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**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, JOHANNESBURG)**

**Case No: 36536/2019**

**Date of hearing: 13/04/2023**

**Date judgment delivered: 21/04/2023**

**NOT REPORTABLE**

**NOT OF INTEREST TO OTHER JUDGES**

**REVISED**

**IN THE MATTER BETWEEN:**

**ROAD ACCIDENT FUND**

**APPLICANT**

**AND**

**ANTONIE JOHANNES LOURENS**

**RESPONDENT**

**BOTES**

**Neutral Citation:** *Road Accident Fund v Antonie Johannes Lourens Botes* (Case no:36536/2019) [2023] ZAGPJHC 365 (21 April 2023)

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**JUDGMENT**

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## **Strijdom AJ**

1. In this matter the applicant sought an order rescinding and setting aside both orders granted on the 24<sup>th</sup> day of November 2021 compelling the applicant to serve and file a discovery affidavit as well as the order granted on the 11<sup>th</sup> day of April 2022, striking out the applicant's defence.
2. The applicant further sought an order reinstating its defence that was struck out on the 11<sup>th</sup> day of April 2022.
3. In this matter the respondent was granted leave to proceed by way of default judgment, due to the applicant's defence being struck out on the 11<sup>th</sup> of April 2022.<sup>1</sup> The matter was placed before me to proceed with the application for default judgment on the civil trial roll on 13 April 2023.
4. On 13 April 2023 the applicant requested a postponement of the application for default judgment. The application for a postponement was dismissed.
5. On 13 April 2023 the applicant filed an application to rescind the court orders granted on the 24<sup>th</sup> day of November 2021 and the 11<sup>th</sup> of April 2022. The application to rescind the said orders was opposed by the respondent. Both parties argued the application and I reserved judgment.
6. This is an application in terms of Rule 27 of the Uniform Rules of Court and Section 173 of the Constitution, Act 108 of 1996.
7. It was submitted by the applicant that the Notices of Set down in the application to compel and in the application to strike out the defence were not brought to the attention of the relevant officer, nor the attention of the state attorney tasked with representing the applicant in court. It was further stated that the email address:[...], used by the respondent to serve both the

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<sup>1</sup> Caselines: p 021-4

applications to compel and strike out the applicant's defence, does not belong to the officer allocated to deal with this matter and is unknown to the applicant.<sup>2</sup>

8. The applicant requested this court to condone any non-compliance with the Rules in terms of Rule 27, and submitted that it has not deliberately and contemptuously disobeyed the court orders.
9. On the 2<sup>nd</sup> of December 2022, a block settlement was conducted between the respondent's legal representatives, and Brett Phillips (RAF Litigation Manager), Carla Williams (RAF Team Leader) and Alungile Nkomo (Claims Handler). The applicant made the following offer in respect of the following heads of damages:
  - 9.1 Section 17(4)(a) Undertaking: 100%;
  - 9.2 General Damages: R 900 000,00;
  - 9.3 Costs: Taxed on agreed party & party.
10. The balance of the respondent's quantum of damages remains to be determined.
11. The applicant conceded merits on the 25<sup>th</sup> of April 2019, as it was determined by the applicant that the insured driver was the sole cause of the collision.
12. The notice to discover was hand delivered and stamped by the applicant on 6<sup>th</sup> September 2021.<sup>3</sup>
13. The application to compel the applicant to serve a discovery affidavit in the principal action was served physically and electronically on the applicant on the 11<sup>th</sup> of November 2021.<sup>4</sup>

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<sup>2</sup> Caselines: FA 025-9 para 16

<sup>3</sup> Caselines: p 020-12

14. The respondent served a copy of the court order to compel physically on the applicant on 19 January 2022<sup>5</sup>, as well as an electronic copy of the court order on the 21<sup>st</sup> of January 2022.
15. On the 28<sup>th</sup> of March 2022 the respondent served the application to strike out the applicant's defence physically on the applicant<sup>6</sup>. The respondent also served the application electronically on the applicant.<sup>7</sup>
16. In its founding affidavit the applicant did not dispute that both applications were served physically on the applicant.
17. The Court may, on good cause shown, condone any non-compliance with the Rules. This direction must be exercised judicially on consideration of the facts of each case and subject to the requirement that the applicant shows good cause for the default.
18. The applicant, of any relief in terms of Rule 27, has the burden of actually proving, as opposed to merely alleging the good cause,
19. There is an interdependence of, on the one hand, the reasons for and the extent of the omission by the applicant and, on the other hand, the merits of the case. No *bona fide* defence was stated in the applicant's founding affidavit.
20. I am not persuaded that a full and reasonable explanation which covers the entire period of delay was given by the applicant.
21. On a conspectus of the founding affidavit and the merits of this matter, I concluded that there has been a reckless disregard of the Rules of Court and that the application is not *bona fide*, but was made to delay the respondent's

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<sup>4</sup> Caselines: p 020-13 and 020-19

<sup>5</sup> Caselines: p 020-38

<sup>6</sup> Caselines: p 022-33

<sup>7</sup> Caselines: p 022-29

claim. I am further of the view that to grant the indulgence sought will seriously prejudice the respondent.

22. In the result the application is dismissed with costs.

**STRIJDOM JJ  
ACTING JUDGE OF  
THE HIGH COURT  
OF SOUTH AFRICA  
GAUTENG DEVISION  
JOHANNESBURG**

**Appearances:**

**For the Applicant: Madasele M T**

**Instructed by: State Attorneys**

**For the Respondent: Adv Wessels SC**

**Instructed by: Clive Unsworth Attorneys**