



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

Case No: 20964/2023

THE ROAD ACCIDENT FUND

APPLICANT

And

ADRIAAN JACOBS

RESPONDENT

Coram: Gxashe, AJ

Heard: 20 July 2026

Delivered: 9 September 2026

Summary: Application to uplift the bar-Rule 27- uniform rules-application on notice-on good cause shown-requires a reasonable and acceptable explanation-for the default-bona fide defence-prospects of success- the applicant failed to show good cause for the failure to file a plea - and has not demonstrated a bona fide defence against the plaintiff (respondent's) claim. Application is dismissed -with costs at party and party scale including counsels' fees on scale B.

ORDER

1. The application is dismissed with costs.
-

JUDGMENT

GXASHE AJ

Introduction

[1] This is an opposed application for the upliftment of bar in terms of rule 27 of uniform Rules Court, brought by the applicant, the defendant in the main action.

Background

[2] On 21 May 2021, the respondent was involved in a motor collision with an unknown vehicle, the driver of which, whose full and further particulars are unknown to the respondent. He then lodged a claim with the applicant on 16 May 2023, and the lodgement documents were served on the applicant by the Sheriff of the Court. On the same day, the applicant returned the lodgement documents and transmitted a letter to the respondent's attorneys advising them to discontinue the practice of delivering the lodgement documents through the Sheriff's office. This

is an opposed application for the upliftment of bar in terms of rule 27 of uniform Rules Court, brought by the applicant, the defendant in the main action.

[3] Following this the respondent issued summons on 22 November 2023, and which were subsequently served upon the applicant on 29 November 2023. Thereafter, on 18 December 2023 the applicant duly served a notice of intention to defend. Having failed to file a plea on 2 April 2024, the respondent served and filed a notice of bar calling upon the applicant to deliver a plea within 5 days of service thereof.

[4] On 30 July 2024, the parties were advised by the registrar of the high court by notice in terms of Uniform rule 37A (6) and (7) that the matter is set down for a pretrial conference on 12 September 2024. Following that, the respondent furnished the applicant with a draft minute for their consideration and input; however, no response was forthcoming and that prompted the respondent to sign the minute unilaterally.

[5] Subsequently, the respondent received pretrial directives to file a pretrial minute whereafter a pretrial meeting was postponed to 11 February 2025, and the applicant was directed to address its failure to attend and or sign the pretrial minute. Having received no response from the applicant, on 9 October 2024 the respondent transmitted correspondence to the applicant, wherein the applicant was reminded to comply with the pretrial directive. On realising that there was no response forthcoming from the applicant, the respondent once again signed a pretrial minute unilaterally and requested the matter to be declared trial ready.

[6] On 26 March 2025, the matter was certified trial ready, and the registrar of this Court directed a notice of set down to the parties indicating that a trial date had been allocated for the matter to be set down on 1 June 2026. On 1 June 2026, the matter was stood down to 2 June 2026 for settlement purposes by agreement. On 2 June 2026, the matter was rolled over until 3 June 2026 by agreement for settlement, and the defence attorney acknowledged that the defendant, applicant herein, was still barred from filing a plea. On 3 June 2026, the applicant served and filed this application to uplift the bar.

Arguments

[7] On behalf of the applicant, Ms. Mothilal argued that section 17(1)(b) of the Road Accident Fund Act 56 of 1996 (the RAF Act) governs the lodgement of claims in cases where the registration of the motor vehicle is unknown. According to her, this section makes provision which required the respondent to lodge a claim with the applicant within two years. Nonetheless, the respondent lodged a claim via the Sheriff on 16 May 2023. On the same day, the Regional Manager returned the documents and addressed a letter to the respondent attorneys requesting them to cease and desist from lodging claims through the office of the Sheriff.

[8] Furthermore, Counsel asserted that the respondent was informed in a letter that the sheriff is a creature of statute and his functions are governed by section 3 of the Sheriffs Act 90 of 1986 (the Sheriffs Act). The letter further stipulated that neither the RAF Act nor any other Act authorises a function for the Sheriff to serve third-party claims on the Road Accident Fund (the RAF) on behalf of legal representatives and/or claimants. Following this, the applicant returned the lodgement bundle to the respondent, and the claim was never registered. According

to counsel, the respondent chose to ignore the letter and only relodged the claim in May 2026, well after the two-year period envisaged by the Road Accident Fund Act. Given this, the applicant intends to raise a special plea of prescription because the claim has since prescribed hence this application. Nonetheless, counsel acknowledged that the applicant may have been negligent in not filing its plea, however given the sound and material reasons, the bar ought to be lifted.

[9] Conversely, the respondent's counsel, Mr. Du Toit, submitted that the applicant filed a notice of intention to defend on 18 December 2023 and only instructed the State Attorney to file its plea on 1 June 2026. According to him, the respondent did not provide any explanation whatsoever for the inordinate delay. In addition, counsel submitted that the applicant does not have authority to prescribe in what manner or by whom lodgement is delivered to its offices. Hand delivery can be made by anyone, and, in this matter, the applicant does not deny receiving the lodgement documentation. Counsel then referred the court to section 24 of the RAF Act and submitted that the Act does not prescribe who may hand deliver lodgement documents to the applicant. In addition, counsel submitted that the applicant's internal directive to refuse to accept hand-delivered lodgement documents does not constitute law or amount to an amendment to the provisions of the RAF Act.

[10] Counsel also referred the court to section 3 of the Sheriffs Act and asserted that the applicant's choice to return the lodgement documents does not negate the fact that lodgement occurred on 16 May 2023. According to counsel, if lodgement occurred on the 16 May 2023, the applicant does not have a defence, and the special plea is bound to fail. Therefore, the question to be determined is not what the applicant did with the lodgement documents, but rather whether the lodgement

occurred on the 16 May 2023. Proof that the documents were hand delivered is confirmed by the sheriff's return of service, and the applicant's irrational decision cannot stand as a reasonable reason that lodgement was not effected on that day. Accordingly, counsel submitted that the applicant's proposed special plea is bad in law and has no prospects of success.

The law

[11] The upliftment of the bar is regulated by Uniform rule 27 which provides as follows:

‘(1) In the absence of an agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

(2) Any such extension may be ordered although the application therefor is not made until after the expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as it seem, meet as to the recalling, varying or cancelling of the results of any time so prescribed or fixed, whether such results flow from the terms of any order or from these Rules.

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

[12] In *Smith v Brummer NO and Another*,¹ the court held that:

‘In an application for the removal of bar the court has a wide discretion which it will exercise in accordance with the circumstances of each case. The tendency of the court is to grant such an application where the applicant has given a reasonable explanation of his

¹ *Smith v Brummer NO and Another* 1954 (3) SA 352 (O) at page 357 para h to 358 para a-b.

delay; the application is bona fide and not made with the object of delaying the opposite party's claim; there has not been a reckless or intentional disregard of the rules of the court; the applicant's action is not ill-founded; and any prejudice caused to the opposite party could be compensated for by an appropriate order as to costs. The absence of one or more of these circumstances might result in the application being refused. Where the delay in filing the pleading is due to the negligence of the applicant's attorney, the court will not on that ground refuse the application. It will refuse it where the negligence or inattentiveness is, in the opinion of the court, of so gross a nature that, having regard to other circumstances, the applicant is not entitled to the indulgence prayed for.'

[13] Rule 27 of the Uniform Rules:

'...deals with the extension of time, removal of the bar and condonation. In terms of rule 27(3) the court may, on good cause shown, condone any non-compliance with the rules. Thus, in order to succeed in this regard, [the applicant] would be expected to show good cause why condonation should be granted for its failure to deliver its plea. Generally, the concept of 'good cause' entails a consideration of the following factors: a reasonable and acceptable explanation for the default; a demonstration that a party is acting bona fide; and that such party has a bona fide defence which prima facie has some prospect of success. Good cause requires a full explanation of default so that the court may assess the explanation.'²

Discussion

[14] In this matter, the evidentiary record establishes that the applicant was duly served with a notice of bar and directed to file its plea within 5 days from the date of service. Despite proper service, the applicant failed to deliver a plea within the prescribed time period, and notwithstanding the respondent's numerous attempts to

² *Ingosstrath v Global Aviation Investments (Pty) Ltd and Others* [2021] ZASCA 69; 2021 (6) SA 352 (SCA) para 21.

engage, the applicant remained unresponsive until this matter was set down for trial on 1 June 2026. As a result of the applicant's deafening silence and failure to engage, the respondent unilaterally signed a pretrial minute on receipt of a directive from the registrar to file the same twice.

[15] What is astounding is the applicant's absolute disregard of the court order, specifically the directive to address its failure to engage meaningfully in the pretrial proceedings in order to curtail the issues and sign the pretrial minutes. The court's directive was served upon the applicant on 9 October 2024, and in the correspondence attached, the respondent reminded the applicant that it had been barred from pleading since 9 April 2024. Notwithstanding this, the applicant ignored the directive and remained in non-compliance with the court's directive and applicable rules for more than two years. This conduct demonstrates a wilful failure to comply with judicial mandates that the applicant is duty bound to protect and the applicable rules.

[16] What heightens the court's concern is the applicant's failure to provide a reasonable and satisfactory explanation for the default. In *Uitenhage Transitional Local Council v South African Revenue Service*,³ 2004 (1) SA 292 (SCA) para 6, the SCA held that:

‘One would have hoped that many admonitions concerning what is required of an applicant in a condonation application would be trite knowledge among practitioners. . . [C]ondonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that if

³ *Uitenhage Transitional Local Council v South African Revenue Service* [2003] ZASCA 76; 2004 (1) SA 292 (SCA) para 6.

non- compliance is time- related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.’

[17] Notably, the applicant’s affidavit fails to address, let alone substantiate, the steps it had taken to ensure compliance with the rules at the earliest reasonable opportunity. These shortcomings were compounded by its counsel’s unsatisfactory explanation from the bar that she did not get instructions from the applicant in that regard. This omission is inexplicable given that when bringing this application, the applicant ought reasonably to have known that establishing a reasonable explanation for the default is a requisite threshold for success in this application. Accordingly, the applicant failed to demonstrate the reasons for its default and this on its own calls to question its bona fides.

[18] What remains is for the court to determine whether the applicant has a bona fide defence to the respondent’s claim. The concept of good cause also entails a demonstration that a party is acting bona fide, and that such party has a bona fide defence which prima facie has some prospect of success.⁴ The minimum that the applicant must show is that his defence is not patently unfounded and that it is based on facts which if proved, would constitute a defence.⁵

[19] In this matter, it was contended on behalf of the respondent that the claim was incorrectly lodged by the sheriff, who does not have the powers in terms of section 3 of the Sheriffs Act to lodge third-party claims. Pursuant to this, a letter was delivered to the respondent advising him that the claim was incorrectly lodged

⁴ Ibid fn 2 para 21.

⁵ *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476-477.

and the lodgement documents were returned to the plaintiff's attorney. The letter the applicant places reliance on reads as follows:

'The above matter refers. The functions of a sheriff are as stipulated in section 3 of the Sheriff's Act No 90 of 1996: "Performance of functions by sheriff- Subject to the provisions of this section, a sheriff shall perform within the area of jurisdiction of the lower or superior court for which he has been appointed the functions assigned by or under any law to a sheriff of that court." Neither the Road Accident Fund Act No 56 of 1996, nor any other Act that we are aware of authorises a function for the sheriff to serve third party claims on the Road Accident Fund, on behalf of legal representatives and or claimants for purposes of section 24 of the Road Accident Act 56 of 1996(*sic*). It is trite and common that a sheriff is a creature of statute. Consequently, kindly cease and desist from continuing with this practice, alternatively advise us of the law in terms of which the function is purportedly authorised. Kindly provide us with the reply within 5 days upon receipt of this letter, failing which we will proceed to take this matter up with the Sheriff's Board.'

[20] It became clear during arguments that the applicant returned the lodgement documents with this letter to the respondent's attorneys. Notably, the applicant did not rely on section 24 (4) (a) of the Road Accident Act to return the documents because this subsection refers to the form and not the manner of service. As a result, it is not clear until now which section other than section 24(4) entitles the applicant to reject the respondent's claim in terms of the Act.

[21] Self-evidently, the letter is silent about the applicant's rejection of the respondent's claim or repudiation of liability. It merely instructed the respondent to desist from instructing the sheriff to lodge claims on behalf of the injured person. Furthermore, the letter afforded the respondent five days within which to furnish a formal response detailing the specific statutory authority permitting delivery of lodgement documents by the sheriff. Despite the respondent's failure to respond to

this letter, the applicant did not take the matter up with the Sheriff's board and/or notify the respondent that the claim is repudiated. Therefore, in my view, it is disingenuous for the applicant to rely on this correspondence as a basis for rejecting the respondent's claim because it is unassailable that the respondent completed the claim form, which amplified his claim.

[22] Section 3 of the Sheriffs Act provides as follows:

‘(1) Subject to the provisions of this section, a sheriff shall perform within the area of jurisdiction of the lower or superior court for which he has been appointed the functions assigned by or under any law to a sheriff of that court.’

[23] The point of departure when interpreting this subsection is to ascertain whether the Sheriffs Act precludes the sheriff from, lodging documents for a claim against the applicant on instructions of the injured person. If one considers the provisions of this section, it limits the sheriff to perform within the area of jurisdiction of the lower or superior court for which he has been appointed and functions assigned by or under any law to the sheriff of that court. Evidently, the Sheriffs Act does not expressly exclude service of lodgement documents to the RAF.

[24] Moreover section 24(1) of the RAF Act provides as follows:

‘A claim for compensation and accompanying medical report under section 17(1) shall-
(a) be set out in the prescribed form, which shall be completed in all its particulars;

- (b) be sent by registered post or delivered by hand to the Fund at its principal, branch or regional office, or to the agent who in terms of section 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing.
- (2)
- (3)
- (4) (a) Any form referred to in this section which is not completed in all its particulars shall not be acceptable as a claim under this Act.
- (5) If the Fund or agent does not, within 60 days from the date on which a claim was sent by registered post or delivered by hand to the Fund or such agent as contemplated in subsection (1), object to the validity thereof, the claim shall be deemed to be valid in law in all respects.’⁶

[25] It is evident from the wording of section 24(1)(b) above that service of lodgement documents shall be sent by post or delivered by hand. In this matter, delivery of the lodgement documents was effected by hand in compliance with the provisions of the Act. The sheriff utilised no alternative method of delivery and thereby fully satisfying the statutory prescripts. Consequently, the crucial question that arises is whether the applicant has the requisite authority to refuse to accept documents delivered in this manner?

[26] In *Mlamli v Johnstone NO and Another*,⁷ the court held that:

‘First, the date of delivery of the claim is the essential first step for the enforcement of any rights of the claimant in terms of the Act. Second, the lodgement is crucial for the claimant because it determines whether or not the claim in the first instance has been

⁶ Section 24 Road Accident Fund 56 of 1996.

⁷ *Mlamli v Johnstone NO and Another* [2024] ZAECMKHC 40; 2024 (4) SA 611 (ECMk) para 34.

submitted timeously. To refuse receipt of the claim, even if it would be rejected in terms of the Act, prejudices the claimant as he would be exposed to the risk of prescription for the claim. In my view, the fund has no authority to refuse to accept the lodgement of documents.’

[27] Furthermore, section 24(b) of the RAF Act does not exclude the sheriff from delivering lodgement documents nor delineate a specific class of persons to effect service on the applicant. When considering the legislative framework of the Act, delivery by the sheriff is proper and falls squarely within the legislative prescripts. Accordingly, the applicant’s reliance upon the administrative directive is misplaced because a directive cannot supersede the clear provisions of the governing statute.

[28] The interpretation put forward by the applicant is thus procedurally unfair because it restricts the interpretation of section 24(b) of the RAF Act to the detriment of the respondent.

[29] Importantly, the court in *Road Accident Fund v Busuku* reflected on the principles relating to the interpretation of the Act and held that:⁸

‘. . .it must be recognized that the Act constitutes social legislation and its primary concern is to give the greatest possible protection to persons who have suffered loss through negligence or through unlawful acts on the part of the driver or owner of a motor vehicle. For this reason the provisions of the Act must be interpreted as extensively as possible in favour of third parties in order to afford them the widest possible protection. On the other hand, courts should be alive to the fact that the fund relies entirely on the

⁸ *Road Accident Fund v Busuku* [2020] ZASCA 158; 2023 (4) SA 507 (SCA).

fiscus for its funding and they should be astute to protect it against illegitimate or fraudulent claims.’

[30] Within the primary context of *Busuku*, the court promotes a broad and liberal interpretation of the RAF Act to ensure the widest possible protection and compensation for those injured as a result of the negligent driving of motor vehicles. At the same time, it highlights the court’s duty to exercise judicial scrutiny to prevent fraudulent claims against the fund thereby safeguarding the integrity of public resources.

[31] Crucially, this application is sought to enable the applicant to raise a special plea of prescription based on the respondent’s alleged failure to lodge the claim within the prescribed two-year period, without traversing the merits of the respondent’s claim. Suffice to say that the applicant does not dispute the respondents claim but relies strictly on the technical form rather than substance. This approach is fundamentally flawed because it fails to consider the nature of the plaintiff’s claim.

[32] In *Seboko v Road Accident Fund*,⁹ the court held that:

‘To my mind, the RAF’s contention is a textbook example of elevating form over substance. The purpose of lodging a claim under s 24 has three fundamental objects, first to notify the RAF of the accident, second, to disclose the nature of the claim, and third, to provide the RAF with an opportunity to investigate the claim before litigation is instituted. It follows as a matter of course that once the RAF has been notified of the accident and the injuries sustained, and has had an opportunity to investigate, the statutory purpose has been served.’

⁹ *Seboko v Road Accident Fund* (1683/24) [2026] ZANWCHC 48 (10 March 2026) para 18.

[33] Viewed in light of the above, the respondent has duly complied with the provisions of the RAF Act by giving the applicant notice of the accident and disclosing the nature of the claim. Upon receiving the notice, the duty to investigate fell upon the applicant and any failure to do so cannot be attributed to the respondent. Given that the applicant failed to object to the validity of the claim within 60 days, the respondent's claim must be deemed as valid as a matter of law.

[34] 'Without a 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.'¹⁰

[35] This underscores the court's determination to preserve access to justice and not to deny a hearing to litigants who genuinely intend to present their cases prematurely. A failure to adopt this approach would bring the administration of justice into disrepute, thereby undermining the integrity and proper administration of justice and the core objectives of the judicial process. Keeping this in mind, it is crucial to note that the interests of justice encompass the rights and obligations of both parties. Accordingly, the court's obligation to safeguard the Road Accident Fund against fraudulent claims does not extend to condoning blatant disregard of procedural rules. Most importantly the applicant failed to comply with the rules at

¹⁰ *Eke v Parsons* [2015] ZACC 30; 2016 (3) SA 37 (CC) para 39.

its own peril. Such non- compliance unduly prejudices a blameless litigant who has not only fully complied with his own obligations but has also sought the Fund to fulfil its statutory obligations.

[36] In conclusion, the court finds that the applicant failed to establish good cause for its failure to file its plea and has not demonstrated a bona fide defence to the plaintiffs (respondent's) claim. Consequently, the application fails and stands to be dismissed.

Costs

[37] The respondent claimed costs inclusive of counsel's fees on scale C due to the applicant's continued disregard of the Uniform rules. In as much as I agree with the respondent in this regard, and while the special plea is without merit, in my mind it was not frivolous and vexatious to warrant a costs order on scale C. The appropriate order in the circumstances should be costs at party and party scale including counsel's fees on scale B.

Order

[38] In the result the court makes the following order:

1. The application is dismissed.
2. Costs at party and party scale including counsel's fees on scale B.

N Gxashe

Acting Judge of the High

Court

APPEARANCES:

For the Applicant:

M Mothilal office of the State Attorney

For the Respondent:

Adv AJ Du Toit instructed by DSC Attorneys