awarded against Lesedi on the scale as between attorney and client. That matter was removed again on 24 October 2025, to allow Lesedi to file an affidavit explaining its earlier default, with no order as to costs. It was removed once more on 31 October 2025, this time for non-compliance with Practice Directive 27(5). The court directed that it not be re-enrolled absent full compliance, and again mulcted Lesedi in punitive costs. It is against this backdrop of repeated procedural default that the present objection falls to be considered.

The current application

[7] The present application was set down for hearing on 14 May 2026, by notice of set down dated 9 January 2026. Lesedi accordingly had more than four months' notice of the hearing date. The Practice Directives of this Division require heads of argument to be delivered not less than fifteen court days before the hearing. On a proper computation, Lesedi's heads of argument for the 14 May 2026 hearing ought to have been delivered by 21 April 2026.

[8] The heads of argument contained in the bundle were, however, prepared and filed for the earlier, now defunct, hearing dates of 19 September 2025 and 3 October 2025. No heads of argument were filed or served for the 14 May 2026 hearing. What was instead transmitted, by email on 11 May 2026, three court days before the hearing, was a document styled '*Applicant's Updated Practice Note*'. That document itself reflects signature only on 8 May 2026.

[9] It identifies the dispute only in general terms. It cites no authorities, and falls short of the structured submissions which the applicable Practice Directives require of proper heads of argument. Given this chronology, it was incumbent on Lesedi to bring an application for condonation of this non-compliance with the Practice Directives of this Division. Towards this end, no application for

condonation was brought. Additionally, no explanation has been proffered by or on behalf of Lesedi.

The point *in limine*

[10] On 13 May 2026, the respondents delivered a notice of point *in limine* and objection to enrolment. In broad strokes, the respondents seek an order striking the matter from the roll, alternatively postponing it *sine die*, together with costs on the attorney and client scale.

Submissions on behalf of the respondents

[11] Mr Ramoshaba submits that Lesedi's default is neither trivial nor excusable. Mr Ramoshaba points to the absence of any heads of argument addressing the 14 May 2026 hearing, the belated and non-compliant practice note, and the absence of any application for condonation. Mr Ramoshaba contends further that this default cannot be viewed in isolation, forming part of a pattern of chronic procedural default spanning two case numbers and several hearing dates, on two of which Lesedi was already mulcted in punitive costs. In the circumstances, Mr Ramoshaba avers, only a striking from the roll, coupled with a costs order on the attorney and client scale, will mark this Court's disapproval of that pattern.

The applicant's litigation posture

[12] Lesedi has filed no answering affidavit to the objection and no heads of argument addressing it. No submissions were accordingly advanced on Lesedi's behalf, whether in opposition to the objection or otherwise. The matter served before this Court effectively unopposed on the *point in limine*. Regard has nonetheless been had to Mr Ramoshaba's affidavit, the respondents' heads of argument, and the whole of the record, in reaching the conclusions set out below.

The law on condonation and compliance with Practice Directives

[13] It is settled that the Rules of Court and the Practice Directives issued under them are not mere technicalities, to be observed or disregarded at a litigant's convenience. In *Federated Trust Ltd v Botha*, the following was stated:

‘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.’¹

[14] In *Coetzer NO and Others v Extrasec Security (Pty) Ltd and Others*, the following was held (footnotes omitted) as regards condonation:

‘[12] The applicable test that governs condonation is well established. Condonation is not for the mere asking. It is a discretionary judicial remedy to be exercised within the prism of the interests of justice. To this end, in *Van Wyk v Unitas Hospital and Another, Off-Beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Limited and Others* and *Grootboom v National Prosecuting Authority and Another*, the apex Court reaffirmed that the overarching enquiry is whether the interests of justice favour the relief being granted. In *Melane v Santam Insurance Co Ltd*, the following factors were identified as considerations relevant to this enquiry: These include the degree of non-compliance; the explanation therefor; the importance of the case; the prospects of success on the merits; the respondent's interests in finality; the convenience of the court; and the avoidance of unnecessary delay in the administration of justice. These considerations are not individually decisive. It axiomatically follows that these considerations must be weighed holistically within the interests of justice enquiry.’²

[15] Our courts have also consistently deprecated litigation conducted by ambush. In *Minister of Land Affairs and Agriculture v D & F Wevell Trust*, the following was stated:

¹*Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) at 654 D.

²*Coetzer NO and Others v Extrasec Security (Pty) Ltd and Others* [2026] ZANWHC 148; [2026] 3 All SA 105 (NWM) para 9

‘a party cannot be expected to trawl through lengthy annexures to the opponent’s affidavit and to speculate on the possible relevance of facts therein contained. Trial by ambush cannot be permitted.’³

[16] A few comments would be apposite as regards the purpose and objects of heads of argument. Heads of argument serve to identify the issues for determination, the authorities relied upon, and the submissions to be advanced. In doing so, they reduce the risk that a party is confronted with a case it has had no proper opportunity to meet.

Evaluation

[17] Juxtaposing these principles to the facts, in my view Lesedi’s non-compliance with the Practice Directives is both material and substantial. Lesedi itself set this matter down more than four months in advance. It nevertheless failed entirely to deliver heads of argument addressing the hearing actually before the Court. The belated practice note does not begin to satisfy the function which heads of argument are designed to serve. It left the respondents, in the days immediately preceding the hearing, without any indication of the legal basis, the authorities, or the submissions Lesedi intended to advance.

[18] As has been noted, no application for condonation was brought. The papers are entirely devoid of any justification for the non-compliance with the well-established principles governing condonation. Accordingly, there is no basis upon which a discretion could be exercised in Lesedi’s favour, even had such an application been made.

³*Minister of Land Affairs and Agriculture v D & F Wevell Trust* 2008 (2) SA 184 (SCA) para 43.

[19] The default does not stand alone. The litigation has been tortuous, traversing a long and halting road to reach this point. It is, on a conservative estimate, the fourth or fifth occasion on which Lesedi has approached this Court in respect of the same underlying dispute, only to founder on procedural default. On some occasions it was a failure to establish urgency. On others it was non-appearance, or non-compliance with a Practice Directive. Lesedi has previously been mulcted in costs on the punitive scale on two prior occasions for materially similar conduct. It cannot expect a further indulgence in the absence of any explanation whatsoever.

[20] The respondents have shown real and demonstrable prejudice. They were left to prepare for an opposed hearing without knowledge of the case they were required to meet. That is precisely the kind of procedural ambush our courts have consistently condemned. The prejudice extends also to this Court, whose own preparation for the hearing was correspondingly compromised by the absence of proper heads. I am accordingly of the view that the point *in limine* is well taken, and that the matter is not ripe for hearing.

Striking from the roll or postponement

[21] The respondents seek, in the alternative to striking, a postponement *sine die*. A postponement *sine die* is, however, no more attractive than striking. What would occur in ordinary litigation is that the matter would return to the roll only once Lesedi applies afresh for a date. This would countermand efficient, expeditious and cost effective litigation. To my mind, such an approach would result in the recurring historical litigating conduct being repeated.

[22] Litigation must be conducted in a posture that breathes life into access to courts. To this end, regard must also be had to section 34 of the Constitution,

which guarantees every litigant the right to have a justiciable dispute resolved in a fair public hearing before a court. The interim relief Lesedi seeks has never been heard on its merits, and the Chrome Wash Plant remains, in the interim, under the respondents' asserted administrative control.

[23] To strike the application, or to postpone it *sine die*, would return the underlying dispute to the general allocation queue for an indeterminate period, a consequence not lightly countenanced where a litigant's access to court is already implicated. Given the litigation history recounted *supra*, I am instead of the view that the more prudent course is to postpone the matter to a specific date, on strict condition, rather than to strike it or postpone it *sine die*. This kind of approach would inadvertently result in proper judicial oversight and management of the matter.

[24] The application is accordingly postponed to a preferential date before Reddy J, to be arranged with the Office of the Judge President and the Registrar, on condition that Lesedi delivers heads of argument fully compliant with the applicable Practice Directives. Should Lesedi fail to comply with this condition, the respondents are granted leave, without further notice, to re-enrol their objection to enrolment for hearing at the earliest available opportunity, and any further non-compliance shall stand as an aggravating factor for purposes of costs.

Costs

[25] The respondents seek costs on the scale as between attorney and client. Such an order is not lightly made, and is generally reserved for conduct that is vexatious, reckless, or otherwise deserving of judicial disquiet. In, *In Alluvial Creek, Ltd* the following was stated:

‘there are people who enter into litigation with the most upright purpose and a most firm belief in the justice of their cause, and yet whose proceedings may be regarded as vexatious when

they put the other side to unnecessary trouble and expense which the other side ought not to bear.⁴

[26] In the premises, such an order is warranted. Lesedi's default is not a first, nor even a second, infraction. It forms part of an established pattern, previously twice visited with punitive costs orders in related proceedings, and repeated here without the slightest attempt at explanation. A punitive costs order is accordant with the justice of the case.

Order

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

1. The point *in limine* is upheld.
2. The application is postponed to a preferential date before Reddy J, to be arranged with the Office of the Judge President and the Registrar, on condition that the applicant delivers heads of argument fully compliant with the applicable Practice Directives.
3. Should the applicant fail to comply with the condition in paragraph 2, the respondents are granted leave, without further notice, to re-enrol their objection to enrolment for hearing at the earliest available opportunity.
4. The applicant is directed to pay the wasted costs occasioned by the defective enrolment, on the scale as between attorney and client.

⁴*In re Alluvial Creek Ltd* 1929 CPD 532 at 535.



REDDY J

**JUDGE OF THE HIGH COURT, SOUTH AFRICA,
NORTH WEST DIVISION**

Appearances

For the Applicant: Adv Marakalla

Instructed by: Rangwako Attorneys, Rustenburg
c/o Kgomo Attorneys, Mahikeng

For the First and Second Respondents: Mr M.S. Ramoshaba

Instructed by: Ms Ramoshaba Attorneys Inc, Johannesburg

For the Third Respondent: No appearance