



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

Not Reportable

Case No: 4541/2024

In the matter between:

CHRISTOFFEL JOHANNES NAGEL

PLAINTIFF

and

THE ROAD ACCIDENT FUND

DEFENDANT

Coram: Masike AJ

Date Heard: 1 June 2026

Date supplementary heads of argument received: 8 July 2026

Date judgment reserved: 8 July 2026

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail, and released to SAFLII. The date that the judgment is deemed to be handed down is **28 AUGUST 2026 at 10h00**.

Summary: Civil Procedure – application for default judgment – defence of defendant having been struck out – plaintiff amending particulars of claim after striking out of defence – effect of rule 28(8) on defence that has been struck out – rule 16(1) attorney on record and not withdrawing as such – service of notices and documents at address other than that of attorney of record.

JUDGMENT

MASIKE AJ

Introduction

[1] This matter served before this Court on 1 June 2026 as an application for default judgment for the determination of the quantum arising from a motor vehicle collision that occurred on 2 September 2014 at about 16h15 and at Mereingspark, Klerksdorp.

Factual Background

[2] Mr Christoffel Johannes Nagel ('the plaintiff') instituted an action against the Road Accident Fund ('the defendant'). It is alleged by the plaintiff that on or about 2 September 2014, a motor vehicle collision occurred between a motor vehicle bearing registration letters and numbers C[...] ('the insured vehicle'), then and there driven by M P Smit, ('the insured driver'), and a motor vehicle bearing registration letters and numbers J[...] then and there driven by the plaintiff.

[3] It is alleged that the motor vehicle collision occurred as a result of the sole negligence of the insured driver, who was negligent in one or more of the following respects:

- ‘3.1 She failed to keep a proper lookout;
- 3.2 She drove too fast under the prevailing circumstances;
- 3.3 She failed to brake sufficiently, timeously or at all;
- 3.4 She failed to adhere to the rules of the road;
- 3.5 She failed to keep the insured vehicle under proper control;
- 3.6 She failed to avoid a collision which could have been avoided had he acted reasonably;
- 3.7 She executed a right-hand turn thereby encroaching on the path of travel of the Plaintiff’s overtaking vehicle when it was inopportune and unsafe to do so;’

[4] It is alleged that, as a result of the motor vehicle collision, the plaintiff sustained injuries in the form of (a) soft tissue head injury with open wounds in the region of the right zygoma and chin with brain oedema and concussion; (b) spain and strain injury to the cervical spine; (c) soft tissue injuries to the right shoulder and both hands; (d) right-sided haemothorax; (e) fracture of the ankle, tibia and fibula of the right lower leg; (f) fracture of the right femur and pelvis; (g) soft tissue injuries to the left ankle; (h) open wounds to the right thigh. The plaintiff claimed R1 375 400.00 against the defendant for personal injuries arising from the motor vehicle collision.

[5] The defendant is a statutory institution established under the Road Accident Fund Act, Act 56 of 1996 (‘the RAF Act’). Plaintiff instituted the

action against the defendant because in terms of s 17(1)(a) of the RAF Act, in the case of a claim for compensation from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established; the defendant is obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum.

[6] The defendant defended the action and is represented by the firm of Tsebane Moloba Inc. On consideration of the pleadings and notices filed before this Court, this Court noted that the defendant's plea was served on the offices of the plaintiff's attorneys on 10 April 2018.

[7] It is important to state that the plaintiff's action against the defendant was initially instituted in the High Court of South Africa, Gauteng Division, Pretoria ("Pretoria High Court") under case number 57941/2018.

[8] The action instituted by the plaintiff against the defendant in the Pretoria High Court was transferred to the High Court of South Africa, North West Division, Mahikeng ('North West High Court'), pursuant to the court order of the Honourable Justice Motha J (Motha J) dated 18 August 2024.

[9] An inspection of the contents of the court file before this Court reveals that the Registrar of the North West High Court allocated the case number 4541/2024 to this matter on or about 30 August 2024.

[10] This Court further observed that on the date that the Registrar of the North West High Court allocated the case number 4541/2024, the Registrar was presented with a filing notice which contained: (a) Court order dated 16 August 2024 – re transfer of the matter to the High Court of South Africa, North West Division, Mahikeng; (b) Court order – Defendant’s defence is struck out as issued in the Pretoria High Court, granted on 16 April 2024; (c) Court order – Defendant’s to compel the defendant to file a properly drafted discovery affidavit as issued in the Pretoria High Court, granted on 30 August 2023; (d) Court order – Merits settled order out as issued in the Pretoria High Court, granted on 27 May 2020; and (e) Copies of bundle pleadings as issued in the Pretoria High Court.

[11] From the contents of the filing notice that was presented to the Registrar of the North West High Court, the defendant's defence was struck out on 16 April 2024.

[12] An examination of the court file further reveals that on 21 July 2025, a notice of substitution of correspondent attorneys at the seat of court was purportedly served on the defendant. Service of the notice of substitution of correspondent attorneys was effected by way of email and forwarded to the e-mail address PTAmotions.

[13] On 16 September 2025, the plaintiff's attorneys purportedly served a notice of set down for the hearing of the application for default judgment on 1 June 2026, by e-mail to the email addresses S[...] and N[...]. In addition, the notice of set down was served on the State Attorney's offices in Pretoria by hand on 17 September 2025. This is evinced by the date stamp on the copy of the served notice of set down.

[14] On 24 March, the plaintiff's attorneys purportedly served a notice of set down for the hearing of the application for default judgment on 1 June 2026 by email to the address S[...] and g[...]. On 26 March 2026, the plaintiff's attorneys served notice of set down on the defendant's offices by hand.

[15] On 22 April 2026, the plaintiff's attorneys purportedly served the defendant with a notice of intention to amend by way of email to the addresses S[...] and g[...]. In addition, the notice of intention to amend was served on the defendant's offices by hand on 23 April 2026, as evidenced by the defendant's date stamp.

[16] The intended amendment referred to in paragraph 15 above related to an increase in the claim amount by the plaintiff from R1 375 400.00 to R2 625 150.71. On 12 May 2026, the attorneys of the plaintiff purportedly effected the amendment by serving the amended particulars of claim on the defendant by way of e-mail at the following email addresses: S[...] and g[...]. I further noted that the plaintiff's attorneys' purported amendment was effected by hand by delivering the amended pages at the defendant's offices on 14 May 2026. This is

evinced by the date stamp of the office of the defendant on the filing notice of the attorneys of the plaintiff.

[17] On 21 May 2026, the attorneys of the plaintiff purported to serve on the offices of the defendant via email at the following email addresses: S[...] and g[...] a notice under rule 38(2) of the Uniform Rules of Court ‘URC’.

[18] The application for default judgment served before this Court on 1 June 2026. Having considered the submissions made by counsel and the documents that served before this Court in support of the application for default judgment. I have a difficulty with the application. I am of the view that the defendant had until 2 June 2026 to make consequential adjustments to the documents filed by it because of the amendment to the particulars of claim which was effected on 12 May 2026, and the defendant was, in my view, not precluded from taking steps as contemplated in rules 23 and 30 of the URC¹ and the application for default judgment was not properly before this Court on 1 June 2026. I address the reasons in the subsequent paragraphs.

Legal Principles And Analysis

[19] Striking out a defence is a drastic measure. It precludes the defendant from advancing legal defences raised as special pleas and from placing countervailing evidence to that of the plaintiff before the court.²

¹ Rule 28(8) of the URC reads: (8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30.

² *T.P.R obo P.M.M v Road Accident Fund* (9117/2019) [2024] ZAGPPHC 387 (18 April 2024) (*T.P.R*) Para 14

[20] In *T.P.R Davis J* said the following, in answer to the question, does an amendment to a plaintiff's particulars of claim after a defence has been struck out 'open the door' to a new plea?

[19] The first part of the answer is that in general the delivery of a substantial amendment to a plaintiff's particulars of claim, even if only in respect of quantum, has the effect of "reopening" the pleadings and thereby has the result that *litis contestatio* falls away. This much has expressly been found in *Olivier*: "*When due consideration is had to the amended particulars of claim, the amendments are substantial and material. There are new aspects that in my view would require some consideration. It may be so that this increase in quantum did not alter the cause of action, the identity of the parties and the scope of the issues in dispute ... Notwithstanding, the scope of damages has been increased significantly and it would without doubt require a pleading*". I respectfully align myself with this view.

[20] Although doubt had been expressed whether an immaterial or minor amendment would have the same result of a "fresh *litis contestatio*", it must be beyond doubt that any substantial amendment would have the result that pleadings are reopened. That the Supreme Court of appeal has confirmed in *Endumeni*. By way of illustration, in *Olivier*, the amount of damages was increased from R6 105 000.00 to R7 155 500.00 and the court found that that would have entitled a defendant to plead thereto. In the present matter the amount of damages was even more significantly increased.

[21] The pertinent question is whether the "reopening of the pleadings" would also apply in instances where the defendant's defence had been struck out. In *Endumeni* the origin of the concept of *litis contestatio* has been explained by reference to Roman Law and by way of a reference to the following explanation thereof by Hollmes AJ in *Government of the Republic of South Africa v Ngubane*: "*In modern practice litis contestatio is taken as being synonymous with close of pleadings, when the issue is closed and joined And in modern terminology, the effect of litis contestatio is to "freeze" the plaintiff's rights as at that moment*".

[22] A defence which has been struck out by a court, would have been a response to a plaintiff's pre-amendment case and to the quantum which the plaintiff had then claimed he or she would be entitled to. Once that claim had been "frozen" by the close of pleadings and the

plaintiff thereafter seeks to “unfreeze” its position, there can, in my view, be no objection to allow a defendant to plead to this “unfrozen” or reopened case. To allow a defendant to plead afresh, would also be consistent with the provisions of Rule 28(8) which expressly allows “*any party affected by an amendment... to make... any consequential adjustment to the documents filed by him*”.

[23] To argue that the “documents” filed by the defendant had been struck out and therefore that there was nothing left in respect of which “adjustment” should be allowed, would in my view again place an unduly prohibitive limitation on the defendant’s Section 34 rights.

[24] Another reason for allowing the defendant to enter the fray afresh, is that to refuse a defendant to do so when the plaintiff had altered its case, would offend against one of the most basic premises of our law and procedure, namely the right to be heard or the *audi alterem partem* – principle. While the defendant may have been silenced in respect of the previously pleaded case of the plaintiff as a result of the defendant’s non-compliance with a procedural obligation (reinforced by an order of court or a directive), that “silencing” should not operate in perpetuity or in respect of a “new” case. To do so would be so manifestly unfair and contrary to the spirit of the Constitution, that it should not be contemplated.

[25] The question posed must therefore be answered in the affirmative, the only qualification being that the plea must be limited to the “consequential” aspect. Should the plaintiff, as he has done in this matter, only amend the nature or the extent of the relief sought, the consequential plea contemplated in Rule 28(8) will have to be limited to that aspect. It would be impermissible for the defendant to attempt, by way of an amended plea, to “reopen” the issues of the merits or its previously struck out special pleas.’³ [footnotes omitted]

[21] The Honourable Davis J further gave the following warning at paragraph 26 of *T.P.R.*:

‘Having regard to the virtual consistent propensity of plaintiffs in RAF matters to effect amendments to their particulars of claim at a late stage in the proceedings, whether that may

³ *T.P.R.* Para [19] to [25].

be due to changed circumstances, the passage of time occasioned by this Division's congested roll of RAF matters or for whatever other reason, such amendments should be effected timeously. If done too shortly prior to the date of hearing, particularly where the time for objection had not yet even run out, would result in the pleadings not yet having been "reopened" or, if the amendment has been effected but the 15 day period contemplated in Rule 28(8) for consequential amendments had not yet expired, it might result in the matter no longer being ripe for hearing.'

[22] The matter of *Olivier v MEC for Health, Western Cape*⁴ which Davis J referred to in *T.P.R* was taken on appeal to the Supreme Court of Appeal (SCA).⁵ Kgoele JA (as she then was), writing for the court, said the following on the question of whether *litis contestatio* falls away when pleadings are amended subsequent to it being achieved:

'[10] Whether *litis contestatio* has been reached is a matter dealt with in rule 29(1) of the Uniform Rules of Court (the rules), which prescribes when pleadings are considered to have closed. However, rule 29 is silent as to what the effect of an amendment brought after this is. However, in *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)*, this Court recognised that amendments to pleadings might alter the scope of the litigation, with consequences for *litis contestatio*. It stated:

'The answer is that when pleadings are re-opened by amendment or the issues between the parties are altered informally, the initial situation of litis contestation falls away and is only restored once the issues have once more been defined in the pleadings or in some other less formal manner. That is consistent with the circumstances in which the notion of litis contestatio was conceived.'

[11] Relatedly, Kruger J in *K.J.S v M.J.S*, taking a cue from *Endumeni*, expanded on this issue and explained that an amendment must be material to undo the earlier achievement of *litis contestatio*. This is in line with the maxim *de minimis non curat lex* (ie, the law does not concern itself with trivialities). In simple terms, a non-trivial amendment will be immaterial.

⁴ 2023 (2) SA 551(WCC).

⁵ *Oliver NO v MEC for Health: Western Cape Provincial Department of Health* (886/2023) [2025] ZASCA 45; 2025 (5) SA 384 (SCA) (17 April 2025) .

In my view, the decision is sound. It was also endorsed in *Ngubane v Road Accident Fund* and is also consistent with *Endumeni*. This brings me to the key question: are the amendments material?’⁶ [footnotes omitted]

[23] There can be no debate that the amendment by the plaintiff of his particulars of claim from R1 375 400.00 to R2 625 150.71 is substantial. I agree with the observations of Davis J in *T.P.R.*

[24] The consequential adjustments to the documents filed by the defendant as a result of the amendment are limited as set out in rule 28(8)⁷ of the URC. It would be impermissible for the defendant to attempt, by way of an amended plea, to ‘reopen’ the issues of the merits of its previously struck out plea. In this matter, the plaintiff amended the claimed amount in the initial particulars of claim; the consequential adjustment to the defendant's documents would be limited to addressing the new claimed amount.

[25] In addition to agreeing with Davis J with his observations in *T.P.R.*, I am bound by the decisions of *Oliver NO v MEC for Health: Western Cape Provincial Department of Health* (886/2023) [2025] ZASCA 45; 2025 (5) SA 384 (SCA) (17 April 2025) and *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) on the question of whether a material amendment to particulars of claim made after *litis contestatio* has the effect of reopening the pleadings.

⁶ *Oliver NO v MEC for Health: Western Cape Provincial Department of Health* (886/2023) [2025] ZASCA 45; 2025 (5) SA 384 (SCA) (17 April 2025) Para [10] and [11]

⁷ URC 28(8) reads as follows: (8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30.

[26] When this matter served before this Court on 1 June 2026, the 15-day period to allow the defendant to make consequential adjustments to his papers had not lapsed. The period lapsed on 2 June 2026. Thus, the warning by Davis J in *T.P.R.* finds application in this matter. The application for default judgment was not ripe for hearing on 1 June 2026. On 28 June 2026, this Court issued a directive directing the plaintiff to file supplementary heads of argument dealing with the following concerns the Court had noted with the application for default judgment that served before it on 1 June 2026:

- ‘6.1 By amending the claimed amount, was this not a substantial amendment which had the effect of reopening the pleadings and thereby had the result that *litis contestatio* fell away? Whether the “reopening of the pleadings” would also apply in instances where the defendant’s defence had been struck out?
- 6.2 Was the application for default judgment properly before the court on 1 June 2026, in light of the 15-day period for the defendant to make consequential adjustments to its documents only lapsed on 17 June 2026?
- 6.3 Was the service of the set down and subsequent notices on the offices of the defendant by way of email and/or by hand, proper service when one considers the address of service is that of the attorneys Tsebane Molaba Inc, and it does not appear the mandate of the attorneys has been terminated, and the attorneys have not withdrawn as attorneys of record for the defendant?
- 6.4 Was the order of Motha J served on the Tsebane Molaba Inc as the attorneys for the defendant?’

[27] The supplementary heads of argument on behalf of the plaintiff have been received, for which this Court is grateful. It is submitted in the supplementary heads of argument that the reference in paragraph 6.2 of the directive that the 15-day period for the defendant to make consequential adjustments to its

documents lapsed on 2 June 2026 and not 17 June 2026 as indicated in the directive of this Court. Counsel for the plaintiff is correct on this point; the referral to 17 June 2026 in the directive was a typing error.

[28] It is submitted in the supplementary heads of argument of the plaintiff that the conduct of the defendant ‘evidenced a recalcitrant litigant not interested in participating in the matter.’⁸ It is submitted on behalf of the plaintiff that the conduct of the defendant shows no intention to participate in the proceedings, no request to plead to the amended papers and no request for a postponement, etc, it is further submitted that the defendant does not rely on or insist on the implementation of rule 28(8), it is this Court making enquiries concerning the rule.

[29] This Court was further referred to the decision of *Eke v Parsons*⁹ at paragraphs 39 and 40, where the Constitutional Court said the following:

‘...Without doubt, rules governing the court process cannot be disregarded. They serve an undeniably important purpose. That, however, does not mean that courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be adherence to the rules. Not surprisingly, courts have often said “[i]t is trite that the rules exist for the courts, and not the courts for the rules”.

[40] Under our constitutional dispensation, the object of court rules is twofold. The first is to ensure a fair trial or hearing. The second is to “secure the inexpensive and expeditious completion of litigation and . . . to further the administration of justice”. I have already touched on the inherent jurisdiction vested in the superior courts in South Africa. In terms of

⁸ Case Lines, Section 001, Item 2, 001-29, paragraph 2.1.

⁹ [2015] ZACC 30.

this power, the High Court has always been able to regulate its own proceedings for a number of reasons, including catering for circumstances not adequately covered by the Uniform Rules, and generally ensuring the efficient administration of the courts' judicial functions.'

[30] It is further submitted on behalf of the plaintiff that, in insisting on compliance with rule 28(8), when 'all indications are that the Defendant has abandoned such right, will inevitably only have the effect to further delay finalisation of cases, not be in the interests of justice and overburden already overburdened trial rolls.'

[31] The concept of 'interests of justice' is so elastic that it is not capable of precise definition¹⁰ and this Court has no intention of defining it in this judgment. This Court understands the submissions on behalf of the plaintiff quoted in paragraph 30 above to mean that the plaintiff contends that the defendant has waived its rights under rule 28(8).

[32] Waiver is the legal act of abandoning a right on which one is otherwise entitled to rely.¹¹ It is not easily inferred or established. The onus to prove it lies with the party asserting waiver. That party is required to establish that the right holder, with full knowledge of the right, decided to abandon it.¹²

[33] I cannot, with respect, agree with counsel for the plaintiff that the defendant waived its rights under rule 28(8) to make consequential adjustments to its documents. As at 1 June 2026, the defendant was within the 15-day period

¹⁰ *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013) (*Grootboom*) para 22.

¹¹ *SA Eagle Insurance Co Ltd v Bavuma* 1985 (3) SA 42 (A) at 49G-H.

¹² *Laws v Rutherford* - 1924 AD 261 at page 263.

to make such consequential adjustments to its documents, and the inference that it waived this right could, in my view, only be made after 2 June 2026 or before then by the defendant in unambiguous terms communicating to the plaintiff that it waives its rights under rule 28(8). In the application for default judgment that served before this Court, there was nothing to suggest that the defendant communicated its intention to waive its rights under rule 28(8) to the attorneys of the plaintiff or to this Court. The contention on behalf of the plaintiff that the defendant waived its rights under rule 28(8) when the matter served before this Court on 1 June 2026, is misplaced and cannot be sustained.

[34] There was further no application advanced before this Court for condonation of the non-compliance with the rules of the court. Condonation cannot be had for the mere taking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to provide a full explanation for non-compliance with the rules or the court's directions.¹³

[35] Rule 27(3) of the URC reads as follows:

‘(3) The court may, on good cause shown, condone any non-compliance with these rules.’

[36] This subrule empowers the court to condone any non-compliance with the rules and is not confined to non-compliance with rules other than those laying down time-limits.¹⁴ The court's wide powers to condone non-compliance with its own rules are subject to the requirement and safeguard that good cause be shown. It is accepted that ‘good cause’ requires an acceptable explanation for

¹³ *Grootboom*, para 23.

¹⁴ Erasmus: Superior Court Practice - RS 26, 2025, D1 Rule 27-8; *Dalhousie v Bruwer* 1970 (4) SA 566 (C) at 571E.

the non-compliance with the rules of the court. When a party realises that he or she has not complied with a court rule, that party should apply for condonation without delay.¹⁵

[37] Surely the attorneys of the plaintiff should have realised that the date allocated for the hearing of the application for default judgment was within the period of 15 days for the defendant to make consequential adjustments to its documents. In my view, the options available to the plaintiff would have been to (a) abandon the intended amendment; (b) postpone the application for default judgment to a date after the 15-day period for the defendant to make consequential adjustments to its documents; or (c) bring an application for condonation for the non-compliance with the rules of the court which would have required the plaintiff to give the defendant notice of the application before the hearing of the application for default judgment.

[38] The plaintiff, despite this Court's directive indicating its concerns, persists in the view that the application for default judgment was properly before this Court on 1 June 2026. As I have shown above, it was not properly before this Court.

[39] Turning to paragraphs 6.3 and 6.4 of the directive of this Court, and having considered the email communications between the plaintiff's attorneys and the office of the defendant, the office of the defendant having acknowledged receipt of the notice of set down via email and requested additional documents from the plaintiff's attorneys. This Court is satisfied that service of the set down and subsequent notices on the offices of the defendant

¹⁵ *Commissioner for Inland Revenue v Burger* 1956 (4) SA 446 (A) at 449G–H).

by way of email and/or hand, was effective service even though it was not served on the offices of Tsebane Molaba Inc. This Court is further satisfied that despite the order of Motha J not being served on Tsebane Molaba Inc, and service of the order being effected directly on the defendant, the defendant has not been prejudiced by that form of service.

The rule 38(2) order made on 1 June 2026

[40] On 1 June 2026, counsel for the plaintiff moved the rule 38(2) application for the evidence of the plaintiff's expert witnesses to be led by way of affidavit. Having found that the application for default judgment was not properly before this Court on 1 June 2026, what does it mean for the rule 38(2) application which was heard on 1 June 2026?

[41] Practice Directive 19A of the Practice Directives of the North West High Court reads as follows:

- ‘1. A substantive application shall be brought before the Presiding Judge by any of the parties if such party intends to request the Presiding Judge that evidence is required to be adduced on affidavit at any trial or that the affidavit of any witness be read at the hearing.
2. An application in terms of Uniform Rule 38(2) shall be brought before the commencement of the trial, on due notice in terms of Rule 6, to the other parties in the litigation.’

[42] This Court is satisfied that when the application for default judgment was heard on 1 June 2026, the plaintiff complied with Practice Directive 19A (1) and (2) of the Practice Directives of the North West High Court. Just because the

application for default judgment was not properly before this Court, I see no reason to throw out the baby with the bath water. The application under rule 38(2) succeeds. Accordingly, this application stands as a part-heard matter before this Court and will be treated as such.

Costs

[43] The defendant did not take part in the proceedings before this Court on 1 June 2026, for reasons unknown to this Court. It will be in the interests of justice for the costs of 1 June 2026 to be reserved for determination on the date of the further hearing of the application for default judgment.

Order

[44] Resultantly, the following order is made:

1. The application for default judgment heard on 1 June 2026 is postponed to 16 September 2026 for further hearing.
2. The plaintiff is ordered to serve the defendant with a notice of set-down for the further hearing of the application for default judgment no later than 2 September 2026 via email at the following email addresses: S[...] and g[...] or any other addresses found to be relevant for service.
3. The costs of 1 June 2026 are reserved to be addressed on 16 September 2026.

4. The further hearing of the application for default judgment is to serve before Masike AJ in open court on 16 September 2026.

T MASIKE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

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