



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 41
KKD-A189-24**

Sheriff Principal Gillian A Wade KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the appeal in the cause

SAUL MWAMBA

Pursuer and Appellant

against

MUHAMMAD ANEES AND NAJMA ANEES

Defenders and Respondents

**Pursuer and Appellant: Party
Defenders and Respondents: Party**

13 March 2026

Introduction

[1] This appeal relates to a dispute about the fixtures and fittings which were within shop premises known as “Shop N Save”, Main Street, Methil in Fife. The respondents leased the shop premises to the appellant who operated the business from July 2005 to 30 July 2016 when was sequestered. After his sequestration the appellant’s estate vested in his trustee in sequestration. It is not disputed that on 18 August 2016 an agent acting for the trustee in sequestration attended at the shop premises and met with the first respondent. On that date an arrangement was entered into, the terms of which are disputed. However the outcome

was that the appellant's interest in the shop premises passed from the appellant's trustee in sequestration to the respondents who also retained the fixtures and fittings. The appellant avers that the respondents later sold the fixtures and fittings and retained the proceeds of sale. His position is that the arrangement covered only the stock in the shop and excluded the fixtures and fittings. The respondents' position is that the appellant's trustee in sequestration discharged any further right to the fixtures and fittings.

[2] The appellant claims that he is entitled to payment from the respondents in respect of the sale of the fixtures and fittings from the shop premises, plus interest.

Procedural background

[3] The appellant raised an action against the respondents at Kirkcaldy Sheriff Court on 26 August 2024 seeking decree for payment in respect of three purported heads of claim, namely:

- (1) Breach of lease agreement.
- (2) Fraudulent appropriation of his sequestrated assets.
- (3) Breach of fiduciary duty of care.

[4] The appellant lodged certificates of intimation upon the respondents on 8 October 2024, service having been effected on the respondents on 23 September 2024.

The respondents lodged a notice of intention to defend on 14 October 2024, and defences on 28 October 2024. On 26 December 2024, in advance of the options hearing, the respondents lodged a note of basis of preliminary plea (rule 22 Note) arguing, amongst other things, that the appellant's claim had prescribed in terms of section 6 and Schedule 1 of the Prescription and Limitation (Scotland) Act 1973. The appellant did not lodge a rule 22 Note.

On 7 January 2025 a diet of debate was assigned and proceeded on 7 April 2025.

[5] However before that debate took place the appellant lodged motion 7/2 of process seeking decree by default. His position then, as now, related to the capacity in which the defences had been lodged. He maintained that because the defences lodged on behalf of the respondents referred to them as directors of Shop & Save Limited, with whom he had no contractual relationship, rather than as individuals the defences were incompetent.

[6] That motion called before Sheriff MacRitchie on 1 April 2025. The appellant appeared in person, but the hearing was otherwise conducted by Webex. The sheriff refused the appellant's motion on the grounds that it had no basis in fact or law. He issued a detailed interlocutor which sought to amend a number of defects in the closed record which had no doubt arisen because the appellant, who was responsible for lodging the same, was a party litigant. He thereafter continued the matter to the debate previously assigned for 7 April 2025. That debate was to be in respect of the respondent's second, third and fifth preliminary pleas. The renumbered fifth plea-in-law was to the effect that the claim had prescribed.

[7] It became clear to me during the course of the appeal proceedings that the appellant sought to appeal this decision of Sheriff MacRitchie immediately but was advised he could not do so. That advice was correct because he had not sought leave and the decision was not a final judgment.

[8] The matter proceeded to debate before Sheriff Borthwick KC. After hearing parties and considering their written submissions he issued an interlocutor of 7 April 2025 in terms of which he sustained the respondents' fifth preliminary plea and granted decree of absolvitor with expenses in favour of the respondents, thereby disposing of the action.

Grounds of appeal

[9] Following the debate the appellant lodged a Note of Appeal. This sought to bring under review the interlocutors of 1 April and 7 April 2025. The grounds of appeal advanced in that note addressed the sheriff's decision on prescription and the previous decision to refuse the appellant's motion for decree by default. Following receipt of the Note of Appeal a report for this court was sought and obtained from Sheriff Borthwick KC but not from Sheriff MacRitchie.

[10] First orders were granted on 29 May 2025, and the matter was considered by the procedural appeal sheriff on 24 June 2025 and appointed to Chapter 8 procedure. On 27 June 2025 having considered the papers then available I ordered that the appeal should proceed by way of written submissions to be lodged by 31 July 2025. However on 26 June 2025 the appellant lodged motion 3/1 of the appeal process in terms of which he sought to sist the appeal for a period of 28 days to allow him to make necessary adjustments to the grounds of appeal. In particular he indicated that in relation to the interlocutor of 7 April 2025 the sheriff had not provided reasons for his decision and he was unable to understand both the reasoning and the decision.

[11] It is clear that Sheriff Borthwick's note had been provided in response to the lodging of the Note of Appeal and was sent to the appellant on 18 June 2025 by first class post. On the basis that the appellant is a party litigant and was clearly becoming confused by the procedure I granted the motion to sist, which was unopposed by the respondent. In the meantime the agent acting for the respondent sadly passed away and his firm could no longer undertake court work. The respondent therefore required time to obtain new representation and indicated by way of email correspondence dated 6 August 2026 that a

new agent had been identified. I therefore recalled the sist and assigned a procedural hearing and a peremptory diet to call by way of Webex on 29 August 2025.

[12] On 24 July 2025 the appellant lodged a further Form 6.2 headed “Note of Appeal”.

That note was marked as “Adjusted” and was in substantially different terms from his original note, focussing only on the interlocutor of 1 April 2025 rather than the decision of 7 April 2025. The grounds of appeal are related to what the appellant describes as the “defendants’ identity”. In this adjusted Note of Appeal the grounds can be summarised as follows:

- (a) There was no contractual relationship between the pursuer and the defenders because there was a difference between the individuals named in the lease and those on whose behalf defences had been lodged.
- (b) and (c) The lease was between Mr Muhammed Anees and Mrs Najma Anees as individuals.
- (d) The defences designed the defenders as two out of three directors of Shop & Save Limited which is a registered company.
- (e) The defences were therefore lodged on behalf of a party other than those against whom the appellant had raised the proceedings.
- (f) and (g) The client on whose behalf the solicitor lodging the defences was acting was Shop & Save Limited and not Mr and Mrs Anees as individuals.
- (h) The defences were therefore irrelevant and incompetent.
- (i) - (p) Expand on arguments that these are two distinct legal personalities and the consequences thereof.

The appellant also made certain observations regarding conduct of the Webex hearing and maintains he was not able to speak.

[13] Following the hearing the appellant wrote to the sheriff clerk asking for a note of Sheriff MacRitchie's reasons for his decision. This appears to have been misinterpreted as the sheriff clerk responded by saying that the sheriff's notes (from the hearing) were not provided and enclosing copies of the interlocutors.

[14] Having identified that the new Note of Appeal was in entirely different terms from that originally lodged by the appellant I sought written submissions on whether the new grounds of appeal should be allowed into process. The respondents did not oppose the adjustments on the basis that they did not materially affect their position, which was that the case was time barred.

[15] The difficulty which the appellant now faces is that there is no ground of appeal bringing the decision of 7 April 2025 under review and therefore no route into the decision of 1 April 2025. However as the appellant is a party litigant and standing the procedural history, I have addressed both decisions for the purposes of this appeal and to explain to the appellant the reasons for my decision.

Appellant's submissions

[16] The appellant lodged written submissions. He argues that Sheriff MacRitchie erred in fact and law in determining that there is no difference between the persons identified in the lease and those on whose behalf the defences were lodged. He submits that as these are two distinct legal entities the actions of one cannot bind the other. That being so there are essentially no defences lodged on behalf of the landlords in the lease who are the persons against whom the appellant's action was directed.

[17] He further submits that the sheriff erred in stating that Shop & Save Limited purchased the fixtures and fittings in the shop from the appellant's trustee in bankruptcy.

He maintains that as a matter of fact this is incorrect. He also argues that the sheriff has attempted to influence this court's view which amounts to an interference with due process of law.

Respondent's submissions

[18] The respondent's submissions, which were lodged on 21 October 2025 do not address Sheriff MacRitchie's decision. By the time his note had been received the respondents were no longer represented. Having confirmed the position with Mr Anees he was content to rest on the submissions previously lodged which dealt comprehensively with the time bar issue upon which Sheriff Borthwick's decision turned and which is not challenged in the new grounds of appeal. In short, it was submitted that the sheriff was correct in deciding that, even if there had been unlawful appropriation of the fixtures and fittings in the shop, any claim in respect of them arose on 18 August 2016 when the respondents took possession of the premises and would have prescribed by 18 August 2021.

[19] In subsequent paragraphs the respondents go on to explain that in the initial writ the appellant designed the respondents as Mr and Mrs Anees trading as Shop & Save Limited and carrying on business at Shop & Save Limited, 6 High Street. The defences in answer 2 explained that they did not carry on business there and in any event the instance was amended to provide the respondents' home address.

Decision

[20] This appeal, despite its lengthy procedural history, is without merit. In the first place, following adjustment of the Note of Appeal, there is now no ground of appeal challenging the sheriff's decision of 7 April 2025 to grant decree of absolvitor and therefore

no mechanism to open up earlier interlocutors for review. Such a course would have been competent on the basis of the original Note of Appeal which referenced both the interlocutors of 1 and 7 April 2025 (*Ferguson's Tr v Reid* 1931 SC 714 per Lord Morison at 718). However as the appellant is a party litigant and has struggled to understand the strictures of the rules of procedure which require to be followed I will address his criticisms of Sheriff MacRitchie's decision in order that he may fully comprehend why the appeal is bound to fail.

[21] The appellant's position came to be that had Sheriff MacRitchie accepted his argument that the defences were incompetent, the consequence would have been that the action was effectively undefended, and the appellant would have been entitled to decree in terms of his motion for decree by default as at 1 April 2025. It is presumed that the "default" to which he was referring was a failure to lodge defences on behalf of the correct defenders. As that motion called before the diet of debate assigned for 7 April 2025 the appellant's argument is that decree ought already to have been granted in favour of the appellant and the legal arguments about time bar would have been circumvented.

[22] This to some extent explained a) why the appellant was focussing on the decision of 1 April 2025 and b) his insistence on obtaining a note of reasons from Sheriff MacRitchie against whose decision his appeal is primarily directed. This position crystalised at a hearing in person before me on 9 December 2025. However I also made clear on that date that the appellant would also require to address the prescription issue which was the basis on which decree of absolvitor had been granted.

[23] On 13 January 2026 the appellant sought once again to sist the appeal in order "to obtain evidence" and address the note provided by Sheriff MacRitchie on 19 December 2025 and the respondents' written submissions dated 17 October 2025. It appeared that,

despite my clear explanation of the procedure to be followed and the importance of dealing with the issue of prescription before the claim could go any further, the appellant sought to pursue alternative arguments. His motion was refused and the appeal was dealt with on the basis of the appellant's notes of argument and written submissions.

[24] Having considered the submissions of both parties it is clear that the basis of the appellant's appeal is fundamentally flawed in a number of material respects. Even if the defences were defective in some way, they had been lodged without objection, and the action had proceeded to an options hearing on the basis that it was a properly defended action. If the appellant had wished to challenge the competency of the defences at debate, which would have been his opportunity to do so, he ought to have included a plea-in-law to that effect and thereafter lodged a rule 22 note providing notice of the point he intended to advance.

[25] As at the 1 April 2025 the respondents were not in default. They had not failed to comply with any timetable or order of court. On the contrary it was the appellant who had failed to lodge a properly prepared record which incorporated the respondents' pleadings.

[26] The initial writ which was drafted and lodged by the appellant designed the defenders as "Mr and Mrs Anees, trading as Shop & Save Ltd. Carrying on business at Shop & Save Ltd, 6 High Street, Leven KY8 4LZ." It was therefore the appellant who raised the reference to Shop & Save Limited.

[27] In answer 2 of condescendence the respondents clarify that the retail business of Shop & Save Limited is conducted by the respondents and their son as directors and at answer 4 a further detailed and candid explanation is given regarding the relationship between Shop & Save Limited and the respondents in the following terms.

“... the premises at 6 High Street, Leven from which the business of Shop & Save Ltd traded was and remains jointly owned by Muhammad Anees and Mrs Najna Anees personally. From 26th August 2005 until in or around July or August 2016 Mr and Mrs Anees leased the said premises to the Pursuer.”

[28] The relationship which existed between the appellant and respondent is clearly spelt out in the body of the defences as is the fact that Shop & Save Limited was not the heritable proprietor of the shop premises. At answer 5 the respondents admit that they were the appellant’s landlords. Furthermore the instance was amended to include their home address, the respondents having expressly denied the appellant’s averment that they resided at the shop premises. The capacity in which the respondents have entered defences is clearly as individuals. Indeed they have a plea-in-law to the effect that the wrong party has been sued, and the action ought to have been directed at Shop & Save Limited. That plea-in-law would make no sense if the as the appellant’s contests the defences were lodged on behalf of the company and not the respondents as individuals.

[29] Sheriff MacRitchie explains at para [1] of his note of 19 December 2025

“On 1 April 2025, at an Opposed Motion Hearing at which I presided, the appellant claimed that the respondents were in default by not lodging Defences and accordingly moved for decree. I refused to grant decree by default as Defences had in fact and in law been lodged by the respondents.”

For the reasons explained above he was quite correct. The sheriff has not erred in his refusal to grant decree by default. The appellant is also incorrect to have described the hearing of 1 April 2025 as an options’ hearing. It was a hearing on the appellant’s opposed motion. The options hearing had already taken place in January when the diet of debate had been assigned. The appellant asserts that the sheriff indicated that he would not dismiss the cause until evidence had been led. As Sheriff MacRitchie makes clear a debate had already been assigned. He was not the sheriff who was due to preside at that debate and it is clear

from both the terms of his note and the fact that he continued the cause to the debate that he concluded that the respondents' arguments on prescription were *prima facie* arguable.

[30] At para [11] of his note the sheriff makes clear that both his interlocutor and contemporaneous notes contradict any suggestion that the appellant was not given an opportunity to speak or be heard. The appellant had lodged lengthy written submissions which are available to me and the clerk would have drawn to the attention of the sheriff any failure to hear a party. The sheriff has noted the appellant's opposition to the motion for expenses which could only have been made after the outcome of the opposed motion was known. This ground of appeal is therefore bound to fail.

[31] The sheriff's interlocutor following the hearing was detailed and clear. It addressed the failings in the record and resolved various housekeeping matters in advance of the diet of debate. Accordingly, even if the interlocutor of 1 April 2025 could be challenged on the basis of the grounds of appeal now before this court, none of the arguments advanced have any basis in law or fact and those grounds would fall to be refused.

[32] There is however a far more fundamental difficulty with the appellant's case which was dealt with on 7 April 2025 and which I sought to explain to him in open court when the matter called before me for procedural hearings in this appeal. As a matter of law the decision of Sheriff Borthwick KC is not now challenged so the appeal must be refused but again, in order that the appellant can fully understand the reasons why that should be so I will deal with the prescription issue.

[33] The appellant appears to believe that if the action was raised and not competently defended it would not matter that the claim had prescribed. He is incorrect. Where there is no longer a right which can be enforced it is incumbent upon a court as part of its inherent

jurisdiction to refuse to grant decree, even if the cause was undefended (*Cabot Financial UK Limited v McGregor* [2018] SAC (Civ) 12).

[34] In this case not only were there competent and full defences, the prescription point was properly and timeously taken. The procedural history is laid out above. The initial writ was served on 23 September 2024. The defences lodged on 28 October 2024 contained a preliminary plea to the effect that the appellant's claim had prescribed in terms of section 6 and 11 and Schedule 1 of the Prescription and Limitation (Scotland) Act 1973. Whether the fixtures and fittings were rightly or wrongly appropriated and by whom there had been such appropriation was in dispute. However it was common ground, on the basis of the appellant's averments and the answers, that this had occurred on 18 August 2016 when the appellant's trustee in bankruptcy had visited the premises.

[35] The prescriptive period therefore expired on 18 August 2021 at the latest. This action was not raised by the appellant until 23 September 2024, being the date of intimation upon the respondents.

[36] At debate the appellant sought to argue that he was prevented from raising these proceedings earlier because he was sequestered and therefore subject to legal disability. This argument is without merit. Any right of action he may have had vested in his trustee throughout that period. Sequestration does not interrupt the prescriptive period.

[37] The appellant raises the fact that different sheriffs presided over different hearings. While it is not entirely clear what he makes of this he appears to find it sinister. It is however quite common in a larger sheriff court for cases to pass from one sheriff to another depending on judicial availability and court programming. That ground of appeal, if indeed it is such, has no merit.

[38] The purpose of a debate is to dispose of a case which cannot succeed as a matter of law even if the factual matters upon which the claim proceeds are established. The appellant's request to sist the appeal on 13 January 2026 to obtain evidence and essentially make calls on the respondents to provide vouching for certain matters of fact demonstrates that despite my best efforts and the comprehensive notes provided by both sheriffs he has not understood this concept.

[39] It is appreciated that the appellant is a party litigant and has struggled to understand both the law and the rules of procedure. He has been afforded considerable latitude and at various stages I have sought to explain to him the difficulties which his appeal faced.

He was either unable or unwilling to accept or address these issues. There is only so far that a court can go to assist parties representing themselves. Ultimately proceedings which are drawn out because of numerous unsuccessful motions to sist, or delay conclusion of the case may well sound in expenses.

[40] For the reasons given the appeal is refused. I shall adhere to the sheriffs' interlocutors of 1 and 7 April 2025. I shall allow parties 14 days from today's date for written submissions to be lodged in relation to the expenses of this appeal.