

SOUTH AFRICA / JUDGMENT

Barhuizen N.O and Others v Firststrand Bank Limited t/a First National Bank (2706/2021) [2021] ZAFSHC 278 (3 November 2021)

[2021] ZAFSHC 278

COURT

Free State High Court, Bloemfontein

BEFORE

PAGE AJ

CASE / FILE NUMBER

2706/2021

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case no: 2706/2021

In the matter between:

HGA BARKHUIZEN N.O

First Applicant

RJ CLAASEN N.O

Second Applicant

JE BARKHUIZEN N.O

Third Applicant

HG BARKHUIZEN

Fourth Applicant

and

FIRSTRAND BANK t/a FIRST NATIONAL BANK

Respondent

CORAM: PAGE AJ

HEARD ON: 21 October 2021

DELIVERED ON: 3 November 2021.

- [1] This an application for condonation and upliftment of bar to enable the applicants to file their plea.
- [2] The Respondents have issued summons against the Applicants based on a loan agreement and an acknowledgment of debt. The summons was served on the Applicants during June 2021.
- [3] The Applicants delivered their entry of appearance to defend on 30 June 2021. The Applicants failed to deliver their plea as required by Uniform Rule 22 within 20 days of filing of their entry of appearance to defend. The Respondents delivered a Notice of Bar calling upon the Applicants to file their plea within five days.
- [4] The application for condonation and upliftment of bar is supported by an affidavit by Jan Andries van Aswegen. The reasons for the delay in delivering the plea are attributed mostly to the complications caused by COVID 19. During argument this is conceded by the Respondents, and it is not necessary to deal with the condonation aspect.
- [5] According to the founding affidavit, the plea was finalised on the fifth day before being ipse facto barred and was emailed to the Respondents. On the following day the Applicant's correspondent attempted to serve the plea on the Respondents but were unable to since the Respondent's legal representative and secretary were not in office at 16:08.
- [6] The Respondents informed the Applicants that they were not accepting the late service of the plea. The Applicants thus launched this application.
- [7] The opposition of the Respondents to the application before this court is based thereon that the Applicants have not shown good cause. It is argued that the Applicants have not averred that they have reasonable prospects of success. On this basis it is requested that the application be dismissed.
- [9] In *Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (OPA) Olivier AJ recorded that 'good cause' as set out in rule 27(1) had to be shown by an applicant. As such the Court has a wide discretion in considering an application such as the current one.
- [10] In principle, the discretion should be exercised upon consideration of the merits of the case. In *Gumede v Road Accident Fund* 2007 (6) SA 304 (CPD) at 307 D van Reenen J emphasised that the grant of condonation is a matter of discretion which must be exercised having regard to all the circumstances of a particular case.
- [11] In *Smith No v Brummer* NO 1954 (3) SA 352 (O) at 358A it is stated that the courts have shown a tendency to grant a removal of bar where:
 - 1. The applicant has given a reasonable explanation for his delay.

2. The application is bona fide and not made with the object of delaying the opposite party's claim.
 3. There has not been a reckless or intentional disregard of the rules of the court
 4. The applicant's action is clearly not ill-founded, and
 5. Any prejudice caused to the opposite party could be compensated for by an appropriate order as to costs.
- [12] That list is not regarded as exhaustive, and the factors are not individually decisive but inter-related in the sense that the strength of one may compensate for the weakness in another.
- [13] In *Ferris v Frist Rand Bank Ltd* 2014 (3) SA 39 (CC) at 43 G-44A the Constitutional Court held that to be late is not the only consideration in determining whether an application for condonation may be granted. The Interest of justice is a consideration as well. The applicant's prospect of success is an issue to be considered as well.
- [14] I have considered the papers and what is of importance is that a plea had been served on the Respondents via email on the last day of the bar which shows that the Applicants did not act with intentional disregard and recklessness. It is clear that the Applicants are bona fide.
- [9] The plea filed via email forms part of the papers and I can hardly ignore the plea. From the contents of the plea and as submitted during argument, the Applicants' defence is that the Respondent's claim forms part of a settlement agreement reached between the parties which is averred to have been made an order of court.
- [10] In consideration of the fact that the Respondents have not resisted the reasons submitted for the delay in delivering the plea which was related to COVID-19, and the fact that the applicants have done the utmost to deliver the plea before the lapse of the bar, as well the prospects of success of the defence mentioned in the plea, I am satisfied that good cause has been shown by the Applicants and the application for the removal of the bar may succeed.
- [11] I make the following order:
1. The Application is granted.
 2. Costs are ordered to be costs in the cause.

PAGE AJ

For Applicant: C/O PIETER SKEIN ATTORNEYS

22 PROCTOR STREET

BRANDWAG

BLOEMFONTEIN

For Respondent; SYMINGTON & DE KOK

169 B NELSON MANDELA DRIVE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2021/278.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/barhuizen-no-and-others-v-firststrand-unknown-topic-afshc-2021>

Prepared on 10 October 2026 · Esheria