

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

Case no: **91545/2016**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **30 JUNE 2023**

SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

APPLICANT/DEFENDANT

And

T MOENG

RESPONDENT/PLAINTIFF

J U D G M E N T

MAKHOBHA, J

[1] This is application for rescission of the order granted by Phahlane J on 14 October 2021. The application is in terms of Rule 42 (1) (a) of the Uniform Rules of Court.

[2] The applicant seeks further condonation for the late filing of the application in terms of Rule 27.

[3] The applicant is the Road Accident Fund which is the defendant in the main action. The Respondent is Mr T Moeng who is the plaintiff in the main action.

CONDONATION APPLICATION

- [4] For the purposes of this judgment I will refer to the applicant as the defendant and the respondent as the plaintiff.
- [5] The plaintiff was involved in a motor vehicle accident on 27 July 2014. The issue of merits was settled in favour of the plaintiff on 31 August 2018. The only outstanding issue is quantum.
- [6] On the 14 October 2021 the matter was set down for a motion to strike out the defense of the defendant. The defendant was not represented and an order to strike was granted by Phahlane J.
- [7] On 26 August 2022 the matter was removed from the default judgment roll to the settlement roll.
- [8] It is common cause that the plaintiff failed to serve an order to compel before he was granted the striking out order by Phahlane J.
- [9] The reasons furnished by the respondent as to why the applicant did not have legal representation at the time when the order of 14 October 2021 was granted is as follows:

9.1 The defendant during February 2020 terminated the contract with the panel of attorneys appointed to represent the respondent in all its matters in court. All active files were returned to the defendant. This resulted in the defendant not being represented in court and failed to adhere to the prescribed time frames in matters under litigation.

9.2 Covid19 pandemic also exacerbated the situation in that it added to the backlog. This led to administrative turmoil of assessing the orders received by the defendant wherein defendant was not represented.

9.3 The financial difficulties experienced by the defendant.

- [10] The plaintiff submitted that there is no basis for this application, and it is causing further delays and unnecessary cost.
- [11] Further it is argue by the plaintiff that there is no explanation offered by the applicant why , the defendant failed to bring an application to rescind the referred to court order within a reasonable timeframe and why only 11 months later it is instituted.
- [12] The court has a discretion whether to grant condonation¹ In *Grootboom*² the court laid down the requirement to be satisfied before the court can grant condonation: “[T]he standard for considering an application for condonation is the interest of justice. However, the concept ‘interest of justice is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both *Brummer* and *Van Wyk* emphasise that the ultimate determination of what is in the interest of justice must reflect due regard to all relevant factors, but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant”
- [13] The defendant did not apply for rescission until the matter was placed on the default judgment roll for 17 August 2022. Which means that the defendant had more than eleven months to bring a rescission application and it failed to do so.
- [14] The only reason furnished by the defendant for such failure is its internal problems it had and the cancellation of the panel of attorneys.

¹ *Grootboom v Nation Prosecuting Authority* 2014 (1) BCLR 65 (CC) at Para 20.

² *Grootboom* Loc Cit Para 22 – 23.

- [15] The matter has been delayed for quite too long even Tlhapi J in issuing a directive on 19 August 2022 remarked that the matter was outstanding for a long time. Further delay of the matter may result in the expert reports being stale.
- [16] In my view the defendant did not show or indicate any prospect of success should the application succeed.
- [17] A proper case must be made out for condonation. There was a long delay in filling the application, the internal problems or challenges of defendant cannot be justified at the expense of the plaintiff.
- [18] The explanation for the delay is not reasonable and acceptable and the prospect of success are minimal.
- [19] I am satisfied that the defendant has not established that there is good cause for the granting of condonation. The granting of condonation would not be in the interest of justice.
- [20] **ORDER**
- The application for condonation is dismissed with cost.

MAKHOB A J
Judge of the High Court
Gauteng Division, Pretoria

HEARD AND RESERVED JUDGMENT: 23 MAY 2023

JUDGMENT HANDED DOWN ON: 30 JUNE 2023

Appearances:

For the Applicant: Adv J Bam (instructed by) ADAMS & ADAMS

For the Respondent: Mr J Perumal (from) STATE ATTORNEY PRETORIA