27 Extension of time and removal of bar and condonation

(1) In the absence of 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 expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry 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.

[Subrule (3) substituted by GN R235 of 18 February 1966.]

(4) After a rule *nisi* has been discharged by default of appearance by the applicant, the court or a judge may revive the rule and direct that the rule so revived need not be served again.

[Subrule (4) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 2 D1-7 November 1987.]

Commentary

General. Rule 27 provides for the following distinct situations:

(a) in the absence of agreement between the parties, the extension or abridging of any time —
  (i) prescribed by the rules;
  (ii) prescribed by an order of court;
  (iii) fixed by an order of court extending or abridging any time (subrule (1));

(b) the extension or abridging of any time referred to in paragraph *(a)* above before or after the time prescribed or fixed (subrule (2));

(c) the recalling, varying or cancelling of the results of the expiry of any time prescribed or fixed, whether such results flow from the terms of any court order or from the rules (subrule (2));

(d) condonation of any non-compliance with the rules (subrule (3));

(e) the revival of a rule *nisi* which has been discharged by default of appearance by the applicant (subrule (4)). [1]

Good cause is a requirement for any extension or abridging of time and for the condonation of non-compliance with the rules. See further the notes to subrule (1) s v 'On good cause shown' below.

Section 84 of the Magistrates' Courts Act 32 of 1944 affords the High Court, as court of appeal against orders of the magistrate's courts, an unfettered discretion to grant an extension of time for the noting or prosecution of an appeal. The discretion is not in any way restricted by rule 27(1). [2]

Subrule (1): 'In the absence of agreement between the parties.' This subrule clearly envisages that an application for the removal of bar is necessary only in the absence of agreement between the parties. [3]

'The court.' In terms of rule 1 'court' means the High Court as referred to in s 6 of the Superior Courts Act 10 of 2013. A 'court' is to be distinguished from a 'judge', which is defined in rule 1 as 'a judge sitting otherwise than in open court'. Consequently, a judge in chambers or sitting otherwise than in open court is not the court contemplated in this subrule. [4]

'May upon application.' An application founded on this subrule falls within the capability of the court to control and regulate its own proceedings. [5] There is no need to distinguish between an application before *litis contestatio* and one that is brought thereafter. [6] Although a bar may be removed by consent of the parties, there is no obligation on the party who has barred to consent to the removal merely upon tender of wasted costs. [7] If there has been a lengthy delay he is entitled to take up the attitude that the party in default should be required to satisfy the court that relief should be granted. [8] If he opposes the application for relief he may be ordered to pay his own costs or the costs caused by his opposition unless he has placed facts before the court which could reasonably be expected to affect the court's discretion with regard to the granting of such relief. [9]

'On good cause shown.' The notes that follow apply to the requisites for the extension of time under this subrule as well as, *mutatis mutantis*, the requisites for good cause for condonation under subrule (3). [10] The requisites for the abridgement of time are set out in the notes to this subrule s v 'Make an order . . . abridging any time' below.

The requisites for the grant of an extension of time or removal of bar have through the years been expressed in different ways and cases decided under former rules should be used with some caution. [11] Rules in force prior to 1965 required an 'affidavit of merits' and other sufficient grounds for the grant of the application. [12] The requirements under the present subrule have been formulated in different and sometimes contradictory ways. [13] The correct view, it is submitted, is that expressed in *Du Plooy v Anwes Motors (Edms) Bpk,* [14] namely that the subrule requires 'good cause' to be shown. This gives the court a wide discretion [15] which must, in principle, be exercised with regard also to the merits of the matter seen as a whole. [16] This approach applies to all applications which may be brought under the subrule. What does differ is the *quantum* of the assurance required to the effect that there is indeed a defence,

which may vary from case to case. [17] The graver the consequences which have already resulted from the omission, the more difficult it will be to obtain the indulgence. [18] There may also be an interdependence of, on the one hand, the reasons for and the extent of the omission and, on the other hand, the 'merits' of the case. [19]

The courts have consistently refrained from attempting to formulate an exhaustive definition of what constitutes 'good cause', because to do so would hamper unnecessarily the exercise of the discretion. [20] Two principal requirements for the favourable exercise of the court's discretion have crystallized out. [21] The first is that the applicant should file an affidavit

satisfactorily explaining the delay. In this regard it has been held that the defendant must at least furnish an explanation of his default sufficiently full to enable the court to understand how it really came about, and to assess his conduct and motives. [22] A full and reasonable explanation, which covers the entire period of delay, must be given. [23] If there has been a long delay, the court should require the party in default to satisfy the court that the relief sought should be granted, especially in a case where the applicant is the *dominus litis*. [24] It is not sufficient for the applicant to show that condonation will not result in prejudice to the other party. An applicant for relief under this rule must show good cause; the question of prejudice does not arise if it is unable to do so. [25] The court will refuse to grant the application where there has been a reckless or intentional disregard of the rules of court, or the court is convinced that the applicant does not seriously intend to

proceed. [26] The application must be bona fide and not made with the intention of delaying the opposite party's claim. [27] The second requirement is that the applicant should satisfy the court on oath that he has a bona fide defence [28] or that his action is clearly not ill-founded, as the case may be. Regarding this requirement it has been held that the minimum that the applicant must show is that his defence is not patently

unfounded and that it is based upon facts (which must be set out in outline) which, if proved, would constitute a defence. [29]

In most of the authorities a third requirement is also laid down, namely, that the grant of the indulgence sought must not prejudice the plaintiff (or defendant) in any way that cannot be compensated for by a suitable order as to postponement and costs. [30]

In *Junkeeparsad v Solomon* [31] the position was stated as follows: [32]

> 'Factors which usually weigh with a court in considering an application for condonation include the degree of non-compliance, the explanation therefor and an applicant's prospects of success on the merits. (See *Ferris and another v Firstrand Bank Ltd* 2014 (3) SA 39 (CC) para 10; *Federated Employers Fire & General Insurance Company Limited & another v McKenzie* 1969 (3) SA 360 (A) at 362F–G; *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and others* [2013] All SA 251 (SCA) para 11.) In *Valor IT v Premier, North West Province and Others* 2021 (1) SA 42 (SCA) para 38, Plasket JA said that "very weak prospects of success may not offset a full, complete and satisfactory explanation for a delay; while strong merits of success may excuse an inadequate explanation for the delay (to a point)." '

A litigant who asks for an indulgence should also act with reasonable promptitude, be scrupulously accurate in his statement to the court, and other neglectful acts in the history of the case are relevant to show his attitude and motives. [33]

In *Ferris v FirstRand Bank Ltd* [34] the Constitutional Court held that lateness is not the only consideration in determining whether an application for condonation may be granted. It held that the test for condonation is whether it is in the interests of justice to grant it and, in this regard, that an applicant's prospects of success and the importance of the issue to be determined are relevant factors.

In *Smith NO v Brummer NO* [35] it was stated that the tendency of the court is to grant a removal of bar where:

(a) the applicant has given a reasonable explanation for his delay;

(b) the application is bona fide and not made with the object of delaying the opposite party's claim;

(c) there has not been a reckless or intentional disregard of the rules of court;

(d) the applicant's action is clearly not ill-founded, and

(e) any prejudice caused to the opposite party could be compensated for by an appropriate order as to costs.

'Make an order . . . abridging any time.' The requisites for an order to extend any time are discussed in the notes to this subrule s v 'On good cause shown' above. The notes that follow apply to the abridgement of time.

The powers of the court under this subrule, and rule 6(12), to abridge the times prescribed by the rules and to accelerate the hearing of matters should be exercised with judicial discretion and upon sufficient and satisfactory grounds being shown by the applicant. [36] The applicant will have to show good cause why the time should be abridged and why he could not be afforded substantial redress at a hearing in due course. [37] The three major considerations which the court would normally consider sufficient and satisfactory are *(a)* the prejudice that the applicant might suffer by having to wait for a hearing in ordinary course; *(b)* the prejudice that other litigants might suffer if the applicants were given preference; and *(c)* the prejudice that the respondents might suffer by the abridgement of the prescribed times and the early hearing. [38] The fact that a litigant with a claim sounding in money may suffer serious financial consequences by having to wait his turn for the hearing of his claim does not entitle him to preferential treatment. [39]

See further the notes to rule 6(12) s v 'Urgent applications' and 'Must set forth explicitly the circumstances . . . which render the matter urgent' above.

'Any time prescribed by these rules.' The default of a defendant in an action for provisional sentence in delivering a notice of intention to enter into the principal case or in delivering a plea within the period specified in rule 8(11) may be condoned under this subrule. [40]

'By an order of court.' In terms of the definition of 'court day' in rule 1 only court days are to be included in the computation of any time expressed in days fixed by an order of court. Non-court days, in terms of the definition, are Saturdays, Sundays and Public Holidays.

'Upon such terms as to it seems meet.' The order which the court makes must be designed to eliminate any prejudice to any party so as to ensure a fair trial. [41]

If the court removes the bar which has been placed upon the applicant and extends the time for filing a pleading, the applicant can do whatever he would have been entitled to do in terms of the rules. [42]

The court can make such an order as to costs upon an application under the subrule as to it seems meet. An application under the subrule is an application for the grant of an indulgence. [43] The general rule in such cases is that 'the applicant for the indulgence should pay all

such costs as can reasonably be said to be wasted because of the application, such costs to include the costs of such opposition as is in the circumstances reasonable, and not vexatious or frivolous'. [44] If an application for relief under the subrule is opposed the respondent may be ordered to pay his own costs or the costs caused by his opposition unless he has placed facts before the court which could reasonably be expected to affect the court's discretion in regard to the granting of such relief. [45] Thus, in *Nathan (Pty) Ltd v All Metals (Pty) Ltd* [46] the successful applicant was ordered to pay the wasted costs as though the application were an unopposed application for the removal of bar.

Subrule (2): 'Of the results of the expiry of any time so prescribed or fixed.' In *Himelsein v Super Rich CC* [47] the court granted an order attaching certain assets in order to confirm jurisdiction in an action to be instituted. The order provided for the lapse of the attachment in the action was not instituted within 30 days. It was held [48] that the court was entitled to grant, under subrule (1), a retrospective extension of the period of 30 days for the institution of the action, and under this subrule a concomitant order that the lapse of the attachment be cancelled. The subrule also applies whether the results of the expiry of any time prescribed or fixed flow from the terms of any order or from the rules. The conversion of provisional sentence into a final judgment under rule 8(11) is one of such 'results' which may be 'recalled' or 'cancelled'. [49] The subrule therefore caters, as a matter of law, for a default in compliance with rule 8(11). [50]

Subrule (3): 'The court.' See the notes to subrule (1) s v 'The court' above.

'May.' This subrule gives the court a wide discretion. [51]

A taxing master has no power to condone the late filing of a notice of review (or cross-review) of taxation. This is the function of the reviewing judge acting in terms of this subrule. [52]

'On good cause shown.' In order not to hamper or abridge the exercise of this discretion, the courts have consistently refrained from attempting an exhaustive definition of what constitutes good or sufficient cause for the exercise of the discretion. [53]

In *Grootboom v National Prosecuting Authority* [54] the Constitutional Court, with reference to *Brummer v Gorfil Brothers Investments (Pty) Ltd* [55] and *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae*), [56] held that the standard for considering an application for condonation is the 'interests of justice'. In this regard the following was stated: [57]

> 'However, the concept "interests of justice" is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both *Brummer* and *Van Wyk* emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.'

See further the notes to subrule (1) s v 'On good cause shown' above where the requisites for good cause are discussed.

'Condone any non-compliance with these rules.' 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. [58]

An applicant should, whenever he realizes that he has not complied with a rule of court, apply for condonation without delay. [59]

It was held in *Brumloop v Brumloop (2)* [60] that inasmuch as the court is given a discretion to condone any non-compliance with the rules, so also it has a discretion to waive a requirement thereof.

The wide powers of the court to condone non-compliance with its own rules is subject to the requirement, and safeguard, that good cause must be shown. [61] See further the notes to subrule (1) s v 'On good cause shown' and the notes s v 'On good cause shown' to this subrule above.

It has been held [62] that where what has been done amounts to a nullity it cannot be condoned in terms of the subrule but where there is a proceeding or step, albeit an irregular or improper one, it is capable of being condoned regardless of whether the rule which has not been complied with is directory or mandatory and whether there has been substantial compliance or not. The validity of this distinction between an irregular proceeding (which

can be condoned) and one that is a nullity or void (which cannot be condoned) has been doubted: it is artificial and in conflict with the wide discretion afforded by the subrule to condone non-compliance with the rules. [63] The subrule empowers the court to condone 'any non-compliance' with the rules, and the use of the word 'any' emphasizes the absence of any restriction on the powers of the court to do so. [64] There must, obviously, be something to be condoned, an objective manifestation of an intention on the part of a litigant to cause a summons to be issued or to file a pleading or to take some other step in terms of the rules. [65] Once there is such an act or objective manifestation of an intention, any non-compliance with the rules, however serious, can be condoned under the subrule. [66] In other words, by virtue of this subrule none of the provisions of the rules is peremptory. [67]

Non-compliance with the rules was condoned in the following cases:

(i) the absence of the registrar's signature on a summons; [68]

(ii) the use of the wrong form (Form 2 instead of Form 2*(a)*) in notice of motion proceedings; [69]

(iii) the use of the wrong form (Form 9 instead of Form 10) in an action for damages; [70]

(iv) a defective power of attorney; [71]

(v) failure to set out in a summons the full name and occupation of the plaintiff; [72]

(vi) failure to set out in a summons an address for service of documents; [73]

(vii) failure to give notice of attachment in terms of rule 45(8)*(c)*; [74]

(viii) an incorrect reference to the rules in a summons; [75]

(ix) acceptance of a document executed outside the Republic for use in the Republic as duly authenticated; [76] and

(x) bringing review proceedings by way of combined summons instead of notice of motion. [77]

For the grant of condonation and extension of time in appeals, see rule 49(6)*(b)* and the notes thereto below.

Subrule (4): 'The court or a judge.' See the notes to subrule (1) s v 'The court' above as to the distinction between 'court' and 'judge'. This subrule differs from subrules (1), (2) and (3) in that either a court or a judge may revive the rule *nisi* concerned.

'A rule *nisi* has been discharged by default of appearance.' Prior to the insertion of this subrule it was held in *Fisher v Fisher* [78] that rule 27(2) does not empower the court to revive a rule *nisi* which has been discharged or which has lapsed. This subrule, which was inserted in 1987, now gives the court the power to revive such a rule which has been discharged by default of appearance by the applicant. [79] The subrule does not, however, empower the court to revive a rule *nisi* which had lapsed because of the fulfilment of a resolutive condition such as, for example, the failure to have taken a prescribed step timeously. [80] The subrule does not purport to eliminate the lodging of a formal application for a 'revival' nor does it change the powers of the court to rescind a judgment. [81] The High Court has no authority to *mero motu* extend the life of a lapsed rule *nisi*. [82]

The subrule does not override or detract from the rights of the opposing party in the litigation or of third parties, nor does it diminish the need to care for such interests. The subrule must therefore be applied with due regard to the circumstances of

each case and in particular to the effect which the revival of the rule *nisi* will have. [83] In other words, if the rule *nisi* is such as to be revived, once discharged by default, the court may so rule and direct that it need not again be served. That will occur only where there is no possible prejudice. Put differently, if the interests of the parties may be affected, the rule *nisi* is unlikely to be revived. [84]

1 In previous revision services of this work it was submitted that rule 27 did not affect the inherent jurisdiction of the High Court under s 173 of the Constitution to protect and regulate its own process in the interest of justice. On a re-consideration of the submission in the light of, amongst others, the majority decision in *Mukaddam v Pioneer Foods (Pty) Ltd* 2013 (5) SA 89 (CC) at paragraphs [31]–[32] and the decision in *Botha t/a Tax Consulting SA v Renwick* (unreported, GJ case no 2019/35217 dated 13 April 2021) at paragraphs [15]–[16] to the effect that s 173 of the Constitution cannot be used where the rules specifically provide for relief, the submission has been withdrawn in this service.

2 See the notes to s 84 s v 'May . . . extend such period' in Jones & Buckle *Civil Practice* vol I.

3 *Gool v Policansky* 1939 CPD 386 at 390.

4 *Mahomed v Mahomed* 1999 (1) SA 1150 (E) at 1152A–C.

5 See the notes to rule 27 s v 'General' above.

6 *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd* 2000 (3) SA 87 (W).

7 *Gool v Policansky* 1939 CPD 386 at 390.

8 *Gool v Policansky* 1939 CPD 386 at 390.

9 *Gool v Policansky* 1939 CPD 386 at 391.

10 See, in addition, also the notes to subrule (3) s v 'On good cause shown' below.

11 *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 215C.

12 See *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 572C–574G.

13 Most of the cases are considered in *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 215C–217C. In *P L J van Rensburg en Vennote v Den Dulk* 1971 (1) SA 112 (W) Hiemstra J rejected the view expressed in *Nathan (Pty) Ltd v All Metals (Pty) Ltd* 1961 (1) SA 297 (D) that all that the court requires is to be satisfied that the defendant bona fide believes that he has a good defence to the action.

14 1983 (4) SA 212 (O) at 216H–217D; *Legodi v Capricorn District Municipality* (unreported, LP case no 2974/2018 dated 9 October 2023) at paragraph [15].

15 *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 216H–217A.

16 See *Gumede v Road Accident Fund* 2007 (6) SA 304 (C) at 307C–308A.

17 *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 217B.

18 See *Silverthorne v Simon* 1907 TS 123 at 126–7; *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 573D–F; *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 217C.

19 *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 217D.

20 *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 353A; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 357C; *Saraiva Construction (Pty) Ltd v Zululand Electrical and Engineering Wholesalers (Pty) Ltd* 1975 (1) SA 612 (D) at 614E–H; *Van Aswegen v Kruger* 1974 (3) SA 204 (O) at 205C; *Ford v Groenewald* 1977 (4) SA 224 (T) at 225E–G.

21 *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 571F and 572C; *Van Aswegen v Kruger* 1974 (3) SA 204 (O) at 205C; *Ford v Groenewald* 1977 (4) SA 224 (T) at 225G; *Flugel v Swart* 1979 (4) SA 493 (E) at 497G. See also *Venmop 275 (Pty) Ltd v Cleverlad Projects (Pty) Ltd* 2016 (1) SA 78 (GJ) at 91F–G and the authorities there referred to; *Kanivest 3146 CC v Petatype CC* (unreported, GP case no 62487/16 dated 26 February 2021) at paragraphs [34]–[39]; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Legodi v Capricorn District Municipality* (unreported, LP case no 2974/2018 dated 9 October 2023) at paragraph [16]. In *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC) the Constitutional Court, with reference to *eThekwini Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC) and *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC), in dismissing the respondents' applications for condonation, *inter alia*, stated (at 75F–H, 76C–D and 78B–79C):

'The respondents were late in filing their answering affidavits, as well as their written submissions. This delay put a serious hurdle in the way of their quest to be heard in this court: they had to apply for condonation. It is axiomatic that condoning a party's non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has a discretion whether to grant condonation.

The failure by parties to comply with the rules of court or directions is not of recent origin. Non-compliance has bedevilled our courts at various levels for a long time . . .

It is now trite that condonation cannot be had for the mere asking. 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 give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default . . .

I need to remind practitioners and litigants that the rules and court's directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably, this will lead to the orderly management of our courts' rolls, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the everincreasing costs of litigation, which if left unchecked will make access to justice too expensive.

Recently this court has been inundated with cases where there has been disregard for its directions. In its efforts to arrest this unhealthy trend, the court has issued many warnings which have gone largely unheeded . . .

The language used in both *Van Wyk* and *eThekwini* is unequivocal. The warning is expressed in very stern terms. The picture depicted in the two judgments is disconcerting. One gets the impression that we have reached a stage where litigants and lawyers disregard the rules and directions issued by the court with monotonous regularity. In many instances very flimsy explanations are proferred. In others there is no explanation at all. The prejudice caused to the court is self-evident. A message must be sent to litigants that the rules and the court's directions cannot be disregarded with impunity.

It is by now axiomatic that the granting or refusal of condonation is a matter of judicial discretion. It involves a value judgment by the court seized with a matter based on the facts of that particular case. In this case, the respondents have not made out a case entitling them to an indulgence. It follows that the application must fail.'

See also *Cape Town City v Aurecon SA (Pty) Ltd* 2017 (4) SA 223 (CC) at 238G–H; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraphs [10] and [46].

22 *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 353A; *Ford v Groenewald* 1977 (4) SA 224 (T) at 225H. See also *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at 477E–G; *Geldenhuys v National Director of Public Prosecutions* 2009 (2) SA 310 (CC) at 316B–317C; *Laerskool Generaal Hendrik Schoeman v Bastian Financial Services (Pty) Ltd* 2012 (2) SA 637 (CC) at 640H–I; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Mukhinindi v Cedar Creek Estate Home Owners Association* (unreported, GP case no 81830/2018 dated 10 May 2021) at paragraphs [31] and [33]; *Legodi v Capricorn District Municipality* (unreported, LP case no 2974/2018 dated 9 October 2023) at paragraph [16]. The older cases are referred to in *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 571F–H.

23 *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at 477E–G; *Santa Fe Sectional Title Scheme No 61/1994 Body Corporate v Bassonia Four Zero Seven CC* 2018 (3) SA 451 (GJ) at 454G–H; *Kanivest 3146 CC v Petatype CC* (unreported, GP case no 62487/16 dated 26 February 2021) at paragraph [26]; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Ingosstrakh v Global Aviation Investments (Pty) Ltd* 2021 (6) SA 352 (SCA) at paragraph [21]; *Lancaster 101 (RF) (Pty) Limited v Steinhoff International Holding NV* [2021] 4 All SA 810 (WCC) at paragraph [26]; *Member of the Executive Committee Department of Education v Despatch Preparatory School* (unreported, ECB case no 496/2020 dated 16 August 2022) at paragraph [12].

24 *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd* 2000 (3) SA 87 (W) at 93G.

25 *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd* 2000 (3) SA 87 (W) at 95E–F; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [7].

26 *Silverthorne v Simon* 1907 TS 123 at 124; *Ford v South African Mine Workers' Union* 1925 TPD 405 at 406; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Textile House (Pty) Ltd v Silvestri* 1960 (4) SA 800 (W); *Vincolette v Calvert* 1974 (4) SA 275 (E) at 277A–B; *Saraiva Construction (Pty) Ltd v Zululand Electrical and Engineering Wholesalers (Pty) Ltd* 1975 (1) SA 612 (D) at 615A–B; *Burton v Barlow Rand Ltd, t/a Barlows Tractor and Machinery Co; Burton v Thomas Barlow & Sons (Natal) Ltd* 1978 (4) SA 794 (T) at 797D; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]. In *Feldman v Feldman* 1986 (1) SA 449 (T) it was held (at 454I–455C) that the deliberate decision by the applicant to postpone pleading and filing a

counterclaim in anticipation of the coming into operation of amendments to an Act which would confer certain advantages on him, could not be construed as either negligence or wilful default.

27 *Silverthorne v Simon* 1907 TS 123 at 124; *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Ingosstrakh v Global Aviation Investments (Pty) Ltd* 2021 (6) SA 352 (SCA) at paragraph [21].

28 *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 571F, 572C; *Van Aswegen v Kruger* 1974 (3) SA 204 (O) at 205C; *Ford v Groenewald* 1977 (4) SA 224 (T) at 225G; *Flugel v Swart* 1979 (4) SA 493 (E) at 497G; *Santa Fe Sectional Title Scheme No 61/1994 Body Corporate v Bassonia Four Zero Seven CC* 2018 (3) SA 451 (GJ) at 454F–G; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Mukhinindi v Cedar Creek Estate Home Owners Association* (unreported, GP case no 81830/2018 dated 10 May 2021) at paragraphs [31]–[32]; *Legodi v Capricorn District Municipality* (unreported, LP case no 2974/2018 dated 9 October 2023) at paragraph [16].

29 *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 217H. See also *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476–7; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Van Aswegen v Kruger* 1974 (3) SA 204 (O) at 206E; *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 574H–575A; *Broadly NO v Stevenson* 1973 (1) SA 585 (R) at 588A; *Motaung v Mukubela and Another NNO* 1975 (1) SA 618 (O) at 624E–G; *Ford v Groenewald* 1977 (4) SA 224 (T) at 226A–C; *Oostelike Transvaalse Koöperasie Bpk v Aurora Boerdery* 1979 (1) SA 521 (T) at 523D–H; *Flugel v Swart* 1979 (4) SA 493 (E) at 497H; *Mukhinindi v Cedar Creek Estate Home Owners Association* (unreported, GP case no 81830/2018 dated 10 May 2021) at paragraphs [31]–[33]; *Ingosstrakh v Global Aviation Investments (Pty) Ltd* 2021 (6) SA 352 (SCA) at paragraph [21]; *Legodi v Capricorn District Municipality* (unreported, LP case no 2974/2018 dated 9 October 2023) at paragraph [16].

30 *Foster v Carlis and Houthakker* 1924 TPD 247 at 252; *Gool v Policansky* 1939 CPD 386; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *The Master v Zick* 1958 (2) SA 539 (T) at 543A; *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 572D; *Marais v Aldridge* 1976 (1) SA 746 (T) at 752C; *Chasen v Ritter* 1992 (4) SA 323 (SE) at 329I; *Santa Fe Sectional Title Scheme No 61/1994 Body Corporate v Bassonia Four Zero Seven CC* 2018 (3) SA 451 (GJ) at 454F–G; *Mukhinindi v Cedar Creek Estate Home Owners Association* (unreported, GP case no 81830/2018 dated 10 May 2021) at paragraph [33], referring to *Benade v Absa Bank Limited* 2014 JDR 1155 (WCC) at paragraph [10].

31 Unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021.

32 At paragraph [7]. See also *Vacation Import (Pty) Ltd v Bumina; Vacation Import (Pty) Ltd v Ngaleka* (unreported, WCC case nos 3852/2022 and 3855/2022 dated 3 March 2023) at paragraph [13].

33 *Duncan t/a San Sales v Herbor Investments (Pty) Ltd* 1974 (2) SA 214 (T) at 216E–H; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [7].

34 2014 (3) SA 39 (CC) at 43G–44A and the cases there referred to.

35 1954 (3) SA 352 (O) at 358A, followed and applied in *Bester NO v Target Brand Orchards (Pty) Ltd* [2023] 3 All SA 101 (WCC) at paragraph [33]; *Vico Mining (Pty) Ltd v Advance Industrial Solutions (Pty) Ltd* (unreported, GJ case no 2021/20060 dated 8 May 2023) at paragraphs 19–20.

36 *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd* 1981 (4) SA 108 (C) at 112H.

37 *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd* 1981 (4) SA 108 (C) at 110H–111A.

38 *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd* 1981 (4) SA 108 (C) at 112H–113A.

39 *I L & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd* 1981 (4) SA 108 (C) at 113G; *Trustees BKA Besigheidstrust v Enco Produkte en Dienste* 1990 (2) SA 102 (T) at 108D–E.

40 *F O Kollberg (Pty) Ltd v Atkinsons's Motors Ltd* 1970 (1) SA 660 (C); *Kemp v Booysen* 1979 (4) SA 34 (T), overruling *Antares (Pty) Ltd v Chenille Corporation of SA (Pty) Ltd* 1976 (4) SA 140 (W); *Light Wall Erection (Pty) Ltd v De Tweedespruit Farm (Pty) Ltd* 1976 (1) SA 944 (W) at 948H; *Mahabro Investments (Pty) Ltd v Kara* 1980 (2) SA 772 (D).

41 See *Chasen v Ritter* 1992 (4) SA 323 (SE) at 329C.

42 See *Niesewand v Eastern Transvaal Townships Corporation (Pty) Ltd* 1959 (4) SA 750 (T).

43 See *Metje & Ziegler Ltd v Stauch, Vorster and Partners* 1972 (4) SA 679 (SWA) at 683A.

44 *Myers v Abramson* 1951 (3) SA 438 (C) at 455G; see further Cilliers *Costs* paragraph 2.34.

45 *Gool v Policansky* 1939 CPD 386 at 391. See also *Metje & Ziegler Ltd v Stauch, Vorster and Partners* 1972 (4) SA 679 (SWA) at 683A.

46 1961 (1) SA 297 (D) at 301B–302A.

47 1998 (1) SA 929 (W).

48 At 932E–933D.

49 *Mahabro Investments (Pty) Ltd v Kara* 1980 (2) SA 772 (D) at 775A.

50 *Mahabro Investments (Pty) Ltd v Kara* 1980 (2) SA 772 (D) at 775. See also *F O Kollberg (Pty) Ltd v Atkinson's Motors Ltd* 1970 (1) SA 660 (C) and *Kemp v Booysen* 1979 (4) SA 34 (T), not following *Antares (Pty) Ltd v Chenille Corporation of SA (Pty) Ltd* 1976 (4) SA 140 (W).

51 *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Barclays Nasionale Bank Bpk v Badenhorst* 1973 (1) SA 333 (N) at 341E–F; *Chopra v Sparks Cinemas (Pty) Ltd* 1973 (2) SA 352 (D) at 357A; *Marais v Aldridge* 1976 (1) SA 746 (T) at 752C; *Mynhardt v Mynhardt* 1986 (1) SA 456 (T) at 461I–J; *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6]; *Mukhinindi v Cedar Creek Estate Home Owners Association* (unreported, GP case no 81830/2018 dated 10 May 2021) at paragraph [21].

52 *Brivik Bros (Pty) Ltd v Balmoral Sales Corporation (Pty) Ltd* 1978 (4) SA 716 (W) at 718C.

53 *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 353A; *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 357C; *Van Aswegen v Kruger* 1974 (3) SA 204 (O) at 205C; *Saraiva Construction (Pty) Ltd v Zululand Electrical and Engineering Wholesalers (Pty) Ltd* 1975 (1) SA 612 (D) at 614E–H; *Ford v Groenewald* 1977 (4) SA 224 (T) at 225E–G; *Mynhardt v Mynhardt* 1986 (1) SA 456 (T) at 463E–F.

54 2014 (2) SA 68 (CC) at 75H–76C. See also *Minister of Defence and Military Veterans v Motau* 2014 (5) SA 69 (CC) at 79G; *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining & Development Co Ltd* 2014 (5) SA 138 (CC) at 151F; *South African Broadcasting Corporation SOC Ltd v South African Broadcasting Corporation Pension Fund* 2019 (4) SA 608 (GJ) at 635B–636E; See also *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining & Development Co Ltd* [2013] 2 All SA 251 (SCA) at paragraphs [11] and [15]; *Attorneys Fidelity Fund Board of Control v Love* (unreported, SCA case no 170/2021 dated 14 April 2021) at paragraph [11].

55 2000 (2) SA 837 (CC).

56 2008 (2) SA 472 (CC).

57 At 76A–C. See also *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining & Development Co Ltd* [2013] 2 All SA 251 (SCA) at paragraphs [11] and [15]; *Attorneys Fidelity Fund Board of Control v Love* (unreported, SCA case no 170/2021 dated 14 April 2021) at paragraph [11].

58 *Dalhouzie v Bruwer* 1970 (4) SA 566 (C) at 571E.

59 *Commissioner for Inland Revenue v Burger* 1956 (4) SA 446 (A) at 449G–H); *Junkeeparsad v Solomon* (unreported, GJ case nos 37003/2019 and 37456/2019 dated 7 May 2021) at paragraph [6].

60 1972 (1) SA 503 (O) at 504F.

61 *Mynhardt v Mynhardt* 1986 (1) SA 456 (T) at 463H; *Chasen v Ritter* 1992 (4) SA 323 (SE) at 329C.

62 *Simross Vintners (Pty) Ltd v Vermeulen* 1978 (1) SA 779 (T) at 783H; *Krugel v Minister of Police* 1981 (1) SA 765 (T) at 768C; *Nampak Products Ltd t/a Nampak Flexible Packaging v Sweetcor (Pty) Ltd* 1981 (4) SA 919 (T) at 922C; *Minister of Prisons v Jongilanga* 1983 (3) SA 47 (E) at 54A; and see *Minister of Prisons v Jongilanga* 1985 (3) SA 117 (A) at 123G–H.

63 *Mynhardt v Mynhardt* 1986 (1) SA 456 (T) at 462G, 463E–F; *Gouws v Scholtz* 1989 (4) SA 315 (NC) at 320I; *Chasen v Ritter* 1992 (4) SA 323 (SE) at 329D–F.

64 *Mynhardt v Mynhardt* 1986 (1) SA 456 (T) at 463G; *Chasen v Ritter* 1992 (4) SA 323 (SE) at 328H. See also *General Accident Insurance Co South Africa Ltd v Zampelli* 1988 (4) SA 407 (C) at 410B.

65 *Chasen v Ritter* 1992 (4) SA 323 (SE) at 329F–I.

66 *Mynhardt v Mynhardt* 1986 (1) SA 456 (T) at 463G.

67 *Chopra v Sparks Cinemas (Pty) Ltd* 1973 (2) SA 352 (D) at 357B.

68 *Chasen v Ritter* 1992 (4) SA 323 (SE), not following *Noord-Kaap Lewendehawe Koöp Bpk v Lombaard* 1988 (4) SA 810 (NC).

69 *Barclays Nasionale Bank Bpk v Badenhorst* 1973 (1) SA 333 (N); *Mynhardt v Mynhardt* 1986 (1) SA 456 (T); *Gouws v Scholtz* 1989 (4) SA 315 (NC) at 320I; a contrary view was taken in *Simross Vintners (Pty) Ltd v Vermeulen* 1978 (1) SA 779 (T).

70 *Krugel v Minister of Police* 1981 (1) SA 765 (T).

71 *Nampak Products Ltd t/a Nampak Flexible Packaging v Sweetcor (Pty) Ltd* 1981 (4) SA 919 (T). This case was decided before the amendment of rule 7 in 1987.

72 *McGill v Vlakplaats Brickworks (Pty) Ltd* 1981 (1) SA 637 (W).

73 *Minister of Prisons v Jongilanga* 1983 (3) SA 47 (E) and 1985 (3) SA 117 (A).

74 *Marais v Aldridge* 1976 (1) SA 746 (T).

75 *Canale v Canale* 1995 (4) SA 426 (E).

76 *Chopra v Sparks Cinemas (Pty) Ltd* 1973 (2) SA 352 (D) in which it was held (at 357A) that rule 63(4) and this subrule stand side by side and that the one does not exclude the other.

77 *Adfin (Pty) Ltd v Durable Engineering Works (Pty) Ltd* 1991 (2) SA 366 (C).

78 1965 (4) SA 644 (W).

79 In *VLG Accounting CC v Koloni Consulting Enterprise CC* (unreported, EL case no 95/2021 dated 7 September 2021) it was held (at paragraph [31]) that the removal of the case from the roll without extension of the rule *nisi* is essentially the type of issue which rule 27(4) envisages as being subject to revival on application in appropriate circumstances. *Sed quare*.

80 *Williams v Landmark Properties SA* 1998 (2) SA 582 (W). If a rule *nisi* operating as an interim interdict is discharged on the return day, the interim relief comes to an end and the interim interdict is not revived or perpetuated by the noting of an appeal (*SAB Lines (Pty) Ltd v Cape Tex Engineering Works (Pty) Ltd* 1968 (2) SA 535 (C); and see *Ismail v Keshavjee* 1957 (1) SA 684 (T)). Once a rule *nisi* is contested, the applicant is in no better position in other respects than he was when the order was first sought (*Banco de Moçambique v Inter-Science Research and Development Services (Pty) Ltd* 1982 (3) SA 330 (T) at 332B–D; *Ghomesi-Bozorg v Yousefi* 1998 (1) SA 692 (W) at 696C–D)).

81 *Manton v Croucamp NO* 2001 (4) SA 374 (W) at 381C–E.

82 *VLG Accounting CC v Koloni Consulting Enterprise CC* (unreported, EL case no 95/2021 dated 7 September 2021) at paragraph [23].

83 *Ex parte S & U TV Services (Pty) Ltd: In re S & U TV Services (Pty) Ltd (in provisional liquidation)* 1990 (4) SA 88 (W) at 90H–J.

84 *VLG Accounting CC v Koloni Consulting Enterprise CC* (unreported, EL case no 95/2021 dated 7 September 2021) at paragraphs [33], [34], [37] and [45]–[46].