

**REPUBLIC OF SOUTH AFRICA**  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**(NORTH GAUTENG, PRETORIA)**

**CASE NO: 46840/2014**

**DATE: 3 MARCH 2015**

In the matter between:

**SOUTH AFRICAN CIVIL AVIATION AUTHORITY**

**APPLICANT**

**AND**

**L[...] J[...] V[...] R[...]**

**FIRST RESPONDENT**

**K[...] J[...] J[...] V[...] R[...]**

**(duly represented by L[...] J[...] v[...] R[...])**

**As his natural mother and holder of parental**

**Responsibilities and rights)**

**SECOND RESPONDENT**

**J[...] D[...] J[...] V[...] R[...]**

**(duly represented by L[...] J[...] v[...] R[...])**

**As his natural mother and holder of parental**

**Responsibilities and rights)**

**THIRD RESPONDENT**

**In Re:**

**L[...] J[...] V[...] R[...]**

**FIRST APPLICANT**

**K[...] J[...] J[...] V[...] R[...]**

**(duly represented by L[...] J[...] v[...] R[...])**

**As his natural mother and holder of parental**

**Responsibilities and rights)**

**SECOND APPLICANT**

**J[...] D[...] J[...] V[...] R[...]**

**(duly represented by L[...] J[...] v[...] R[...])**

**As his natural mother and holder of parental**

**Responsibilities and rights)**

**THIRD APPLICANT**

**AND**

**SOUTH AFRICAN CIVIL AVIATION AUTHORITY**

**RESPONDENT**

## **JUDGMENT**

**WEBSTER J**

1. The applicant seeks an order in the following terms:

*“1. That the Applicant be and is hereby granted condonation for the late filing of the opposing affidavit in the main application;*

*2. That the Applicant pays the wasted costs occasioned by such late filing of the opposing affidavit; and*

*3. Further and/or alternative relief.”*

2. The history to the matter is as follows:

- An application was launched by the first to third respondents to this application. In accordance with

the Uniform Rules of Court the applicant had to file its answering affidavit by 25 July 2014.

- On 23 July 2014, the attorneys for the applicant sent a letter to the attorneys for the respondents requesting an extension of two weeks for the filing of opposing papers. This letter was transmitted to the attorneys for the respondents via fax transmission.
- On 25 July 2014, a second letter again from the applicant's attorneys was sent to the respondents' attorneys requesting an answer to the request for the extension for the filing of the opposing papers. This second letter was likewise sent via fax transmission.
- On 11 August 2014, a third letter was sent by the applicant's attorneys to the respondents' attorneys enquiring whether the respondents were proceeding with the application set down on 12 August 2014 on the unopposed motion roll. The following appears at the second paragraph:

• *2. Kindly indicate to us as to whether your office will be proceeding with the application as set down for 12 August 2014 on the unopposed roll. We reiterate that we are opposing the application and will be filing our opposing papers in due course.*" This letter was likewise sent via fax transmission.

- The deponent to the founding affidavit to this application, Poppy Khoza, is also the deponent to the answering affidavit in the main action. Her schedule is attached to the founding affidavit marked Annexure 鄭 • and sets out her daily activities during the months July to September 2014. The answering affidavit was served on the respondents' attorneys on 26 September 2014, approximately thirty (30) court days after the date to which extension was requested.
- Subsequently this application was served and filed on the respondents' attorneys on 6 November 2014 informing them of the date of hearing on 6 January 2015.
- The application for condonation was unopposed and there was no opposition in court either.

3. Very little information is disclosed to this court about the main action. No mention is made of when the main action is before court. In the case of *Hall v The Head, Specialised Commercial Crimes Unit of The National Prosecuting Authority* 2010 JDR 0973 (GNP) Hiemstra AJ stated the following:

*"...to condone the unexplained filing of the answering affidavits almost six months out of time, would be to condone contumacious flouting of the Rules of Court..."*

It has to be mentioned that in the case quoted above, an application for condonation for the late filing of the

answering affidavit was filed “...one *court day before the hearing of the matter...*”. The application for condonation was subsequently dismissed.

4. However, the facts in this matter differ slightly from the Hall case (*supra*). The answering affidavit was filed two calendar months after the initial due date. Furthermore no opposing papers were filed and in the absence of a date the court cannot infer that the respondents would be prejudiced by granting the condonation application. It is clear from the record that the applicant’s attorneys endeavoured to get a response from the respondents’ attorneys regarding an extension of time for the filing of the answering affidavit which was not forthcoming.

5. In light of the circumstances set out above, the following order is granted:

1. That the Applicant’s late filing of the opposing affidavit in the main application be and is hereby granted;
2. That the Applicant pay the wasted costs occasioned by such late filing of the opposing affidavit.

**G. WEBSTER**

**JUDGE IN THE HIGH COURT**