

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No. 2145/2020

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	(NO.)
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	(NO.)
(3) REVISED.	
15 MAY 2023	
DATE:	SIGNATURE:

In the matter between:

CORVINE INVESTMENTS CC

Plaintiff

and

ADVTECH (PTY) LTD t/a PROPERTY DIVISION

Defendant

NEUTRAL CITATION: *Corvine Investments CC vs Advtech* (Case No: 2020-2145)
[2023] ZAGP JHC 485 (15 May 2023)

JUDGMENT

Todd AJ

DELIVERED: *This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 16h00 on 15 May 2023.*

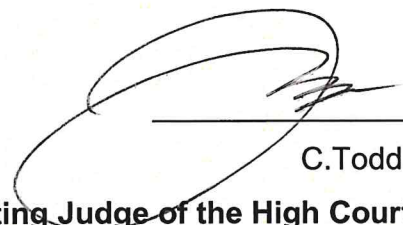
- [1] This is an application for leave to appeal against the judgment and order I made dated 17 August 2022.
- [2] The Applicant brought the application some three and a half months out of time, and has applied for condonation.
- [3] The essence of the explanation given for the delay in bringing the application is that the Applicant sought advice from new counsel (different from the counsel who had argued the matter at the trial), and that after preliminary advice from a newly appointed junior counsel on prospects of success the Applicant was advised to obtain a copy of the record of proceedings and to seek further advice from senior counsel before seeking leave to appeal. Mr Louw, who appeared for the Applicant in this application, submitted that these steps had been prudent in the circumstances.
- [4] On the merits of the application, the Applicant's principal contention is that in determining the special pleas of mis-joinder in favour of the Respondent the Court had regard impermissibly to extrinsic evidence regarding the interpretation of the relevant contracts. Following the same reasoning that the Court adopted in deciding that Advtech Limited was the Defendant before Court despite its incorrect citation in the pleadings, the Applicant contends that the Court should have found that the party to the contracts on which the cause of action was founded was Advtech Limited.
- [5] I do not agree with the Applicant's contention. The issue which the Court had to determine, raised by way of special pleas of mis-joinder, was whether Advtech Limited was a party to the relevant contracts. Since Advtech Limited was not the contracting party described in the contracts, the decision about whether or not it was

in fact the contracting party necessarily required consideration of evidence of the surrounding circumstances. Evidence was not introduced in an attempt to interpret the contract, but to determine whether or not Advtech Limited was a party to it. I have considered the authorities to which Mr Louw referred me, and can find no support for the proposition that the evidence considered by the Court was inadmissible.

- [6] Mr Louw appeared to accept that the Court could only have determined the special pleas in the Applicant's favour (concluding that the true party to the contracts was indeed Advtech Limited) by having regard to extrinsic evidence. It is unclear what evidence the Applicant considers should have been permitted for this purpose and what evidence it regards as inadmissible.
- [7] In any event, as pointed out by Mr Van Niekerk, who appeared for the Respondent, the Applicant had not objected to the introduction of any evidence led at the trial, and had in fact itself relied on the evidence which it now contends was inadmissible in advancing its alternative argument that if the Court found that the true contracting party was not the Respondent this was a case in which corporate personality should be disregarded applying the principles described in *Ex parte Gore & Others NNO 2013 (3) SA 382 (WCC)*.
- [8] In my view the Applicant does not have a reasonable prospect of success on appeal. In seeking condonation, the Applicant has provided a weak explanation for what is in the circumstances of an application for leave to appeal a substantial delay. I have considered the various factors identified by the Constitutional Court in *Grootboom v National Prosecuting Authority & Another 2014 (2) SA 68 (CC)* as being relevant to a decision whether it is in the interests of justice to grant condonation. On balance, weighing these factors, and taking into account in particular the weak explanation for the delay and the Applicant's poor prospects of success, this is a matter in which condonation should in my view be refused.

[9] I make the following order –

The application for condonation is dismissed, with costs.


C. Todd.

**Acting Judge of the High Court
Gauteng Local Division, Johannesburg**

APPEARANCES

For the Applicant: Adv. A J Louw SC with Adv. H C Van Zyl
Instructed by: Lily Rautenbach Attorneys

For the Defendant: Adv. D Van Niekerk
Instructed by: Cliffe Dekker Hofmeyer Inc.

Judgment reserved: 10 May 2022

Judgment delivered: 15 May 2022