REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Court a *quo* case number: 71943/2016

Appeal Case Number: 149/2023

(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED:

10 February 2025 [redacted]
DATE SIGNATURE

In the matter between:

G P SMITH LETTING CC Appellant

And

JACOBS AND VAN ASWEGEN PROPERTY DEVELOPERS CC First Respondent
(Registration No. 2007/107707/23)

HENK GERHARDUS VAN ASWEGEN Second Respondent

Coram: MODIBA J, STRIJDOM J, BOTSI-THULARE AJ

Summary: *Failure to ensure compliance with uniform rule 49(6)(a) — lapsing appeal — application for condonation — factors to be considered — cumulative effect of such factors — the delay not satisfactorily explained — lack of prospects of success in the appeal — condonation refused — re-instatement of the appeal refused.*

JUDGMENT

BOTSI-THULARE AJ (Modiba J, Strijdom J concurring)

Introduction

[1] The appellant, GP Smith Letting CC (GP Smith Letting) instituted an action against the respondents Jacobs and Van Aswegen Property Developers CC (the property developers) and Henk Gerhardus Van Aswegen (Mr Van Aswegen) for the setting-aside of a court order which made an arbitration award an order of court. It sought this relief on the basis that the underlying arbitration award which was the subject of a settlement agreement between the parties was actuated by fraud allegedly perpetrated by the respondents.

[2] The court a *quo* per Senyatsi J (the court a *quo*) dismissed the action in a judgment dated 13 August 2021. GP Smith Letting applied for leave to appeal and it was granted by the court a *quo* on 7 December 2021.

[3] The basis of the appeal by GP Smith Letting is that the court a *quo* erred in its application and interpretation of the law of hearsay as against the facts that were before it. The appeal is opposed by the respondents.

Factual background

[4] GP Smith Letting represented by Mr Smith and the property developers represented by Mr Van Aswegen concluded a Joint Venture Agreement on 16 November 2006 (JV Agreement) in terms of which they agreed to embark on a property development project on GP Smith Letting's farm known as Bendor Meadows (the Property). Mr Van Aswegen was authorised in terms of the JV Agreement to manage, represent, act on behalf of and make any decisions pertaining to the property development without GP Letting's consent.

[5] Mr Van Aswegen appointed consultants to, *inter alia*, procure the availability of bulk services and township development rights. One of the consultants which were appointed by the Mr Van Aswegen was Vikna Consulting Civil and

Developmental Engineers, Polokwane (Vikna) which was represented by Nick Spotswood (Mr Spotswood).

[6] On 10 March 2011, GP Smith Letting repudiated the JV Agreement. In 2014, the respondents instituted arbitration proceedings against GP Smith Letting impugning the repudiation. They claimed the costs incurred in relation to the consultants in an amount of R1 502 933.36, and a management fee equal to 8% of the turnover for the property development project in an amount of R6 600 000.00. During the arbitration proceedings, negotiations ensued between the parties. They reached a compromise and concluded a settlement agreement in the amount of R1 211 724.76. On 20 April 2015, the Arbitrator made an award incorporating the settlement agreement.

[7] GP Smith Letting is alleged to have breached the award by failing to make payment as ordered. This led respondents to launch an application for an order making the arbitration award an order of court. GP Smith Letting did not oppose the application. An order making the arbitration award an order of court was granted on 8 December 2015. During the period between the granting of the award and order of court, GP Smith Letting made various payments to the property developers, including payment for an invoice of R250 000.00 from Vikna.

Proceeding before court a quo

[8] In the court a *quo*, GP Smith Letting sought an order for the setting-aside of the 8 December 2015 order of court on the basis that the settlement agreement on which the award was based was induced by fraud. It further alleges that the respondents had misrepresented to it that the bulk of the amount claimed included an invoice of R1 200 000.00 from Vikna when the latter amount was not yet due and payable.

[9] GP Smith Letting further contended that after the settlement, it came across information that the amount on the invoice prepared by Vikna was not due and payable when the settlement agreement which led to arbitration award was concluded. GP Smith Letting further alleged that when the compromise was reached, Vikna would have only been entitled to payment in the amount of

R250 000.00 if the JV Agreement had been implemented. The respondents defended the action on the basis that the designs which Vikna was contracted to do were done, thus increasing the value of the property. This rendered the full amount of Vikna's invoice due and payable.

[10] During the trial, Mr Smith testified on behalf of GP Smith Letting regarding a letter written by Mr Spotwood's attorney (Mr Koos Geyser) to the South African Revenue Service (SARS) and the Hawks representing that the invoice was a *proforma* invoice and that the VAT input in respect of the amount of R1 200 000.00 was not claimed. The respondents' version is that the letter was not written at their request or on their behalf. GP Smith Letting did not call Mr Spotwood to testify about this letter and/or Vikna's invoice to corroborate GP Smith Letting's version.

[11] Against this background, the court a *quo* concluded that the mere production of the letter to SARS and the Hawks; and Mr Smith's evidence is not conclusive of the facts set out in the letter as Mr Smith was not the author of the letter. Further, the court a *quo* held that the contents of the letter constitute inadmissible hearsay evidence. The court a *quo* reasoned that it was not persuaded as to why the authors of the letter was not called as a witness to confirm that the sum of R1 200 000.00 invoiced by Vikna to the property developers was indeed not due and payable. Further, the court a *quo* found that GP Smith Letting failed to establish the factual or legal basis for the hearsay evidence to be admitted in the interest of justice.

[12] The court a *quo* concluded that the appellant's reliance on hearsay evidence is impermissible, therefore, it failed to discharge the onus to prove the fraud.. As a result, the court a *quo* held that GP Smith Letting failed to make out a proper case for the relief sought.

Appeal proceedings

[13] In the present proceedings, GP Smith Letting relies on the following grounds of appeal:

a. The court a *quo* erred in relying on the following principles of law which were outlined as follows in paragraphs 16 and 17 of the court a *quo* judgment:

> "It is prerequisite to obtaining restitution in integrum on the ground of fraud that the document had not been available to the party who seeks restitution before an order was made. The position is the same in a case where fraud is committed in a manner other than falsifying documents.
>
> The court will grant relief if the evidence that was fraudulently considered and came to light after the conclusion of the trial which would have entitled a party to a different judgment head this evidence been procured, provided that a party can show weighty reasons by which he was prevented from producing such evidence at trial. The party seeking restitution must therefore show that it was not through his own fault that a document was discovered before the order was made."

b. The court a *quo* should have found that the appellant was in possession of the document i.e. the invoice.

c. The court a *quo* erred by stating in paragraph 20 of the judgment that the mere production of the invoice and Mr Smith's evidence on it was not conclusive as the author of the letter was not called upon to testify.

d. The statement by the court a *quo* that there will be violation of law of hearsay if the letter is accepted as conclusive evidence (without the author testifying on it) is wrong.

<u>*Condonation application*</u>

[14] GP Smith Letting seeks condonation for prosecuting the appeal out of time. It delivered the notice of appeal on 23 December 2021. It only applied for a hearing date on 12 May 2023, approximately 13 months later. This is outside of the 60 days period prescribed in terms of uniform rule 49(6)(a). In terms of uniform rule 49(9), the appeal is deemed to have lapsed. It is for that reason that GP Smith Letting seeks condonation for non-compliance with uniform rule 49(6)(a).

[15] GP Smith Letting further requests this court that, to the extent it failed to comply with uniform rule 49(13)(a) read with uniform rule of 49(7)(a), such non-compliance be condoned. The condonation application is opposed by the respondents.

[16] Uniform rule 49(6)(a) provides as follows:

> "Within 60 days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal and if the appellant fails to do so a respondent may within 10 days after the expiry of the said period of 60 days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs."

[17] Uniform rule 49(6)(b) provides for the remedy GP Smith Letting seeks. It provides as follows:

> "The court to which the appeal is made may, on application of the appellant or cross- appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed."

[18] Therefore, to succeed in this application, GP Smith Letting is required to show good cause for non-compliance with uniform rule 49(6)(a).

[19] GP Smith Letting's explanation for failing to prosecute the appeal on time is that although it filed the appeal record timeously, it did not furnish security as required in terms of uniform rule 49(13)(a) because its attorney laboured under the incorrect belief it was not required to furnish security.

[20] On 4 April 2022, GP Smith Letting's attorney posted an inquiry on CaseLines about the allocation of a date for the hearing of the appeal. He followed up with further inquiries on 17 of May 2022, 7 June 2022 and 18 July 2022. He then made enquiries with colleagues regarding the usual time frames within which

appeals are normally heard and was informed to be patient as there is a substantial backlog of cases.

[21] GP Smith Letting's attorney concedes that the problem concerning the application for a date was due to confusion on his part concerning the normal practice directives and those relating to CaseLines and Covid 19. He alleges that he is not familiar with the applicable practice directives as well as CaseLines because he practices in Polokwane where the relevant practice directives are not applicable and Caselines in not used. As a result, he became sidetracked and in the process, overlooked the requirement in uniform rule 49(6)(a) as well as the applicable practice directives.

[22] The respondents argue that GP Smith Letting's concedes that it has failed to comply with rule 49(6)(a), rule 49(13)(a) as well as failed to properly or fully comply with paragraphs 19, 49 and 52 of Practice Directive 2 of 2022. Further, its attorney failed to make any enquiries regarding the status of the appeal during the entire period until 12 May 2023. Therefore, the respondents' contends, GP Smith Letting has failed to show good cause.

The applicable law

[23] It is trite that where a party fails to comply with a prescribed time limitation, whether statutory or in terms of the rules of court the High Court may grant condonation in the interests of justice.[1]

[24] In *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd & Others*[2] the Supreme Court of Appeal held that:

> "Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation therefor, the importance of the case, a respondent's interest in the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice ... ."

[25] The courts have consistently refrained from attempting to frame any

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[1] *Yunnan Engineering CC v Chater* 2006 (5) SA 571 (T) at 578H–J.
[2] [2013] 2 All SA 251 (SCA) at para 11.

comprehensive definition of what constitutes good cause for purpose of granting of condonation for procedural shortcomings in appeals. Condonation is granted at the discretion of the court, judicially exercised having regard to all the circumstances of the case.[3]

[26] It is common cause that the appeal is deemed to have lapsed for reasons advanced on behalf of GP Smith Letting. As a result, the respondents served on GP Smith Letting an application for payment of their wasted costs of the lapsed appeal in terms of Rule 46(6)(a) on 13 April 2023. It was at this point that GP Smith Letting's attorney started reaching out to the respondents. This was after a long period of inaction. He has offered no explanation why he only reached out to the respondents' attorney after the application for wasted costs was served when he could have done so earlier, particularly after the respondents' heads of arguments in the appeal were delivered in October 2022.

[27] GP Smith Letting's attorney has demonstrated lack of diligence in prosecuting the appeal. Counsel for the respondents delivered his heads of argument in the appeal on 7 October 2022. GP Smith Letting attorney incorrectly states that the heads of argument were sent to his correspondent attorney for delivery on 27 October 2022. However, no e-mail to such effect is attached to the affidavit filed in support of the application for condonation. To make matters worse, he was unaware that heads of argument were served on his correspondent attorney until February 2023 when he found an email from the correspondent dated 9 November 2022 in his computer's deleted bin. He then used an "unused" email address of the correspondent attorney to enquire whether non-compliance indeed occurred. There is no evidence to suggest that he followed up on the email he had sent to his correspondent attorney. These delays were clearly occasioned by lack of diligence on his part.

[28] During March 2023 a further conversation took place between the attorney for GP Smith Letting and counsel for the respondents. During this conversation, counsel for the respondent hinted that non-allocation of a date for the hearing

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[3] *PAF v SCF* 2022 (6) SA 162 (SCA) at para 21. Also see *United Plant Hire (Pty) Ltd v Hills* 1976 (1) SA 717 (A) at 720E–G and *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at 477A–B.

may be due to GP Smith Letting's attorney failure to properly prosecute the appeal. The attorney for GP Smith Letting only realised that the "unused" email did not reach the correspondent attorney when the respondents' application for costs was served on him on 13 April 2023. Only after counsel for GP Smith Letting came on board was an application for a hearing date made on 12 May 2023. This occurred a month after respondents' application for costs was served.

[29] GP Smith Letting, as an applicant for condonation, seeks an indulgence from this court and must provide a candid and full explanation of the entire period of the delay and the reason/s for it. Its attorney has not been candid with this court. He has also not provided a full explanation for the delay. Further, his explanation is not reasonable.

[30] In *Unitrans Fuel and Chemical (Pty) Ltd v Dove-Co Carriers CC*[4] it was stated that High Courts should in future require that the entire period of the delay be thoroughly explained, regardless of the length of the delay. In this regard, the court observed:

"Firstly; it is often and undesirably so, in our Courts, that the length of the delay in condonation applications, determines how detailed the explanation is.

To illustrate: if a delay of a few days has to be explained, then the failure to deal with a day or two may well prove fatal to the application. Likewise, if a delay of some 3 weeks has to be explained, then a failure to deal with 3-4 days, may lead to the failure of the application.

In the case of much longer delays, such as the case *in casu*, (of some 3 years), applicants somehow, (but too often), regard the failure to explain 3-4 days as negligible. In fact, much longer, unexplained periods seem to pale into insignificance, simply due to the length of the total delay, seemingly under the impression that a few days or even weeks, here and there, will not "*break the camel's back*".

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[4] 2010 (5) SA 340 (GSJ).

> This is unacceptable. The test does not change due to the length of the delay and the duty to fully explain the entire period of the delay, remains the same, quite irrespective of the period of the delay."[5]

[31] An inordinate delay induces a reasonable belief that the order had become unassailable and the successful party is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter further.[6] Thus, to grant condonation after an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality in litigation, unless it is shown that it is in the interests of justice.[7]

[32] In my view, there are two separate periods of inaction which were not sufficiently explained by GP Smith Letting. The first period is from 4 April 2022 until 18 July 2022 during which the admitted wrong procedure was followed to apply for a date of hearing (3 months and 14 days of inaction). The second period is from 18 July 2022 until sometime in September 2022. This translates into a further period of approximately 2 months of inaction.

[33] In other words, there was inaction on the part of the attorney for GP Smith Letting until he received the respondents' heads of argument on 7 October 2022. He mentioned that the heads of argument had to be delivered on 27 October 2022. He failed to explain why the date on which he received the respondents' heads is stated to be 20 days after they were served on his correspondent attorneys.

[34] The March 2023 conversation between the attorney for GP Smith Letting and counsel for the respondents does not mitigate GP Smith Letting's failure to provide a full and reasonable explanation for its delay in prosecuting the appeal.

[35] It is trite that lack of diligence on the part of an attorney causes harm to their client. Generally, courts are loath to penalise a blameless litigant due to lack of diligence on the part of its attorney.[8] However, the Appellate Division in *Saloojee and Another NNO v Minister of Community Development* observed that:

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[5] *Id* at para 14-17.
[6] *Van Wyk v Unitas Hospital* at 479H–480A.
[7] *Van Wyk v Unitas Hospital* at 480A–B.
[8] *Shaik v Pillay* 2008 (3) SA 59 (N) at 61I.

> "There is a limit beyond which a litigant cannot escape the result of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations ad misericordiam should not be allowed to become an invitation to laxity. . . . The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are."[9]

[36] This statement has consistently been applied, not only in the case of appeals to the Supreme Court of Appeal, but also in the case of appeals to a full court from a single judge and of appeals to the full bench of the High Court from the magistrate's court.[10] In my view, circumstances are proper for this principle to be applied in this case.

[37] Seemingly it was only after the respondents' application for costs was served on the attorney for GP Smith Letting that he did what he should have done from the outset to properly prosecute the appeal. He failed to ensure compliance with uniform rule 46(6)(a). His explanation is unfortunately not satisfactory.

Prospects of success

[38] I have therefore reached the conclusion that the delay is not satisfactorily explained. Despite, this is not the only factor to be considered in order to determine whether or not condonation application should be granted. The prospects of success on appeal should also be considered. It is trite that good prospects of success compensate for a poor explanation for the delay in filing and prosecuting the appeal.[11]

[39] In this matter, GP Smith Letting contends that the issue of "hearsay evidence" in relation to the contents of the letter and the affidavit deposed to by Mr Spotswood lies at the heart of the intended appeal. In my view, the court *a quo* correctly held

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[9] 1965 (2) SA 135 (A) at 141C–E. See also *Mtshali NO and Others v Buffalo Conservation 97 (Pty) Ltd* [2017] ZASCA 127 (29 September 2017)
[10] *Aymac CC v Widgerow* 2009 (6) SA 433 (W) at 451D–H
[11] *Melane v Santam Bank Insurance Co. Ltd* 1962 (4) SA 531 (A) at 532 B-E

that the letter authored by Mr Spotswood amounts to inadmissible hearsay. It was not tendered simply to prove that a statement of fact was made. It was tendered in an attempt to prove that its contents are true. The court a *quo* could only admit it in terms of the Law of Evidence Amendment Act No. 45 of 1988 (Law of Evidence Amendment Act).

[40] Section 3(1)(a)-(c) of the Law of Evidence Amendment Act provides that hearsay evidence shall not be admitted in civil proceedings, unless the parties agree to the admission of such evidence; or the person upon whose credibility the probative value of such evidence depends himself testifies or the court is of the opinion that such evidence should be admitted in the interests of justice.

[41] In *Giesecke and Devrient South Africa (Pty) Limited v Tsogo Sun Holdings (Pty) Limited and Another* (*Giesecke*)it was stated that:

> "The general rule is that evidence presented in the course of proceedings must be the best available evidence. In trial proceedings, this rule generally entails that the person upon whose credibility the probative value of the evidence depends, not only gives the evidence but is also available for cross-examination."[12]

[42] It should be noted that the court in *Giesecke* was alive to the fact that there are exceptions to the general rule that the person upon whose credibility the probative value of the evidence depends, not only gives the evidence but is also available for cross-examination. In this regard, the court in *Giesecke* that:

> "... . The principles underlying these exceptions are usually twofold:
>
> That there must be a good reason why the witness cannot give evidence in person, such as death, impracticality or that the witness is untraceable.
>
> The evidence is nonetheless reliable (that is the fact that the evidence cannot be tested by cross-examination does not substantially undermine its probative value)."

[43] Equally of relevance, are the provisions of the Civil Proceedings Evidence Act 25 of 1965 (Evidence Act). Section 34(1)(b) of the Evidence Act provides that

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[12] [2010] ZAGPJHC 41 at para 36 (25 May 2010)

where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact provided certain conditions are met, such as personal knowledge by the person who made the statement, statement made in the performance of a duty to record information, and impossibility for the person to attend as a witness for valid reasons.

[44] Mr Spotswood is a person upon whose credibility the probative value of his affidavit depends. The appellant had ample time to serve a subpoena on Mr Spotswood considering that the court proceedings commenced on 25 November 2019 and concluded on 1 October 2020. In my view, the affidavit of Mr Spotswood therefore falls foul of the provisions of section 34(1)(b). No evidence was tendered before the court a *quo* to show that it was not reasonably practicable to secure the Mr Spotswood's attendance at court and that all reasonable efforts had been made without success. In my view this amounts to fatal non-compliance with section 34(1)(b).

[45] Section 34(2) of the Evidence Act gives the court a discretion to admit a document if, having regard to all the circumstances of the case, the court is satisfied that undue delay or expense would otherwise be caused notwithstanding that the person who made the statement is available but is not called as a witness. In my view no facts were placed before the court a *quo* in order to determine whether there would be an undue delay or expense if the affidavit is not admitted.

[46] I am of the view that the court a *quo* was correct to conclude that the mere production of the invoice and Mr Smith's evidence on it was not conclusive as the author of the letter was not called upon to testify. Therefore, there are no reasonable prospects of success on appeal.

[47] Further, given that the settlement agreement pursuant to which the arbitration award was made was for a globular amount in full and final settlement of all claims arising from the JV agreement, there are no reasonable prospects that GP Smith Letting would succeed in persuading this court that it was fraudulently

induced to agree to this amount by the respondents' misrepresentation that an amount of R1 200 000.00 was due and payable to Vikna.

[48] In conclusion, it is my considered view that the cumulative effect of lack of diligent on the part of GP Smith Letting's attorney in prosecuting the appellant's attorney, the inadequacy of the explanation for the delay and lack of prospects of success in the appeal mean that granting condonation would not serve the interests of justice. For these reasons, GP Smith's application for condonation stands to fail. Its request for the re-instatement of the appeal cannot succeed.

Costs

[49] The appellant submits that this court should, by means of a cost order on attorney and client scale, ensure more effectually than it can by means be out of pocket in respect of the expenses caused to it by the litigation. On the other hand, the respondents argue that the appellant be ordered to pay the costs of the application on a punitive scale.

[50] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there be good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances.

[51] Regarding the punitive cost order sought by the respondents, it should be stated that generally courts do not order a litigant to pay the costs of another litigant on the basis of attorney and client unless some special grounds are present, such as, for example, that he has been guilty of dishonesty or fraud or that his motives have been vexatious, reckless and malicious, or frivolous, or that he has acted unreasonably in his conduct of the litigation or that his conduct is in some way reprehensible.[13]

[52] It has frequently been emphasised that in awarding costs, the court has a discretion to be exercised judicially upon a consideration of the facts in each

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[13] See *Mahomed & Son v Mahomed* 1959 (2) SA 688 (T); *Rilon v Van der Spuy and Partners* 2002 (2) SA 121 (C).

case, and that in essence the decision is a matter of fairness to both sides.[14] In giving the court a discretion, the law contemplates that it should take into consideration the circumstances of each case, carefully weighing the issues in the case, the conduct of the parties and any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair and just between the parties.

[53] In this matter, GP Smith Letting's attorney failed to prosecute the appeal on time. The explanation for the delay was also not adequate which meant that the appeal lapsed. It is also common cause that the respondents had already incurred legal costs in opposing the condonation application as well as the lapsed appeal.

[54] Against this background, in the exercise of my discretion and mindful that a punitive costs order is not awarded easily or readily, I am of the view that a punitive costs order is justified and warranted in this matter. A costs order on a party and party scale will be insufficient to cover all the expenses incurred by the respondents in this matter. An award of punitive costs on an attorney and client scale is warranted in the circumstances because it would be unfair to expect the respondents to bear any costs occasioned by the condonation application as well as the lapsed appeal.[15]

[55] Accordingly, the grant of a punitive costs order against the appellant is therefore necessary and warranted.

Order

[56] In the result, I make the following order:

1. The application for condonation is dismissed with costs on the attorney and own client scale.

2. The appellant is ordered to pay the costs incurred by the respondents in opposing the lapsed appeal on the attorney and own client scale.

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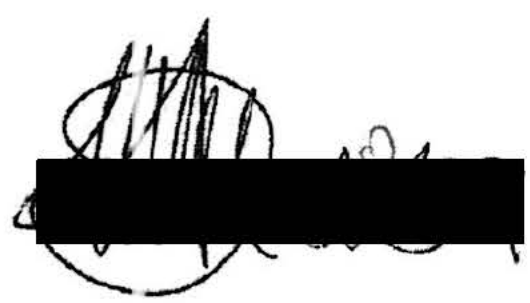
[14] *Mashele v BMW Financial Services (Pty) Ltd* 2021 (2) SA 519 (GP) at para 39.
[15] *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at para 22.

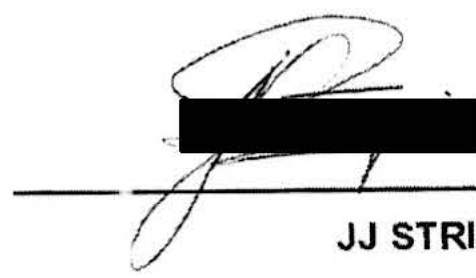
MD BOTSI-THULARE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.



LT MODIBA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree.



JJ STRIJDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

Counsel for the Appellant: Advocate GM Young

Instructed by: Mathee Attorneys

Counsel for the First and Second Respondent: Advocate De Waal Keet Nigrini

Instructed by: Cremer Attorneys

Date of Hearing: 27 November 2024

Date of Judgment: 10 February 2025

MODE OF DELIVERY: This judgment is handed down electronically by transmission to the parties' legal representatives by email, uploading on Caselines and release to SAFLII. The date and time for delivery is deemed to be 10:00am.