

4. The applicant is ordered to pay the costs of the respondent on the scale as between attorney and client.

JUDGMENT

GARVEY AJ

Introduction

- [1] The applicant is the defendant in a pending foreclosure action brought by the respondent bank. He applies in terms of rules 30 and 30A of the Uniform Rules of Court to set aside the respondent's combined summons in its entirety and seeks condonation for the late delivery of his notice of complaint and of the application itself. The respondent opposes the application and seeks condonation in turn, on a provisional basis, for the late delivery of its answering affidavit. The applicant appeared in person, and counsel appeared for the respondent.

Background

- [2] The background is largely common cause. In October 2004 and October 2007, the respondent lent the applicant R 680 000 and R 200 000 under two home loan agreements, secured by two mortgage bonds over his home, Erf 5[...] H[...] Extension 2 Township, Roodepoort. The applicant fell into arrears. His last payment was made on 24 August 2022, and by 3 May 2024 the arrears stood at R 385 852.36. After notice under section 129(1) of the National Credit Act 34 of 2005, the respondent issued a combined summons on 18 July 2024 claiming R 497 792.91 with interest, an order declaring the property specially executable, a reserve price, and costs.
- [3] The sheriff served the summons on the applicant personally at the property on 30 August 2024. The return records that its nature and contents were explained to him. He gave notice of intention to defend on 11 September 2024. On 7 November 2024 he delivered a notice of complaint in terms of

rules 30 and 30A raising seven complaints, which the respondent's attorneys rejected on 13 November 2024. Nothing followed until a notice of bar on 20 January 2025. At his request the applicant was given until 3 February 2025 to plead. He did not plead, instead, on 4 February 2025 he launched this application.

- [4] The respondent answered on 27 February 2025. After the applicant objected that the affidavit had been commissioned before a commissioner employed by the respondent's former attorneys, a further commissioned affidavit followed on 18 March 2025, with a condonation application on 15 April 2025. The applicant filed no replying affidavit and no affidavit opposing condonation.

The respondent's condonation

- [5] The answering affidavit was due by 4 March 2025 and was some 11 days late. The delay is fully explained. The initial affidavit was delivered in time, but the deponent had unknowingly deposed before a “*disqualified*” commissioner, and the defect was cured within the very 10-day period the applicant's own notice allowed. The delay was short, the explanation is candid, and no prejudice was suggested. Condonation is granted.

The applicant's condonation

- [6] Rule 30(2) required the applicant to deliver his notice of complaint within 10 days of becoming aware of the alleged irregular step, and the application within 15 days after the expiry of the period allowed for removing the alleged complaint. With the summons having been served on 30 August 2024, he had to deliver his notice by 13 September 2024. He delivered it on 7 November 2024, roughly two months late. The application, due by mid-December 2024 at the latest, came on 4 February 2025, a further seven weeks late.
- [7] Condonation is not to be had for the mere asking. A full, detailed and accurate account of the causes of the delay must be given (see *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at

para 6). The degree of lateness, the explanation, the prospects of success and the importance of the case weigh together, but without prospects of success condonation serves no purpose (see *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F). The applicant's explanation, being a lack of funds, a fruitless search for legal assistance, family matters in Eswatini, and a return to South Africa on 27 January 2025, is thin. He gives no dates for his absence and does not explain September to November 2024, when he was in the country, gave notice to defend, and himself having drafted a detailed notice of complaint. He is, however, a lay litigant defending his home, and I make every allowance for that. The decisive question is whether his complaints enjoy any prospect of success. I turn to them.

The complaints

- [8] Rule 30 permits the setting aside of an irregular step. Rule 30A provides a remedy for non-compliance with the rules. Both are procedural tools. An irregular step will be set aside only where it prejudices the complaining party in the further conduct of the case, and even then, the court retains a discretion. Technical objections to less than perfect procedural steps should not, in the absence of prejudice, be permitted to delay the decision of cases on their real merits (see *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 278F-G).
- [9] The first complaint is that the sheriff did not explain the nature and contents of the summons, in breach of rule 4(1)(d). The return of service says the opposite, and it is *prima facie* proof of what it records under section 43(2) of the Superior Courts Act 10 of 2013. A bare denial does not displace it (see *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) at paras 12 - 13). In any event the summons served its purpose. The applicant received it and defended timeously. There is no prejudice. The complaint fails.
- [10] The second complaint, under rule 16(1), was not renewed in the founding affidavit. Rightly so, as the summons identifies the respondent's attorneys.

The third is that a simple summons under Form 9 had to be used because the claim is for a debt or liquidated demand. It is not so confined. The respondent also claims an order declaring the applicant's home specially executable and the fixing of a reserve price under rule 46A, relief that requires pleaded particulars. Form 10 was the correct and a permissible form. Both complaints fail.

- [11] The fourth complaint is that the summons was not signed as rule 18(1) requires. It was signed by René Pieterse, an attorney with the right of appearance in the High Court in terms of section 25(3) of the Legal Practice Act 28 of 2014, and rule 18(1) permits signature by such an attorney alone. The complaint is factually unfounded.
- [12] The fifth and sixth complaints concern the missing first loan agreement and the particularity of the pleading. The particulars of claim plead when, where and by whom each agreement was concluded, explain that the signed first agreement was lost despite a diligent search, and annex an unsigned copy of the standard terms then in use. Rule 18(6) does not compel the impossible. The loss of a written contract does not destroy the cause of action, and its terms may be proved by secondary evidence (see *ABSA Bank Ltd v Zalvest Twenty (Pty) Ltd* 2014 (2) SA 119 (WCC) at paras 9 and 12). The remaining points, being the 2003 date of the standard terms, the arrears calculation, the legibility of annexures, are matters for a plea, a request for clearer copies, or trial. They do not render the pleading irregular. These complaints fail.
- [13] The seventh complaint is non-compliance with rule 46A. The particulars of claim plead the rule 46A framework, draw the applicant's attention to section 26 of the Constitution, and invite him to place his personal circumstances before the court. No writ of execution can issue against his home unless a court, after considering all relevant circumstances, orders it. That judicial oversight still lies ahead, and the applicant will be fully heard when it happens. There is no present irregularity and no prejudice. The complaint fails.

Conclusion and costs

[14] None of the complaints discloses an irregularity that prejudices the applicant in the conduct of his defence. Everything he raises can be raised in a plea. The application, which was launched the day after his extended deadline to plead had expired, and after he had been barred, was in all probability aimed at delay. It has no prospects of success. On the approach in *Melane* that is decisive, and condonation is refused. Even had I granted it, I would have dismissed the application for the reasons given.

[15] Costs follow the result. The mortgage bonds entitle the respondent to costs as between attorney and client in proceedings to enforce its security, and the application was a meritless device deployed to stall a foreclosure. The applicant's lay status does not excuse that. Costs are awarded on that scale. The respondent's condonation application was occasioned by its own commissioning error. Its costs will be costs in the action.

Order

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

1. The late delivery of the answering affidavit of the respondent dated 18 March 2025 is condoned. The costs of the respondent's application for condonation are costs in the action.
2. The application by the applicant for condonation of the late delivery of his notice of complaint in terms of rules 30 and 30A of the Uniform Rules of Court, and of his application in terms of those rules, is refused.
3. The application in terms of rules 30 and 30A of the Uniform Rules of Court to set aside the combined summons issued by the respondent herein under case number 2024-079930 is dismissed.
4. The applicant is ordered to pay the costs of the respondent on the scale as between attorney and client.

**C B GARVEY
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Date of hearing:	8 June 2026
Date of judgment:	9 September 2026
Appearances:	
For the Applicant:	In person
For the Respondent:	M Rakgoale
instructed by	Vezi & De Beer Incorporated