THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 573/2024

In the matter between:

SHOWROOM CENTRE (PTY) LTD **FIRST APPLICANT**

SIYATHEMBANA PROJECT MANAGEMENT & DEVELOPMENT (PTY) LTD **SECOND APPLICANT**

STEPHEN ZAGEY **THIRD APPLICANT**

and

RONALD KAGAN **RESPONDENT**

Neutral citation: *Showroom Centre (Pty) Ltd and Others v Ronald Kagan* (573/2024) [2025] ZASCA 175 (21 November 2025)

Coram: MOCUMIE, KATHREE-SETILOANE and KOEN JJA

Heard: 7 November 2025

Delivered: 21 November 2025

Summary: Civil procedure – leave to appeal – reconsideration in terms of s 17(2)(*f*) of the Superior Courts Act 10 of 2013 of refusal of leave to appeal – whether a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute – applicants applying for a stay of action because costs of previous litigation not paid – applicants also applying for upliftment of the bar – applicants not persisting with stay application save for the costs thereof – whether applicants have prospects of successfully appealing the exercise of the high court's discretion refusing the costs of the stay application – whether applicants required to establish bona fide defence for bar to be uplifted.

ORDER

On application for reconsideration: Referred in terms of s 17(2)*(f)*, for oral argument in terms of s 17(2)(*d*) of the Superior Courts Act 10 of 2013:

1 The application for reconsideration is granted.

2 The application for leave to appeal is dismissed with costs.

JUDGMENT

Koen JA (Mocumie and Kathree-Setiloane JJA concurring):

Introduction

[1] This is an application, pursuant to the provisions of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act), for the order of two justices of this Court, who refused the applicants leave to appeal, to be reconsidered and, if necessary varied and referring the applicant's application for leave to appeal to oral argument in terms of s 17(2)(*d*) of the Act. The application for leave to appeal which was refused by the two justices relates to two orders of the Gauteng Division of the High Court (the high court). The first order dismissed the applicants' claim for the costs of an application to stay an action instituted against them. The second order dismissed their application to uplift the bar to them continuing with the action, after they had become *ipso facto* barred because they elected not to file their plea at that stage.

[2] The application raises three issues for determination. They are: whether a grave failure of justice would result or the administration of justice may be brought into disrepute if the order of the two justices is not reconsidered; whether leave to appeal should have been granted to appeal the high court's order which dismissed the applicants' claim for the costs of the application to stay; and whether leave to

appeal should have been granted in respect of the high court's refusal to uplift the bar.

[3] The applicants are Showroom Centre (Pty) Ltd, Siyathembana Project Management and Development (Pty) Ltd, and Mr Stephen Zagey. They are the first, second, and third defendants respectively in the action. The respondent, Mr Ronald Kagan, is the plaintiff in the action. The parties are referred to, as they are designated in the action before the high court.

Background

[4] The action in the high court is part of an ongoing history of litigation between the parties. This litigation arises from the advance of R1 million by the plaintiff to the first defendant, alternatively, the second defendant. An amount of R220 000 has been repaid in respect of this advance and interest accrued thereon. It is not in dispute that R1 million was advanced and R220 000 was repaid to the plaintiff. In the action the plaintiff seeks to recover the balance outstanding.

[5] The plaintiff previously, during February 2019, instituted an action (the first action) against the first, second, and third defendants and another. The defendants successfully excepted to the plaintiff's particulars of claim and the plaintiff was ordered to pay the costs (the exception costs). An unsuccessful attempt by the plaintiff thereafter to amend his particulars of claim, resulted in a further order for costs (the amendment costs) being awarded against him. The plaintiff then withdrew the first action and tendered the costs thereof (the costs of the first action).

[6] During March 2021, the plaintiff launched an application for the liquidation of the first defendant, based on the same indebtedness. Costs were incurred in respect of an attempt by the plaintiff to have the answering affidavit struck out (the strike-out costs). After the answering affidavit was filed the plaintiff, on 9

November 2021, withdrew the liquidation proceedings. He tendered the strike-out costs and the costs of the liquidation proceedings (the liquidation application costs).

[7] The plaintiff also launched an urgent application to prevent the defendants from executing on his property. The urgent application was subsequently withdrawn and the plaintiff tendered the costs thereof (the urgent application costs).

[8] Bills of costs were taxed, and the allocaturs were endorsed in respect of the exception costs and the amendment costs on 4 May 2021 and 6 September 2021, respectively. The defendants sought to execute on these twice: the first resulted in a partial payment of the outstanding costs; the second yielded nothing, the plaintiff having allegedly advised the sheriff that he had no assets and no money on the premises.

[9] On 17 November 2021, the plaintiff instituted the action which came before the high court and has given rise to the application before this Court. The particulars of claim in this action have not been included in the appeal record before this Court.

[10] The defendants' founding affidavit in the reconsideration application however narrates that the plaintiff in the action alleges that: the payment of the R1 million in 2016 was a loan to the second defendant; the second defendant had undertaken to repay this amount plus interest fixed in an amortization table; the first defendant would be entitled to accept the benefits under the agreement; the plaintiff would receive 5% of the shares in the first defendant; the first defendant accepted the benefits under the agreement and was substituted for the second defendant; and the first defendant made repayments to him from 7 February 2019 until 16 January 2020, leaving a balance owing.

[11] In the alternative, according to the narration, the plaintiff is said to allege that he has a claim against the second defendant on the basis that the first defendant did not accept the benefits under the 2016 loan, and the second defendant remains liable for the loan. In the further alternative, the plaintiff claims against the third defendant personally, based on an alleged fraudulent, alternatively negligent, misrepresentation by the third defendant that the second defendant had accepted and signed the agreement, and that the plaintiff was required to pay the capital amount advanced into a designated bank account.

[12] The defendants delivered a notice to defend the action on 1 December 2021. Their plea was due on 27 January 2022. They failed to file their plea within the period prescribed by the rules. On 13 April 2022, the plaintiff served a notice to plead calling upon the defendants to deliver their plea within five days, failing which they would be *ipso facto* barred. The five days expired on 22 April 2022.

[13] Instead of delivering their plea, the defendants served an application on 21 April 2022 claiming two-fold relief. They sought a stay of the action (the stay application) until such time as the defendants received payment of all the costs which the plaintiff had been ordered, or had tendered, to pay. At the time the application was launched, only the bills of costs in respect of the exception costs and the amendment costs had been taxed. The two taxed bills had not yet been paid in full. The defendants maintain that the plaintiff had placed them under bar before the taxing master could tax the costs of the first action, the strike out costs, the liquidation costs, and the urgent application costs. They contend that the plaintiff's conduct in commencing the action without paying the previous costs was vexatious and an abuse of process.

[14] Apart from seeking a stay of the action, the defendants sought an order, which they anticipated would be required, to uplift the bar, following their failure

to deliver a plea. They asked that the time for delivering any pleadings or notices in terms of the rules of court be extended, and commence running only from the date upon which all the costs and interest, awarded and tendered, even if at that stage not taxed, 'are paid to the defendants, as if the defendants had delivered their notice of intention to defend on such date'.

[15] The defendants' applications were both opposed. Within approximately three weeks after the launch of the stay application, the defendants managed to tax three more bills. The plaintiff paid what remained due in respect of the first two bills that had been taxed before the stay application was brought. He also paid the three bills taxed after the application was launched.

[16] Although the sixth bill of costs had not been taxed, the defendants say they felt that they had to proceed with the matter. This was less than a month after the launch of the stay application. They accordingly advised the plaintiff that: they would no longer seek a stay of the action; he need not file answering papers to their application; he should pay the costs of the stay application up to that point; and he should agree to the upliftment of the bar, extend the time periods for the defendants to take the next step, and proceed with the action.

[17] On 24 May 2022, the plaintiff communicated his refusal to accede to the defendants' proposal, insisting that the defendants were under bar and that he could apply for default judgment unless the court ordered otherwise. The defendants contend that they accordingly had no choice but to proceed with the balance of their application: that is, for the costs relating to the claimed stay of the action; and for an order uplifting the bar and extending the time for delivering further pleadings and notices. While awaiting a date for the hearing of the stay application, the sixth bill of costs was apparently also taxed, and the amount determined to be due was paid.

The proceedings in the high court

[18] The high court identified three issues for determination in the defendants' application: (a) whether the defendants were entitled to the legal costs of the application for a stay; (b) whether the defendants had made out a case for uplifting the bar; and (c) the adjudication of the plaintiff's application for default judgment, based on the defendants being barred. It concluded that: the plaintiff was not vexatious or abusing the court process; the plaintiff was pursuing a genuine claim, but his legal representatives had not properly crafted the pleadings in the previous court processes; the defendants were seeking, as part of the stay application, an upliftment of the bar and an extension of time, based essentially on rule 27 of the Uniform Rules of Court; the defendants had to establish good cause for such an extension of time; and they had failed to do so.

[19] Specifically, the high court found that the defendants had not explained the delay in bringing the stay application and had not set out a bona fide defence. It dismissed the applications for the costs of the stay application, dismissed the application to uplift the bar with costs, and struck the application for default judgment from the roll.

The defendants' contentions

[20] The defendants maintain that a stay application has no prescriptive time period. It could therefore be brought at any stage, and they need not explain any delay. As regards good cause and a bona fide defence, they maintain that their stay application was essentially: first, a pursuit of the right not to incur the costs of litigation and to advance their defences until the previous costs orders had been paid in full; and second, that as there is no exhaustive definition of 'good cause', it would, in the interest of justice, not be fair or appropriate to force a defendant to deal with its defences in a stay application, until the costs had been paid.

[21] They contend that a claim for staying the action and not dealing with their defences until the costs were paid should be flexible enough to handle their circumstances in this case. A court should be able, in retrospect, to review a stay application and, insofar as the defendants have made out a case for it, reverse some, or all, of the steps taken against them, insofar as it is appropriate to do so.

Discussion

The application for reconsideration

[22] The application for leave to appeal against the orders of the high court was placed before the two justices for decision. The application was decided in the absence of a replying affidavit from defendants. The replying affidavit was, at that stage, not yet due – a fact not drawn to their attention. Deciding the application for leave to appeal in the absence of the replying affidavit may result in a grave failure of justice or the administration of justice brought into disrepute, where the replying affidavit could have resulted in the application for leave to appeal being granted. Accordingly, the refusal of leave to appeal falls to be reconsidered. The issue for determination is whether, now that all the affidavits relating to the application for leave to appeal to this Court have been placed before it, leave to appeal the orders of the high court should be granted.

The stay application

[23] The defendants' appeal in respect of the stay lies solely against the refusal by the high court to award the defendants the costs of that application. Apart from that, the appeal has no practical effect or result, as the defendants did not persist with the substantive relief of seeking a stay of the action. In terms of s 16(2)[1] of the Superior Courts Act, when, at the hearing of an appeal, the issues are of such a

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[1] Section 16(2) of the Superior Courts Act 10 of 2013 provides:

'*(a)*(i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have practical effect or result is to be determined without reference to any consideration of costs.'

nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone. Whether an appeal will have any practical effect or result is to be determined without reference to any consideration of costs. The only issue, if leave to appeal was to be granted, would relate to the costs of the stay application. The proposed appeal will, as contemplated by s 16(2), have no practical effect.

[24] But, in any event, regardless of the provisions of s 16(2), the defendants have not established reasonable prospects of success on appeal. A costs order is always within the discretion of a court. It is a narrow discretion, which is to be exercised judicially. It can only be challenged on appeal on very narrow grounds, such as that it was exercised arbitrarily or capriciously, was influenced by wrong principles, was affected by a misdirection on the facts, or could not reasonably have been reached by a court properly directing itself to the relevant facts and principles.[2] An appellate court will not interfere with the exercise of that discretion unless there was a material misdirection by the lower court.[3] The defendants have not demonstrated that the high court's discretion suffered from any such shortcomings, or that another court will impugn the high court's exercise of its discretion.

[25] The high court's refusal of the costs cannot, in any event, be faulted as the stay application lacked merit. Stay applications are not regulated by the Uniform Rules of Court. A stay of proceedings is normally sought either as a remedy at common law or, where applicable, in terms of the provisions of the Vexatious Proceedings Act 3 of 1956.[4] The mere launching of a stay application does not automatically stay proceedings. Proceedings are stayed only when ordered by a court. Whether proceedings should be stayed lies within the discretion of the court.

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[2] *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (6) SA 253 (CC) para 107.
[3] *Zuma v Office of the Public Protector and Others* (1447/2018) [2020] ZASCA 138 (30 October 2020) para 19.
[4] See *Beinash and Another v Ernst and Young and Others* 1999 (2) SA 116 (CC); 1999 (2) BCLR 125 para 16 which confirmed that a stay in terms of s 2(1)*(b)* of that Act would limit the right of access to court protected by s 34 of the Constitution. The defendants did not base their application on the provisions of the Vexatious Proceedings Act.

[26] In *Smit v Venter*,[5] it was held that the principles which underpin the intervention of the courts where the costs of previous proceedings have remained unpaid, are the court's inherent power to prevent vexatious litigation and to prevent an abuse of the process of the court. The judgment emphasized that a court has a discretion, whether to stay proceedings because of unpaid costs. The discretion, in the context of that case, was informed by: whether the party has been ordered to pay costs incurred because of some abuse of the process of the court; whether the party has either deliberately or through carelessness occasioned unnecessary costs; and whether that party has contumaciously refused to pay the costs awarded against him or is efficaciously withholding payment.[6] This list is not exhaustive.

[27] The court held further that the requisites for a stay of proceedings, on the basis of non-payment of previously incurred costs, requires that the further proceedings cover substantially the same grounds as the former proceedings, must be brought truthfully and honestly, and that there be a previous judgment in the applicant's favour. Moreover, the costs must have been taxed and demanded, and the non-payment must result from a wilful refusal by the debtor to make such payment. This is necessary, as a stay would impede a litigant's access to a court, guaranteed by s 34 of the Constitution.[7] There must be a balancing of rights. Although it is prima facie (on the first impression) vexatious to bring defendants before a court a second time on the same or substantially the same causes of action, without paying the costs of the prior litigation,[8] ultimately, whether a stay would be appropriate will depend on the facts of each case.

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[5] *Smit v Venter* (2080/2009) [2014] ZANWHC 8 (20 February 2014) para 8.
[6] The court referred to *Argus Printing & Publishing Co Ltd v Rutland* 1953 (3) SA 446 (C) at 449E.
[7] *Trevor Giddey NO v J C Barnard and Partners* [2006] ZACC 13; 2007 (5) SA 525 (CC); 2007 (2) BCLR 125 (CC) paras 15 and 16; *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Agri SA and Others as Amici Curiae)* 2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC) para 40.
[8] *Western Cape Housing Development Board and Another v Parker and Another* 2003 (3) SA 168 (C) para 11.

[28] A stay was never ordered in this case. The defendants, in order to succeed with their claim for the costs of the stay application, would have to establish that they would probably have succeeded in obtaining a stay order on the basis that proceeding with the action, solely while the costs quantified by the first two taxed bills only had not yet been paid, was vexatious or that the plaintiff had otherwise abused the process. The further bills in respect of the tendered costs that were not yet taxed, could not be relied upon by the defendants for a stay, because the extent of the plaintiff's liability, in respect of those bills, had not yet been quantified when the stay application was launched.

[29] The defendants have proceeded from the premise that as long as any portion of the taxed costs remained unpaid, that, *per se* (in itself), entitled them to a stay of the action. That approach proceeds from a conceptually flawed premise. Unpaid costs, in respect of similar proceedings, only prima facie points to proceedings being vexatious. The costs of previous proceedings, even if substantially similar, might remain unpaid for a variety of reasons. The fact that the costs have remained unpaid, will not inevitably result in a stay of proceedings.

[30] The application for a stay should reasonably be preceded by a demand that if the unpaid costs that are due are not paid, an application for a stay of the proceedings shall follow. No such demand was made. Insofar as it was contended that the application for the stay itself constituted such a demand, it is significant that once the stay application was brought, the outstanding costs were paid in full within a reasonable period thereafter. Constituting the stay application as the demand, is to introduce an unnecessary process and costs, which should not be recoverable, as a letter of demand would have sufficed.

[31] But, even if the plaintiff had properly been placed in mora with regard to payment of the outstanding balance of the taxed costs, that also does not mean that the action was vexatious or would have been stayed. The argument that the action

was vexatious because it was simply a repeat of the first action, cannot be determined with certainty. The particulars of claim in the action have not been included in the record placed before this Court. A comparison of the causes of action pleaded in the two actions therefore cannot be undertaken. It was the responsibility of the applicants to place before this Court whatever documents were required to persuade this Court that the stay application would have been successful. They have not done so.

[32] But, even assuming in favour of the defendants that the proceedings were substantially similar, the plaintiff explained his reasons for withdrawing the first action, in respect of which the taxed costs remained outstanding when the stay application was launched. He states that his previous attorneys and counsel, who had prepared the pleadings in the first action, had not done so properly. On consideration of the particulars of claim in the first action, that conclusion is not misplaced.

[33] Due to the exception taken and the resistance to the pleadings in the first action and the liquidation application, the plaintiff decided to start afresh with a new legal team, at considerable expense. That was, in the circumstances, a prudent and reasonable course of conduct. He has paid all the costs related thereto.

[34] The defendants also suggest that the plaintiff was deliberately obstructive and sought to avoid payment of the outstanding costs, by untruthfully advising the sheriff that he had no money and no assets on the property. This is disputed by the plaintiff. Being the respondent in the stay application, his version, in the event of a material dispute, must prevail.[9] The defendants' accusation is not warranted.

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[9] *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd* [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 at 638D.

[35] The sheriff's return purported to be a *nulla bona* return. Such a return is dependent on whether the execution debtor owns sufficient disposable property. Disposable property does not include bonded immovable property. The plaintiff's version is that not all the immovable property was owned by him only, that the property was mortgaged and therefore not disposable, and further, that his bank accounts had been frozen. The defendants have not, on the accepted test, established that there was willfulness, consistent only with the plaintiff proceeding vexatiously, in instituting and pursuing the action.

[36] The stay application would not have succeeded. The plaintiff's conduct in paying the outstanding taxed costs was not a capitulation and concession that the stay application was correctly brought. The defendants have not established reasonable prospects of success in appealing the high court's refusal of the costs of the stay application.

The application to uplift the bar

[37] Barring a litigant from pleading is a unique remedy provided in terms of rule 26 of the Uniform Rules of Court.[10] Lifting a bar and extending the time periods for the filing of further pleadings and notices, is regulated by rule 27. The defendants rightly accepted that they would be required to apply for the bar to be lifted, even if their stay application succeeded. They would otherwise not have asked for that relief.

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[10] Rule 26 provides:
'Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be ipso facto barred. If any party fails to deliver any other pleading within the time laid down in these Rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and ipso facto barred: Provided that for the purposes of this rule the days between 16 December and 15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading.'

[38] Rule 27(1) provides:

'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.' (Emphasis added)

Good cause requires a reasonable and acceptable explanation for the default and that on the merits, the defendants have a bona fide defence which prima facie carries some prospect of success.[11]

[39] As regards an explanation for the delay in delivering their plea, the high court referred to the following paragraph in *Ingosstrakh v Global Aviation Investments (Pty) Ltd and Others*:[12]

'With regard to the explanation for the default, there are two periods of default which Ingosstrakh must explain for its failure to deliver its plea. The first is before the notice of bar was served on it, and the second relates to the period after the bar was served . . .'

[40] The high court correctly concluded that the defendants had failed to proffer any explanation for not delivering their plea during the period ending 27 January 2022, when the plea was due, until 13 April 2022, when the plea still had not been delivered and the notice of bar was served. During that period, the defendants were not under bar, although a notice of bar could have been filed at any stage after 27 January 2022. Once the notice of bar was filed and the defendants had not responded and became *ipso facto* barred, they had to explain why they had become barred and advance good cause to uplift the bar and extend the time limits for filing a plea. Central to that enquiry is whether they have a bona fide defence.

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[11] *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764I-765D; *Colyn v Tiger Foods Industries Limited t/a Meadow Feed Mills (Cape)* 2003 (2) All SA 113 (SCA); 2003 (6) SA 1 (SCA) para 11.
[12] *Ingosstrakh v Global Aviation Investments (Pty) Ltd and Others* [2021] ZASCA 69; 2021 (6) SA 353 (SCA); [2021] 3 All SA 316 (SCA) para 22.

[41] The defendants' belief regarding the effect their stay application might achieve, and the basis on which it might be achieved, is not a defence to the plaintiff's action. It might explain why they did not plead before they were barred, but by following the strategy they did, once they were barred, they had to satisfy the requirements for the lifting of the bar, including establishing that they have a bona fide defence to the plaintiff's claim. Litigation is often about making difficult choices.[13]

[42] The defendants' motivation for not setting out a bona fide defence is encapsulated in the following: If a defendant is entitled to a stay of the proceedings, a plaintiff should not be able to capitalize on the steps taken to compel the defendant to act before the stay application is heard, as this will undermine the purpose of the stay application itself. If entitled to a stay of proceedings, a defendant should also benefit from the extended time periods, which would only begin to run after the plaintiff has paid the previous costs. Where a plaintiff capitulates in response to a stay application, the defendant should not be put in a worse position. Therefore, where this happens, it will only be fair and appropriate for a court to uplift any bar that the plaintiff has put in place in the interim, and to extend the defendant's time periods to run from the date when the plaintiff paid the previous costs orders.

[43] The basic difficulty with this proposition is that the plaintiff did not capitulate on the stay application. He paid the costs on which the defendants based their stay application in the belief, whether erroneous or otherwise, that this was necessary for his action to continue or to avoid further delay, which he wished to avoid. That is not consistent only with a concession that the stay application was well founded in the first place.

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[13] *S v Dlamini, S v Dladla and Others; S v Joubert; S v Schietekat* 1999 (4) SA 623; 1999 (7) BCLR 771 para 94.

[44] Furthermore, as concluded above regarding the costs of the stay application, the stay application was unlikely to succeed. In the light of that conclusion, the defendants' election not to deliver a plea was not justified and placed them at the mercy of the requirements of rule 27. By not pleading any bona fide defence they may have to the action, the defendants did not satisfy the requirement of good cause. In the absence of a bona fide defence to the plaintiff's claim, there would be no purpose in lifting the bar.[14] It would simply result in the continuation of a contested action where there is no valid defence to the plaintiff's claim. That is why the defendants had to satisfy the court that they had a bona fide defence to the plaintiff's claim.

[45] In the alternative, the defendants submitted that it was unnecessary for them to deal with their defences in the founding affidavit, as the plaintiff, in his answering affidavit, had alluded to them. These defences, they say, should be considered in context, as they were previously raised and were successful in defeating an application for summary judgment and the liquidation application.

[46] I disagree. It is not required of a court to have to trawl through documents and annexures in other proceedings to discern the facts supporting a requirement which a party to the litigation was required to establish. In any event, what the plaintiff alluded to were conflicting 'defences' previously advanced in the affidavit opposing summary judgment in the first action and the answering affidavit in the liquidation application. The affidavit opposing summary judgment contained an admission of liability. The affidavit opposing the liquidation of the first defendant sought to retract the admission in the summary judgment opposing affidavit and advance other grounds in defence, some of which were peculiar to liquidation

[14] In *Madinda v Minister of Safety and Security, Republic of South Africa* [2008] ZASCA 34; 2008 (4) SA 312 (SCA); [2008] 3 All SA 143 (SCA) para 12 this Court, in a slightly different context rhetorically asked: 'what can be achieved by putting the court to the task of exercising a discretion to condone if there is no prospect of success?'

proceedings. That does not satisfy the requirement of setting out a bona fide defence which, if established, will constitute a defence to the plaintiff's claim.

[47] Ultimately, it is not in dispute that the plaintiff advanced R1 million to the first or second defendant, represented by the third defendant. The plaintiff received a 5% shareholding in the first defendant, as he was entitled to in terms of their agreement, confirming the implementation of their agreement. He also received various repayments in respect of capital and interest from the first defendant as partial repayment of the amount advanced. He seeks to recover the balance owing from the defendants jointly, alternatively separately, or in the alternative, on a number of bases. The defendants were required, having allowed themselves to become barred with full knowledge and acceptance that they would have to apply to uplift the bar, to disclose their bona fide defence.

[48] The high court cannot be faulted for concluding that the defendants had failed to make out a case for lifting the bar and an extension of time to file a plea. The defendants remained barred from taking any further steps in opposition to the plaintiff's claim, as formulated.

The default judgment

[49] There is no cross appeal in respect of the order of the high court striking the application for default judgment from the roll. It is accordingly not considered.

Order

[50] Having reconsidered the issue whether leave to appeal the order of the high court should have been granted, it is clear that the defendants have not established grounds for such leave to be granted, as they do not have reasonable prospects of

success. Nor is there any other compelling reason why leave to appeal should be granted.[15] The following order should therefore follow:

1 The application for reconsideration is granted.

2 The application for leave to appeal is dismissed with costs.

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P A KOEN

JUDGE OF APPEAL

[15] Section 17 of the Superior Courts Act. *The Mont Chevaux Trust (IT 2012/28) & Tina Goosen and 18 others* (LCC14R/2014) para 6.

Appearances

For the appellants:	W Strobl
Instructed by:	Andrew Garratt Incorporated, Johannesburg
	Willers Attorneys, Bloemfontein
For the respondent:	M C Scheepers
Instructed by:	Edelstein Farber Grobler Incorporated, Johannesburg
	MM Hattingh Attorneys Incorporated, Bloemfontein.