

IN THE COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No. 61512/2018

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED **NO**

DATE: 26th April 2023

SIGNATURE:

In the matter between:

KGOANE FRANK RACHUENE

FIRST APPLICANT

MALETE WINNIE RACHUENE

SECOND APPLICANT

AND

BUSINESS PARTNERS LIMITED

RESPONDENT

JUDGMENT

[1] This is an application for leave to appeal to the full bench of the above honourable court against my judgment/order granted on this the 16th of September 2022. The applicant is also seeking an order of condonation.

BACKGROUND

[2] The applicant is applying for condonation on the basis that issues of litigation are naturally onerous, multiple, and burdensome to an individual consumer (legal laypersons). He further says the implications of the order are contrary to public policy for fairness, reasonableness, and undue harshness. He also says that the finality of proceedings affects the essence of the applicant's life, prejudice, and constitutional implications

[3] The applicant says I failed to apply judicial oversight in that I did not consider the homeowner's input.

The Law

[4] Section 17(1) of the Superior Courts Act, Act 10 of 2013 the Superior Courts Act regulates applications for leave to appeal and provides:

(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;

(b) the decision sought on appeal does not fall within the ambit of Section 16(2)(a); and (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[5] The test in an application for leave to appeal prior to the Superior Courts Act was whether there were reasonable prospects that another court may come to a different conclusion.¹ Section 17(1) has raised the test, as Bertelsmann J, correctly pointed out in *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC) at para [61]:

'It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cornwright & Others* 1985 (2) SA 342 (T) at

¹ *Commissioner of Inland Revenue v Tuck* 1989 (4) SA 888 (T) at 890

343H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. '

[6] Condonation is not a mere formality and is not to be had "merely for the asking".² An explanation must be given for the delay to prosecute the appeal as well as the delay in seeking condonation for non-compliance.³ The applicant must show that he did not willfully disregard the timeframes provided for in the Rules of Court.⁴ It is upon the applicant to satisfy the court that there is sufficient or good cause for excusing compliance.⁵

[7] It is upon this court to exercise its discretion judicially. This court has to be fair to both sides in considering the facts. It is therefore imperative that the applicant puts all facts which will include the degree of lateness and non-compliance; the explanation offered by the applicant; the prospects of success; the interest of the respondent in the finality of the judgment; any unnecessary delay in the administration of justice; and the importance of the case.

ANALYSIS

[8] The factors alluded to *supra* must be considered cumulatively together in order for the court to come to an informed decision. In casu, the applicant has failed to deal with the factors alluded to. The applicant says he is a layperson and the litigation process is complex. Clearly, these are not reasons to be considered in granting condonation.

[9] It is trite that If there are no prospects of success there would be no point in granting condonation. These factors should not be considered in a piecemeal fashion but cumulatively so the court can determine whether sufficient cause has

² Uitenhage Transitional Local Council v South African Revenue Service 2004 (1) SA 292 (SCA) at para [6]

³ Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited 2017 (6) SA 90 (SCA) at para [26].

⁴ Shabalala v Goudine Chrome (Pty) Ltd and Another, unreported, case no: M 342/2016, Northwest Provincial Division, Hendricks J, 2 November 2017, at para [3]

⁵ Erasmus v Absa Bank Ltd and Others, unreported, case no: A/982/13, Gauteng Provincial Division, Pretoria, Full bench per Potteril J, at para [11].

been shown to grant condonation. It is sad that counsel was appointed but still failed to ensure that the documents were filed to deal with an application for condonation as required. Counsel's excuse is that he was appointed at a later stage when the application had already been filed.

[10] It is evident as pointed out by counsel for the respondent that the applicant knew of the order and if they wanted to challenge it same could have been done timeously. I have considered all the documents filed on caselines, and I have listened to counsel for the applicant as well as counsel for the respondent. I have applied judicial oversight in this matter as required at the time that I considered the order. I therefore stand by my initial order and I do not believe that another court would come to a different decision.

[11] **ORDER**

The following order is made:

- 11.1 The late filing of the application for leave to appeal is not condoned.
- 11.2 The applicant's leave to appeal the whole of the judgment/order is dismissed.
- 11.3 The applicant is to pay the costs of this application.

KHWINANA ENB
ACTING JUDGE OF THE GAUTENG
HIGH COURT

FOR THE APPLICANT: ADV MURERIWA

FOR THE RESPONDENT: ADV LOUW