

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA

Case no: 69235/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
22 August 2024

DATE

SIGNATURE

In the matter between:

BIDEASY AUCTIONS (PTY) LTD

Applicant (2nd Defendant)

And

RINGWOOD INVESTMENTS 81 (PTY) LTD

1st Respondent (Plaintiff)

ROBYN FRANCES BRAIDWOOD

2nd Respondent (1st Defendant)

J U D G M E N T

APPLICATION FOR LEAVE TO APPEAL

MAKHOBABA, J

[1] The applicant seeks condonation for late delivery of its Notice of Application for leave to appeal the judgment handed down by this court on 1 December 2023.

[2] The applicant is the second defendant in the main action. The first defendant in the main action, did not give notice for her intention to apply for leave to appeal and does not partake in this condonation application or in the application for leave to appeal.

[3] The parties agreed that the condonation and leave to appeal applications be heard together. The first respondent opposed the application.

[4] The applicant furnished the following reasons why the delay in filling the notice of appeal:

4.1 Counsel was abroad, and it was during December holidays. It was impossible if not difficult to summarily hand over the matter to alternative counsel.

4.2 It was a lengthy trial with 3500 pages. The delay was not a long one.

4.3 The court misapplied the decision in Spenmac (Pty) Ltd.

4.4 The judgment orders joint and several liability where no basis for such was provided by the first respondent, and the applicant has now been to make good on funds which it did not receive or benefit from.

4.5 It is submitted on behalf of the applicant that the applicant has a satisfactory explanation for the delay. The applicant has good prospect of success on appeal. The delay was not significant or inordinate.

4.6 The second defendant ought to be granted Leave to Appeal as another court might find differently.

- [5] In reply the first respondent argue that the December holiday period is irrelevant to this application and refers the court to the decision in *Leon JJ Van Rensburg Attorneys v Matloto Trading (Pty) Ltd and others*.¹
- [6] It is further argued by the first respondent that the applicant and its representatives, being aware of the applicable 15 Court-day period, took no steps from 1 December 2023 to 9 January 2024 to apply for leave to appeal. They decidedly took their vacations and left the matter for the new year.
- [7] It is submitted that the appeal would not have a prospect of success and the application for leave to appeal be dismissed with cost.
- [8] The applicant must set out the reasons for the delay in the timeous prosecution of the appeal as well as the delay in seeking condonation.²
- [9] In *United Plant Hire (Pty) Ltd v Hills and Others*³ Holmes, JA said: “It is well settled that, in considering applications for condonation, the Court has a discretion, to be exercised judicially upon a consideration of all of the facts; and that in essence it is a question of fairness to both sides. In this enquiry, relevant consideration may include the degree of non-compliance with the Rules, the explanation therefore, the prospects of success on appeal, the importance of the case, the respondent’s interest in the finality of his judgment, the convenience of the Court and the avoidance of unnecessary delay in the administration of justice.”

¹ Case No: 04956/2020 Gauteng Local Division delivered on 15 July 2022 par 35.

² *Mulaudzi v Old Mutual Life Insurance Co (South Africa) Ltd and others, National Director of Public Prosecutions and Another v Mulaudzi* 2017 (6) SA90 (SCA).

³ 1979 (1) SA 717 (A) 720 E-F.

- [10] Our courts have held that where non-compliance with the Rule has been flagrant and gross an application for condonation should not be granted, whatever the prospects of success might be.⁴
- [11] In *Siber v Ozen Wholesalers (Pty) Ltd*⁵ Schreiner, JA said: “It is enough for present purposes to say that the defendant must at least furnish an explanation of his default sufficiently to enable the court to understand how it came about and to assess his conduct and motives”
- [12] In *Smith NO v Brummer NO and Another*⁶ Brink, J considered and summarised the factors which the court must consider in determining whether or not condonation should be granted. These, in short, are:
1. *whether a reasonable explanation has been given for the neglect;*
 2. *whether the application is bona fide not brought with the intention to delay the other party’s claim;*
 3. *if there is absence of reckless or wilful neglect of the Court Rules;*
 4. *whether or not applicant’s case is ill-founded;*
 5. *if, where there is prejudice, such cannot be compensated with a proper costs order.*
- [13] In *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as amicus curiae)*⁷ the court said: “Prospect of success pale into insignificance where, as here, there is an inordinate delay coupled with the absence of a reasonable explanation for the delay”.
- [14] The attorney for the applicant states in her affidavit that on 1 December 2023, she became aware that counsel will not be available from 5 December 2023

⁴ *Dairries v Sheriff, Magistrate’s Court, Wynberg and another* 1998 (3) SA 34 at 41 A-D.

⁵ 1954 (2) SA 345 (A) at 353 A.

⁶ 1954 (3) SA 352 at 358 A.

⁷ 2008 2 SA 472 at Par 33.

but failed to discuss or arrange with counsel on how this matter should be handled.

[15] The attorney despite being aware of the matter she closed offices on 14 December 2023. The final instruction to proceed with the matter was received on 9 January 2024.

[16] The attorney in my view did not put effort to have matter attended to by another counsel, all what she is saying in the affidavit is that this was a voluminous (3500 pages) matter.

[17] It would have made a difference if she at least tried to engage someone to deal with the matter, but she failed to do so.

[18] In my view the time elapsed before the application for leave to appeal was filed is inordinate.

[19] The grounds raised by the applicant for leave to appeal have been dealt with in my judgment. In my view there are no reasonable grounds of success on appeal.

[20] I am satisfied that there are no prospects of success on appeal by the applicant.

[21] The following order is therefore made:

1. The application for condonation and leave to appeal is dismissed.
2. Applicant is ordered to pay the costs of the application on Scale B.


MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD JUDGMENT: 21 AUGUST 2024

JUDGMENT HANDED DOWN: 22 AUGUST 2024

Appearances:

For the Applicant: Adv K. Groenewald (instructed by) Rama Annandale & Munonde Attorneys

For the First Respondent: Adv HC Hartman (instructed by) Vorster & Brant Attorneys.