



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 3235/2022

In the matter between:

GREATER BLOEMFONTEIN TAXI ASSOCIATION

1st Applicant

MOFEREFERE SHADRACK MAPHISA

2nd Applicant

and

RETSHIDISITSWE ISAAC MAFISA

Respondent

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 01 FEBRUARY 2024

- [1] On 13 April 2023, the applicants filed and served two applications for leave to appeal and the condonation for the late filing of the application for leave to appeal. The application for condonation is opposed on the basis that it does not comply with the provisions of the Uniform Rules of Court and that there are no prospects of success.
- [2] On 23 January 2023, I confirmed a Rule Nisi in terms of which:
- 2.1 the respondent was interdicted from preventing the applicant's vehicle from loading at the Taxi Rank known as Majakathata Taxi Rank in line

with a permit with number: LFSLB44201/5 held by the applicant for the vehicle in question.

2.2 the respondent was interdicted from instructing or affecting or causing any driver of the Applicant to vacate the Taxi rank where he was supposed to load.

- [3] It is this order that the applicants appeal against.
- [4] The deponent to the first applicant's affidavit to the condonation application (the only one in the application), alleged to have been authorised to depose to an affidavit on behalf of the second respondent, confirmed that the applicants received the judgment confirming the rule nisi on/about 24 January 2023.¹ The applicants were dissatisfied with the court order and felt that they should launch an appeal after funds were available.² On 31 January 2023, the first applicant's executives held a meeting that discussed, *inter alia*, the judgment. It was agreed that the matter should be pursued on receipt of funds as they were low at the time.³ The funds were only available after 1 April 2023.⁴ The delay was due to the non-availability of funds.⁵
- [5] The applicants were of the view that the matter raised important questions of law in that the Free State Department of Transport and its Board issued the respondent with an irregular permit and, furthermore, the court refused to grant an order for the joinder of the parties. The grounds of appeal raised in the notice of appeal were nothing but a rehash of the arguments in the previous application.
- [6] Rule 49(1)(b) of the Uniform Rules of Court provides that when leave to appeal is required and it has not been requested at the time of the judgment or order, the application for such leave shall be furnished within fifteen days after the date

¹ Para 5.1 of the FA.

²² Para 5.2 of the FA.

³ Paras 5.3 and 5.4 of the FA.

⁴ Para 5.7 of the FA.

⁵ Para 5.10 of the FA.

of the order appealed against provided that the court may, upon good cause shown, extend the said period of fifteen days.

- [7] I was referred to the following *dicta* in *Grootboom v National Prosecuting Authority and Another*⁶:

"In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that inquiry include:

- (a) the length of the delay;*
- (b) the explanation for, or cause for, the delay;*
- (c) the prospects of success for the party seeking condonation;*
- (d) the importance of the issue(s) that the matter raises;*
- (e) the prejudice to the other party or parties; and*
- (f) the effect of the delay on the administration of justice.*

Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation."

- [8] The respondent argued that the applicants had not shown good cause for the condonation for the late filing of the appeal. They failed to appeal within the stipulated timeframe stipulated by the rules. They were represented in this appeal by the same representative who appeared for them in the urgent application. The delay in filing the leave to appeal was excessive taking into account that the parties were present in the application proceedings. The applicants do not say that they did not have funds but allege that their funds were low. As businessmen and taxi owners, they received money daily. The second applicant sued in his personal capacity, could not rely on the other members of the organization for money as he is a businessman in his own right. The second

⁶ 2014 (2) SA 68 (CC) at para 50.

applicant's attitude seems nonchalant as he neither filed a supporting or confirmatory affidavit.

- [9] Besides, the respondent stood to suffer prejudice due to the long litigation history which was characterized by the first applicant's non-compliance with court orders. The respondent stood to suffer financial ruin as every time that his taxi was prevented from doing business, he was left without income and exposed to losing his asset or the motor vehicle which was financed by the bank.
- [10] The order being appealed against was the confirmation of the rule nisi, that is, to finally interdict those persons who sought to interfere with the rights of the respondent, and not to determine any rights. The defences raised by the applicants were irrelevant and were not issues before the court. The grounds raised in the notice of appeal are flimsy and have already been dealt with in the judgment. Leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. There are neither prospects of success in this appeal nor good cause shown for the late filing of the appeal.

[11] Consequently, I make the following order:

Order:

Both applications for the late filing of the application for leave to appeal and the application for leave to appeal are dismissed with costs.


MHLAMBI, J

On behalf of the Applicant: Mr MJ Ponoane

Instructed by: OMM Attorneys Inc.
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On behalf of the Respondent: Adv. NM Bahlekazi

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