

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

Case no: **013372/2022**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 30 JUNE 2023

SIGNATURE

In the matter between:

W J MATHEE

Applicant

And

THE METROPOLITAN MUNICIPALITY OF TSHWANE

Respondent

J U D G M E N T

MAKHOBABA, J

- [1] This is an application to have the filing of an answering affidavit by the respondent declared an irregular step, alternatively that it does not comply with the Uniform Rules of Court, and be set aside, as per Rule 30 read with Rule 30A.
- [2] On 20 September 2022, the applicant served an application upon the respondent and respondent served its notice of intention to oppose on 2 November 2022.
- [3] The respondent served its answering affidavit on 8 December 2022. It is common cause that the respondent filed its answering affidavit out of time and

there is no condonation application before this court. The *dies* to deliver the answering affidavit lapsed on 23 November 2022.

- [4] The applicant contends that the respondent should have filed an application for condonation and rely on Rule 27 (1) and also refers to Rules 30 and 30A.
- [5] Whereas the respondent argued that the applicant is wrong in relying on the Rule 27 (1) which is not applicable in this matter since Rule 27 (1) deals with application to uplift a bar.
- [6] The respondent argued further that it is not a requirement that condonation must always be sought by a substantive application.
- [7] In *Grootboom v National Prosecuting Authority and Another*¹ the court said the following at paragraph 35 *“It is now axiomatic that the granting or refusal of condonation is a matter of judicial discretion. It involves a value judgment by the court seized with a matter based on the facts of that particular case”*
- [8] In the absence of prejudice, courts have been reluctant to refuse condonation.² In *Ardnamurchan Estate (Pty) Limited v Renewables Cookhouse Wind Farm 1 (RP) (Pty) Ltd*³ the court said the following:

“To sum up, a Court will always have a discretion to allow an affidavit notwithstanding any non-compliance with the Rules if it is in the interest of justice to do so. In exercising that discretion the Court will consider whether any party will be prejudiced by allowing the affidavit and furthermore whether allowing the affidavit will be conducive to the proper and expeditious ventilation of the dispute before it. Procedural objections should not readily be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.”

¹ 2014 (2) SA 68 (CC).

² *Mcgill v Vlakplaats Brickworks (Pty) Ltd* [1981] 1 All SA 44 (W); *Trans-African Insurance Co Ltd v Maluleka*.

1956 (2) SA 273 9A0 at 277 A-B and *Rabbie v DeWet* [2013] JOL 30203 (WCC).

³ 2020 JDR 2564 (ECG) at Para 49.

- [9] The answering affidavit by the respondent does give reasons for the lateness of the answering affidavit. The applicant on the papers before me did not show how he will be prejudiced should the court condone the respondent's answering affidavit.
- [10] Moreover, the applicant's replying affidavit was also late by 8 days and he did not seek condonation. It is also surprising that the applicant replied to the very answering affidavit he is opposing.
- [11] It follows that from the case law I have referred to above that I am of the view that the delivery of an answering affidavit out of time without an application for condonation is not a nullity or irregular proceeding or step which is not cable of being condoned.
- [12] The application is dismissed with cost.

MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 24 MAY 2023

JUDGMENT HANDED DOWN ON: 30 JUNE 2023

Appearances:

For the Applicant: Adv H Scholz (instructed by) TAUTE, BOUWER, CILLIER INC
ATTORNEYS

For the Respondent: Adv S Mbeki (instructed by) MAJANG INC ATTORNEYS.