



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

**CASE NO: 1115/2019**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: YES/NO

2025/02/05

SIGNATURE

DATE

In the matter between:

**THE ROAD ACCIDENT FUND**

**APPLICANT/DEFENDANT**

and

**MATHIVHA FHATLWALANI ONICA**

**RESPONDENT/PLAINTIFF**

*Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be at 10:00 on 5 February 2025.*

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**JUDGMENT**

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## **Phahlamohlaka AJ**

### **Introduction**

[1] This is an application for leave to appeal against my judgment and order dated 22 February 2022. It is common cause between the parties that the application was brought out of time and the applicant puts the blame partly on the court because according to the applicant the court delayed in providing reasons for its judgment and order.

[2] The application for leave to appeal was argued together with the application for condonation.

[3] The history of this matter is apposite. Ten months after I delivered judgment on 22 February 2022, the applicant launched an application for rescission which served before my brother Mogotsi AJ. The application for rescission was dismissed with costs and it was followed by the application for leave to appeal, which was also dismissed with costs. After the applicant could not succeed with the application for rescission, the applicant belatedly launched the current application for leave to appeal my judgment and order.

[4] Counsel for the respondent submitted that the applications by the applicant were triggered when the applicant was supposed to pay the respondent/plaintiff as per the court order. After the applicant refused to pay the respondent/plaintiff pursuant to the court order, the respondent obtained a writ of execution together with a rescission application which prompted the applicant to approach the court seeking an order on urgent basis for the stay of the warrant of execution. The application for a stay of warrant of execution as well as the rescission application were dismissed with costs.

### **Condonation Application**

[5] Counsel for the applicant submitted that because the application for rescission of judgment (which incorporated the application for leave to appeal) is dated 27

February 2023 and the reasons for judgment/order of 22 February 2022 were furnished on 11 July 2022, after the launch of the application for leave to appeal – it can thus not be argued that the application for leave to appeal was “late”.

[6] It is extremely difficult to follow the submission by the applicant in this regard because the law governing appeals is clear and unambiguous. Rule 49(1)(b) of the Uniform Rules of Court provides as follows:

“When leave to appeal is required and it has not been requested at the time of the judgement or order, application for such leave shall be made and the grounds therefor shall be furnished within 15 days after the date of the order appealed against:

Provided that when the reasons or the full reasons for the court’s order are given on a later date than the date of the order, such application may be made within 15 days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of 15 days.”

[7] An applicant who fails to file application for leave to appeal within the 15 days prescribed by the rules must apply for condonation for the late filing and the court may only grant the application for condonation on good cause shown. Condonation is therefore not there for the mere taking. This was stressed by the Constitutional Court in *Grootboom v National Prosecuting Authority and Another*<sup>1</sup> where the following was said:

“It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it the court’s indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court’s directions. Of great significance, the explanation must be reasonable enough to excuse the default.”

[8] The applicant says the reasons for judgment were only furnished on 11 July 2023 but does not explain why the applicant failed to file the application for leave to appeal within 15 days after receipt of the reasons. In my view, the applicant is just

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<sup>1</sup> *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC) at para 23.

clutching at straws because the applicant launched a number of applications before this application, and only woke up from the slumber after those applications were not successful.

[9] The application for condonation has no merit and therefore stands to be dismissed. However, in case I am wrong, I am inclined to consider the application for leave to appeal.

### **Leave to Appeal**

[10] Section 17(1) of the Superior Courts Act 10 of 2013 (“the Act”) provides as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[11] Counsel for the applicant correctly conceded that the applicant cannot advance any cogent argument against the quantum. On the merits, it is common cause between the parties that the applicant failed to participate in the trial and therefore did not challenge the evidence presented by the respondent. The applicant now wants to plead contributory negligence, again without relying on any evidence.

[12] It could not be denied by the applicant that the applicant previously lodged an urgent application for a stay of the Warrant of Execution and the Rescission Application on the same grounds that they are bringing this application for leave to appeal. This, in my view, is testimony that the applicant is abusing the court system, and this must be frowned upon.

[13] I agree with counsel for the respondent that the applicant’s grounds for appeal are exactly the same as those of the rescission application which was dismissed by my brother Mogotsi AJ.

[14] It appeared during submissions by counsel that the applicant is only complaining about the merits, without presenting any evidence to gainsay the respondent's evidence. Even on quantum, the applicant has not presented any evidence to counter that of the respondent.

[15] Section 17(1)(a)(i) enjoins the court to grant leave to appeal if the appeal would have reasonable prospects of success. The meaning of reasonable prospects of success was canvassed in *S v Smith*<sup>2</sup> where it was held that:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the fact and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal."

[16] In *Cook v Morrisson and Another*<sup>3</sup> the Supreme Court of Appeal said the following:

"The existence of reasonable prospects of success is a necessary but insufficient precondition for the granting of special leave. Something more, by way of special circumstances, is needed. These may include that the appeal raises a substantial point of law; or that the prospects of success are so strong that a refusal of leave would result in a manifest denial of justice; or that the matter is of very great importance to the parties or to the public. This is not a closed list..."

## Conclusion

[17] In my view, the applicant dismally failed to satisfy the principles laid down in section 17(1) which were clarified by the Supreme Court of Appeal. In fact, the

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<sup>2</sup> *S v Smith* 2012 (1) SACR 567 (SCA) at para 7.

<sup>3</sup> *Cook v Morrisson and Another* 2019 (5) SA 51 (SCA) at para 8.

applicant is forum shopping, and this demeanour must be frowned upon. It is unfortunate that the applicant is using the public purse to pursue this hopeless case.

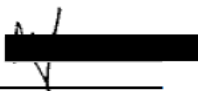
[18] In the premise, I find that the appeal will have no reasonable prospects of success. The applicant has not even made out a case that there is some or other compelling reason why the appeal should be heard.

[19] On costs, it is an established principle of our law that the successful party must be awarded costs, although this would be in the court's discretion. I have already lamented the fact that the applicant is using the public purse to pursue this application and therefore the award of costs against the applicant will not affect those officials who take these decisions. However, the respondent should not be left out of pocket for having opposed this application. In the premises, I am inclined to award costs on a higher scale.

### **Order**

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

20.1 The application for leave to appeal is dismissed with costs, such costs to be taxed on Scale C.

  
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**K F PHAHLAMOHLAKA**  
ACTING JUDGE OF THE HIGH COURT  
MPUMALANGA, MIDDELBURG

### **Appearances**

For the Appellant:	Adv Williams SC
Instructed by:	The State Attorney
For the Respondent:	Adv Boot SC

Instructed by: Adams & Adams Attorneys

Judgment reserved on: 06 November 2024

Judgment delivered on: 5 February 2025