THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case 1435/2014

In the matter between:

STANDARD BANK OF SOUTH AFRICA LTD	**Plaintiff**
and	
CLOUD 9 SKYLIGHTS AND PATIO SYSTEMS CC	**First Defendant**
IAN ANDREW LOWE	**Second Defendant**
PATRICK O'RIORDAN	**Third Defendant**
MARION O'RIORDAN	**Fourth Defendant**

Coram: Rogers J

Heard on: 18 May 2022

Delivered: 25 May 2022 (electronically at 09h30)

JUDGMENT

ROGERS J:

Introduction

[1] A seemingly straightforward overdraft claim by a bank for just over R129,000 has been allowed, over the last eight years, to sink in a procedural bog. What is before me is an application by the defendants to uplift a bar so that they may plead to the particulars of claim. But it took some time to get here.

[2] The first defendant, Cloud 9 Skylights and Patio Systems CC (Cloud), is sued as the principal debtor. The second defendant Mr Ian Andrew Lowe, the third defendant Mr Patrick O'Riordan, and the fourth defendant Mrs Marion O'Riordan, are sued as sureties. I shall refer to the second to fourth defendants collectively as the individual defendants.

Procedural history

[3] The plaintiff, Standard Bank of South Africa Ltd, issued summons in January 2014. The particulars of claim (particulars) alleged that Cloud opened a current account in August 2011 on the bank's standard terms and conditions. Those terms were attached to the particulars. The plaintiff sought to hold the individual defendants liable on the basis of a suretyship signed in December 2004.

[4] In March 2014 the defendants, acting in person, gave notice of their intention to defend. The plaintiff sought summary judgment, which was opposed. In April 2014 the defendants were given leave to defend. The plaintiff delivered a notice of bar in June 2014, to which the defendants (still in person) responded by serving an "application" of exception and striking-out.

[5] In November 2019, more than five years later, the plaintiff delivered a notice of intention to amend its particulars. I was told from the bar that some of the delay was caused by the fact that Cloud was deregistered and that the plaintiff had to bring an application to restore Cloud to the register. The defendants' present attorneys, Van Eeden Beirowski Inc (VEB), represented Mr Lowe and Mr O'Riordan during 2019 in opposing the restoration application. That application was, however, settled; the respondents withdrew their opposition, and Cloud was restored to the register. Be that as it may, the proposed amendment of November 2019 alleged that Cloud had concluded two business account agreements with the plaintiff, one in May 2004,

the other in August 2011. Details were now furnished of the persons who represented the plaintiff and Cloud respectively. The documents alleged to record the 2004 and 2011 agreements (the 2011 document being a repeat of the one annexed to the original particulars) were attached. The plaintiff continued to rely on the same suretyship.

[6] In December 2019 the individual defendants, represented by VEB, filed an objection to the proposed amendment. It is unclear why VEB did not at that stage include Cloud as a party to the objection; perhaps Cloud had not yet been restored to the register.

[7] The plaintiff did not give effect to the proposed amendment. More than a year later, the plaintiff served another notice of intention to amend dated 26 January 2021. This notice announced that the plaintiff was withdrawing the notice filed in November 2019. The new notice repeated the content of the previous notice about the conclusion of the business account agreements in 2004 and 2011, but then went on to allege that Cloud had operated two current accounts. Additional allegations were made about interest and breach. A certificate of indebtedness in respect of the first account, and the bank statements in respect of the second account, were attached.

[8] On 29 January 2021 the plaintiff's attorneys, De Klerk & Van Gend Inc (DKVG), served the notice of amendment on VEB. In their filing sheet, DKVG identified VEB as the attorneys for the first, second and third defendants (that is, Cloud, Mr Lowe and Mr O'Riordan). The filing notice identified Mrs O'Riordan as unrepresented care of an address which was presumably her home. DKVG instructed the deputy sheriff to serve the notice of amendment on her, which the deputy sheriff did on 16 February 2021. These dates of service are important to the defendants' argument. They contend that the 10-day period for the defendants to object to the amendment in terms of rule 28(2) ran from 29 January 2021, since VEB was acting for all the defendants.

[9] As background to the defendants' contention, the following detail must be added. According to the plaintiff, the respective attorneys at DKVG and VEB had a

telephonic conversation in August 2019, during which the plaintiff's attorney asked whether VEB's mandate included Mrs O'Riordan. The defendants' attorney appeared to be uncertain. It was for this reason that DKVG regarded VEB as acting only for the first three defendants, hence the way in which the notice of amendment of January 2021 was served. According to the defendants, by contrast, the conversation between the attorneys in August 2019 took place in the context of the restoration application. The inquiry about Mrs O'Riordan did not make sense to the defendants' attorney, because Mrs O'Riordan was not a party to the restoration application.

[10] If the 10-day period for objection ran from 29 January 2021, it expired on 12 February 2021. If the 10-day period ran from 16 February 2021, it expired on 2 March 2021. The defendants did not object to the amendment within either of these periods. In terms of rule 28(5), where no objection to a proposed amendment is made, the recipients of the notice are deemed to have consented to the amendment, and the party who gave the notice "may, within 10 days after the expiration of the [period for objection], effect the amendment as contemplated in subrule (7)", that is, by delivering the amended pages of the pleading. Depending on when the 10-day period for objection in this case expired, the further 10-day period for the plaintiff to deliver the amended pages expired on 26 February 2021 or 16 March 2021.

[11] On 10 March 2021, the deputy sheriff served the amended pages on Mrs O'Riordan. On 12 March 2021, DKVG served the amended pages on the first to third defendants care of VEB. The defendants contend that the 10-day period for the plaintiff to serve the amended pages expired on 26 February 2021. Because the amended pages were served late, so the defendants contend, the notice of amendment served in January 2021 lapsed. If the plaintiff wanted to proceed with that amendment, it had to give a fresh notice of amendment and comply with the time limits in rule 28.

[12] The defendants did not, however, promptly take this objection. Nothing was initially heard from the defendants, and so on 15 April 2021 the plaintiff's attorneys drafted a rule 26 notice of bar. On 19 April 2021 the notice of bar was served by the deputy sheriff on Mrs O'Riordan, and on 22 April 2021 DKVG served the notice of

bar on the first to third defendants care of VEB. If the notice of bar was good, the five-day period for the defendants to plead would expire on 30 April 2021.

[13] It was only in reaction to the notice of bar that the defendants took issue with the late delivery of the amended particulars. On 23 April 2021, VEB – who still recorded themselves, as they had done in December 2019, as acting only for the second to fourth defendants – served a notice in terms of rule 30A in which the defendants objected to the delivery of the amended particulars, as well as the service of the notice of bar, as irregular steps. This was based on the contention that no valid amendment to the particulars had been effected. (If correct, this would mean that the only currently valid particulars are the original particulars of January 2014, against which there would be the still-pending exception and striking-out application of June 2014.)

[14] On 30 April 2021, VEB emailed DKVG, seeking a response to the rule 30A notice. DKVG's reply was that, because of the need to serve Mrs O'Riordan separately, the amended pages had been timeously delivered, and that the five-day period for the defendants to file a plea would expire that same day. The defendants complain that DKVG's response was only sent at 16h34, and they impute bad faith to the plaintiff.

The rule 27 application

[15] On 1 June 2021, the defendants delivered the application which is now before me. In the notice of motion, VEB still record themselves as acting only for the individual defendants. However, in the founding affidavit, Mr Lowe states that the application is made by all four defendants. The notice of motion seeks condonation, in terms of rule 27, for the defendants' failure to comply with the time limits contemplated in rule 22 (that is, the rules for filing a plea); that the bar imposed on them by the plaintiff's notice of bar be lifted; that the defendants be allowed to file pleas within 20 days of the Court's order; and that the plaintiff pay the costs of the application in the event of opposition. In his founding affidavit, Mr Lowe repeats that the purpose of the application is to seek the foregoing relief. In regard to the requirement for good cause, he sketches the procedural history, and states that the defendants' failure to plead was not due to wilfulness and that the plaintiff will not be

prejudiced if the defendants are allowed to file a plea within 20 days, as the plaintiff itself has been dragging its feet for seven years.[1]

[16] In regard to the requirement of a bona fide defence, he states the following.

> "20. I deny that I am liable as surety for the amounts owing by the First Defendant to the Plaintiff because of the following reasons:
> 20.1 The surety clause contained in the contract does not comply with the requirements envisaged in section 6 of the General Law Amendment Act 50 of 1956 in that the identity of the creditor, that of the principal debtor, that of the surety, as well as the nature and amount of the principal debt, is not clearly defined in a separate written document.
> 20.2 Further to the above, at the time of the conclusion of the credit agreement between the Plaintiff and the First Defendant the Plaintiff exceeded the maximum credit limit it was authorised to extend to the Defendants.
> 20.3 Never did the Plaintiff furnish the First Defendant or me with notice, or a proposal, of a credit limit increase. Such increase without my consent constitutes reckless credit lending."

[17] In its opposing affidavit, the plaintiff disputes that there was good cause for the defendants' non-compliance or that they have a bona fide defence.

The defendants' submissions

[18] Although the heads of argument on both sides addressed the application as presented, counsel for the defendants began his oral submissions by stating that he would argue only one point, namely that the notice of bar was bad in view of the fact that the amended particulars had not been timeously delivered and that there were thus no amended particulars to which the defendants could be required to plead. I pointed out to him that I did not have before me a rule 30 application to set aside the notice of bar as an irregular step; what was before me was a rule 27 application

[1] In para 19 of the founding affidavit, he formulates these statements with reference to himself, but I assume that he intended them to apply to the other defendants as well.

which assumed the validity of the notice of bar and which asked that the defendants' non-compliance be condoned and the bar be lifted so that they could file a plea. Counsel submitted that I could nevertheless determine the point he wished to argue in the exercise of the Court's inherent jurisdiction.

[19] After making oral submissions on the above point, counsel for the defendants – in a departure from his opening position – made brief submissions in the alternative, in which he argued that the bar should be lifted. In regard to the requirement of a bona fide defence, the only oral submission he made was that the deed of suretyship contained a handwritten amendment to the name of the principal debtor, and this amendment had not been initialled. The deed of suretyship described the principal debtor as follows (the headings of the two boxes were pre-printed, everything else handwritten):

Debtor's full name
~~ONLINE SHELF 3 CC~~ Registration number, if applicable
CK [....]
Change of name: CLOUD 9 SKYLIGHTS AND PATIO SYSTEMS CC

[20] Counsel for the plaintiff submitted that it was not open to the defendants to convert the present application into a rule 30 application directed at the filing of the amended pages and notice of bar. Regarding the rule 27 application, he submitted that there was neither good cause nor a bona fide defence.

The defendants' primary argument: irregularity and inherent jurisdiction

[21] I do not consider that the Court should exercise its inherent jurisdiction in order to decide the primary argument advanced by the defendants at the hearing. Inherent jurisdiction is sparingly exercised, and is generally intended to cater for procedural matters not expressly regulated by the Uniform Rules of Court or to prevent manifest injustice.[2] The Uniform Rules expressly lay down the procedure to

[2] *Phillips v National Director of Public Prosecutions* [2005] ZACC 15; 2006 (1) SA 505 (CC) at para 48; *South African Broadcasting Corporation Limited v National Director of Public Prosecutions* [2006] ZACC 15; 2007 (1) SA 523 (CC) at paras 86-90; *Oosthuizen v Road Accident Fund* [2011] ZASCA 118; 2011 (6) SA 31 (SCA) at paras 17-20; *Molaudzi v S* [2015] ZACC 20; 2015 (2) SACR 341 (CC) at paras 33-4.

be followed by a litigant who considers that the adversary has committed an irregular step. The defendants embarked on the first stage of that process when they delivered a rule 30A notice on 23 April 2021. They should actually have proceeded in terms of rule 30, not rule 30A, since they were not seeking to compel the plaintiff to comply with a requirement of the rules but to impeach, as irregular, two steps which the plaintiff had taken. Nevertheless, they did give the plaintiff 10 days in which to remove the causes of complaint, as would have been required by rule 30(2)(b).

[22] Since the plaintiff did not remove the causes of complaint within the 10-day period, that is by 10 May 2021, the defendants had 15 days in terms of rule 30(2)(c) in which to bring an application to set aside the irregular steps. That 15-day period expired on 31 May 2021. The rules thus expressly regulate how the point which counsel for the defendants wished to ventilate could be placed before a Court for decision. The defendants did not, however, bring a rule 30 application. Instead, on 1 June 2021, the day following the expiry of the time for bringing a rule 30 application, the defendants delivered a rule 27 application. That cannot have been anything but a deliberate choice. The defendants have not even belatedly delivered a rule 30 application. The issue was only pursued – informally, orally and without a request for condonation – in argument on 18 May 2022, nearly a year after a rule 30 application should have been served.

[23] In any event, I do not consider that a litigant's failure to deliver amended pages within the 10-day period specified in rule 28(5) has the guillotine effect for which the defendants' counsel argued. I am willing to assume in the defendants' favour, without so deciding, that service on VEB was service on all the defendants, and that the plaintiff was under a misapprehension in believing that it needed to effect separate service on Mrs O'Riordan.[3] Litigants who have received a notice of amendment are deemed to have consented to it if they do not object within the 10-day period specified in rule 28(2). This deemed consent operates immediately upon the expiry of the 10-day period. Rule 28(5) states that the litigant which gave the notice "may" within 10 days effect the amendment. I accept that this imposes on the

[3] I note, in passing, though, that there was no remonstration from VEB in reaction to DKVG's filing sheets identifying VEB as the attorneys for only the first to third defendants or in reaction to service by the deputy sheriff on Mrs O'Riordan.

litigant an obligation to deliver the amended pages within the 10-day period if it wishes to pursue the amendment.

[24] It does not follow that amended pages delivered outside the 10-day period are a nullity and that the amending party has to start the rule 28 process afresh. After all, the litigants receiving the amended pages might have no objection to the lateness. If they do, they could proceed in terms of rule 30; and, in the face of such an objection, the amending party would be entitled to seek condonation from the Court. In that regard, I agree with Goosen J's analysis of the position in *Becker*,[4] where the learned Judge concluded:

> "In my view the failure by a litigant to act in accordance with its intention to amend pleadings within the stipulated time period does not ipso facto preclude such party from thereafter filing its amendment. All that may be said is that a litigant who conducts himself in that manner exposes himself or herself to the possibility that a party may object on the basis that such constitutes an irregular step. Where there is no such objection there can, in principle, be no objection to the court dealing with the matter on the basis of the amended pleadings."[5]

[25] In the present case, the plaintiff served the amended particulars on all defendants by not later than 12 March 2021. If the defendants objected to the lateness of the amended particulars, they had 10 days in terms of rule 30(2)(b) to give a notice to remove the cause of complaint. That 10-day period expired on 29 March 2021. They did nothing, however, until the notice of bar was served on them on 22 April 2021. By then, it was too late to object to the late delivery of the amended particulars. Quite plausibly, the defendants did not previously object to the late delivery of the amended particulars because there was no conceivable prejudice to them.

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[4] *Becker v MEC For The Department Of Economic Development & Environmental Affairs* [2014] ZAECPEHC 43.

[5] Id at para 21. In the course of his judgment, Goosen J considered and distinguished the authorities which the defendants' counsel in the present case cited, namely *Van Heerden v Van Heerden* 1977 (3) SA 455 (W) and *Fiat SA (Pty) Ltd v Bill Troskie Motors* 1985 (1) SA 355 (O).

[26] Although the rule 30A notice which the defendants delivered on 23 April 2021 was directed at the delivery of both the amended particulars and the notice of bar, the objection to the notice of bar depended for its validity on the soundness of the objection to the delivery of the amended particulars. The objection to the delivery of the amended particulars was significantly out of time. In the absence of a substantive rule 30 application, including condonation for the defendants' failure timeously to raise their objection to the delivery of the amended particulars, the plaintiff's amended particulars were and remain validly part of the pleadings. Any irregularity in their late delivery is irrelevant in the absence of a proper rule 30 application.

The defendants' alternative argument: rule 27

[27] Turning to the rule 27 application, the rule requires "good cause" to be shown. The two main factors in assessing whether good cause has been shown are the explanation for the delay and whether the delinquent party has a bona fide claim or defence.[6] Prejudice to the other party, if condonation were granted, is also a relevant consideration. If I were satisfied that the defendants had a bona fide defence, I would probably exercise my discretion in favour of condonation and lifting the bar, given the litigation history. While the defendants' conduct, particularly between 12 March 2021-1 June 2021, leaves much to be desired, the plaintiff itself did not, before that time, display diligence in advancing the litigation. However, the defendants have not come close to showing that they have a bona fide defence, and this leads to the ineluctable conclusion that the rule 27 application is simply a delaying tactic.

First alleged defence

[28] In regard to the first defence, namely the attack on the validity of the suretyship (a point which would not avail Cloud), the defendants, in their founding affidavit, failed to particularise the complaint, and the heads of argument for the defendants (not drafted by counsel) did not elaborate. The creditor is specified as

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[6] In the context of rule 27, see *Van Aswegen v Kruger* 1974 (3) SA 204 (O); *Benade v Absa Bank Limited* [2014] ZAWCHC 84 at para 10; *Junkeeparsad v Solomon* [2021] ZAGPJHC 48 at para 6. In *Ferris v Firstrand Bank Limited* [2013] ZACC 46; 2014 (3) SA 39 (CC), the Court said that the test for condonation, ultimately, is the interests of justice, and that the delinquent party's prospects of success in the main case is a relevant factor (at para 10). See also *Turnbull-Jackson v Hibiscus Court Municipality* [2014] ZACC 24; 2014 (6) SA 592 (CC) at para 23.

Standard Bank of South Africa Ltd. The sureties are also clearly identified by name and identity numbers.[7] The suretyship covers, up to the maximum amount of R250,000, "all present and future debts of any kind" of the principal debtor to the plaintiff, and thus covers the alleged indebtedness on overdraft to the plaintiff.

[29] As to the description of the principal debtor, section 6 of Act 50 of 1956 requires only that the terms of the contract of suretyship should be in a written document signed by or on behalf of the surety. Although it is customary for parties to initial handwritten insertions in pre-printed contracts, initialling is not necessary in order to achieve compliance with section 6, provided of course that the handwritten insertion, if it is a term of the contract, was on the document when the surety signed it or was later inserted with the surety's authority before the signed document was delivered to the creditor.[8]

[30] Although the defendants have not alleged, in their rule 27 application, that the alteration of the principal debtor's name was made after they signed the suretyship, they did make such an allegation in their affidavit opposing summary judgment, and I am willing to assume this in their favour. One of the terms of a suretyship is the identification of the person who is the principal debtor. The corporate existence of a close corporation does not, however, undergo change when its name changes. The defendants have not alleged that Cloud does not have the registration number stated in the suretyship or that its name was not previously Online Shelf 3 CC. They do not say that, when they signed the suretyship, the close corporation's name was not correctly recorded as Online Shelf 3 CC, and there is material in the record

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[7] The named sureties are Mr Lowe and Mr O'Riordan, the latter being described as married in community of property. Mrs O'Riordan is not named in, and did not sign, the suretyship, and is presumably sued on the basis of the community marriage. No defence in terms of section 15(2)(h) of the Matrimonial Property Act 88 of 1984 has been raised by the O'Riordans, which might be because Mrs O'Riordan gave the written consent contemplated in section 15(2) or because the suretyship was given by Mr O'Riordan in the ordinary course of his profession, trade or business as contemplated in section 15(6). The onus was on the O'Riordans to allege and prove non-compliance with section 15(2)(h) read with section 15(6): *Strydom v Engen Petroleum Ltd* [2012] ZASCA 187; 2013 (2) SA 187 (SCA) at paras 10-16.

[8] See *Jurgens v Volkskas Bank Ltd* 1993 (1) SA 214 (A), dealing with the case where signature precedes the insertions. This decision implicitly recognises that insertions do not need to be separately initialled..

suggesting that in December 2004 this was indeed the first defendant's name.[9] The fact that the corporation may later have changed its name does not invalidate the suretyship. One can disregard what may have been a later internal "correction" which the bank noted on the suretyship. If it were disputed, evidence would be admissible to prove that the first defendant is the close corporation previously called Online Shelf 3 with the registration number stated in the deed.[10]

Second alleged defence

[31] The second defence is that, at the time of the conclusion of the banking agreement between the plaintiff and Cloud, "the plaintiff exceeded the maximum credit limit it was authorised to extend to the defendants". If the defendants are referring to some internal authority within the bank, it is not a point they can take; only the plaintiff itself could complain if one of its officials committed the bank to a contract beyond his or her authority. If the defendants are referring to some limit which they themselves placed on the overdraft which the plaintiff could grant Cloud, they have given no details of the limit and when and how it was communicated to the plaintiff.

[32] While a bank is not obliged, in the absence of prior arrangement, to honour payment instructions which would result in the account being overdrawn, or which would result in the overdraft exceeding an agreed limit, a bank is entitled to treat such payment instructions as a request for further facilities, and the customer cannot

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[9] The material in the pleading file is somewhat confusing as to the first defendant's correct name at any given time. The 2004 application to open a business account gave the close corporation's name as Cloud 9 Skylights & Patio Systems (record 186 and 189). This is also the name used in the 2011 application to open a business account (record 202 and 212). Yet in September 2005, Mr Lowe and Mr O'Riordan signed a vehicle and asset finance suretyship giving the close corporation's name as Online Shelf 3 CC (record at 25). Attached to the plaintiff's original particulars of claim (at record 22-4) is a report apparently issued by the Companies and Intellectual Property Registration Office (CIPRO) on 20 November 2007. The corporation's current name is there given as Cloud 9 Skylights and Patio Systems, but there is a note of a change of name on 20 November 2007, beneath which appears the name Online Shelf 3. This may indicate that until November 2007 the close corporation's official name was Online Shelf 3 CC. In the period 2004-2007 it might have been trading as Cloud 9 Skylights & Patio Systems. The registration number of the close corporation on these and all other relevant documents is the same: CK 2004/029530/23.

[10] *Sapirstein v Anglo African Shipping Company SA Ltd* 1978 (4) SA 1 (A) at 12B-E; *Republican Press (Pty) Ltd v Martin Murray Associates CC* 1996 (2) SA 246 (N) at 251D-G; *Industrial Development Corporation of SA (Pty) Ltd v Silver* 2003 (1) SA 365 (SCA) at paras 9-10. Cf *Van Wyk v Rotccher's Saw Mills (Pty) Ltd* 1948 (1) SA 983 (A) at 990-1.

then be heard to say that it is not liable.[11] As for the sureties, the suretyship stated that their liability would "not be affected by any renewal, change or withdrawal of any facilities, or indulgences, granted by the bank to the debtor".

[33] It appears from documents in the pleadings file that in 2004 Mr Lowe was the close corporation's sole member,[12] and that by not later than November 2007 Mr Lowe and Mr O'Riordan were Cloud's sole members, holding member interests of 70% and 30% respectively.[13] In the 2011 application to open a business account, Mr Lowe and Mr O'Riordan were identified as the close corporation's members,[14] with either of them to have signing powers.[15] A complaint by them that the plaintiff should not have honoured Cloud's payment instructions is spurious.

Third alleged defence

[34] The final defence is that the plaintiff did not notify Cloud or Mr Lowe of a credit limit increase, that the increase was without Mr Lowe's consent, and that it constituted reckless lending. As I have said, Cloud's liability for the overdrawn balance on its account is not affected by whether or not the plaintiff had pre-approved a particular credit limit. It was Cloud's payment instructions which resulted in the account being overdrawn.

[35] As to reckless lending, the defendants have provided no details. In any event, the plaintiff has, in all three iterations of its particulars, alleged that the National Credit Act[16] is inapplicable, having regard to the fact that Cloud is a juristic person and to the thresholds contemplated in section 4(1)(a) of the Act. The defendants have not addressed this at all.

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[11] *Trust Bank of Africa Ltd v Wassenaar* 1972 (3) SA 139 (D) at 142C-143F; *Absa Bank Ltd v I W Blumberg and Wilkinson* 1997 (3) SA 669 (A) at 675I-676E.

[12] He is described as "sole proprietor" in the 2004 application to open a business account – record 188.

[13] See CIPRO report, above note 9 above, at record 23.

[14] Record 203.

[15] Record 204.

[16] 34 of 2005.

Conclusion

[36] It follows that the defendants' application must be dismissed with costs. The application was initially set down for hearing on 24 January 2022. No judge was allocated, apparently because of an absence of a practice note and request for early allocation. The plaintiff seeks the wasted costs of 24 January 2022, submitting that the costs were wasted because of the defendants' failure, as the applicants, to make sure that the case was ready for allocation. The defendants contest this. It matters not, because if the defendants were not at fault, the wasted costs should be costs in the cause (the cause for this purpose being the rule 27 application).

Order

[37] I make the following order:

1. The defendants' rule 27 application is dismissed.
2. The defendants, jointly and severally, must pay the plaintiff's costs in the application, including the wasted costs of 24 January 2022.

O L ROGERS
Judge of the High Court

For the Plaintiff:	Z Haffjee instructed by De Klerk & Van Gend Inc.
For the Defendants:	G Potgieter instructed by Van Eeden Beirowski Inc (the heads of argument having been prepared by Van Eeden Beirowski Inc).