

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 4145/2021

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates:NO

In the matter between:

MOHOKARE LOCAL MUNICIPALITY

FIRST APPLICANT

and

**THE MUNICIPAL MANAGER: MOHOKARE
MUNICIPALITY (MR SELBY SELEPE)**

SECOND APPLICANT

and

**SOUTH AFRICAN LOCAL AUTHORITIES
PENSION FUND**

RESPONDENT

In re:

**SOUTH AFRICAN LOCAL AUTHORITIES
PENSION FUND**

APPLICANT

and

MOHOKARE LOCAL MUNICIPALITY

FIRST RESPONDENT

**THE MUNICIPAL MANAGER: MOHOKARE
MUNICIPALITY (MR SELBY SELEPE)**

SECOND RESPONDENT

JUDGMENT:

MOLITSOANE, J

HEARD ON:

26 MAY 2022

DELIVERED:

09 JUNE 2022

[1] This is a condonation application for the late filing of the answering affidavit. Contrary to the practice in this Division this application is not brought with the main application.¹ This application is opposed.

[2] For convenience the parties will be referred to as follows; the Applicant will be referred to as “the SALAPF” and the respondents will jointly be referred to as “the Municipality”. It is contended that the Municipality failed to make payments which were due to SALAPF as a member. The parties then referred a dispute to the Pension Fund Adjudicator (the PFA). On 30 July 2020 the PFA handed down a determination in which the Municipality was compelled to pay some specified monies over to the SALAPF. It is contended that the Municipality thereafter failed to comply with the determination.

[3] On 08 September 2021 the SALAPF issued the contempt of court proceedings. The Municipality signified their intent to oppose this application on 05 October 2021. The answering affidavit was due on 26 October 2021.

[4] On 27 October 2021 the attorney for the Municipality requested an indulgence to file the answering affidavit by 12 November 2021. On 08 November 2021 the SALAPF granted the said indulgence. The answering affidavit was not filed by end of business day on 12 November 2021.

[5] On 17 November 2021 the Municipality requested a further indulgence. On the same day the SALAPF informed the Municipality that should it wish to file the answering affidavit, condonation for the late filing should be sought.

¹ The main application is for contempt of court.

[6] The answering affidavit was duly filed 23 days later, on 29 November 2021. On 11 March 2022 the SALAPF filed its replying affidavit and dealt with allegations raised in the answering affidavit. Notwithstanding filing the replying affidavit, SALAPF persisted with its stance that the answering affidavit was filed out of time hence this condonation application.

[7] The issue for determination is whether there is a need for condonation for the late delivery of the answering affidavit. If the answer is in the affirmative, then in that case whether condonation should be granted.

[8] The filing of an answering affidavit outside the prescribed limits and without seeking condonation is an irregular step.²

[9] Uniform Rule 30(1) and (2)(a) provides that:

(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if-

(a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;

[10] The SALAPF elected not to challenge the filing of the answering affidavit as an irregular step as envisaged in Rule 30. It however dealt with the allegation in its replying affidavit in full. The acquiescent stance also compounded by filing a replying affidavit may rightly be seen as an agreement to condone the delay in the filing of the answering affidavit. Having taken a step in the furtherance of bringing the application to finality the SALAPF cannot thereafter complain of the irregular filing of the affidavit.

² Ardnamurchan Estates (Pty) Ltd v Renewables Cookhouse Wined Farms 1 (RF) (Pty) Ltd and Others [2021] 1 ALL SA 829 (ECJ).

[11] I align myself with the following sentiments in *Ardamurchan Estates*³:

“...where...an answering affidavit is delivered out of time and an applicant takes a further step by delivering a replying affidavit, that applicant is in the same position as an applicant who has agreed in terms of Rule 27(91) to afford a respondent an extension for the delivery of the answering affidavit.”

[12] In opposing the condonation application the SALAPF has not demonstrated any prejudice it suffered by the late filing of the answering affidavit. It in fact dealt fully with the answering affidavit without any complaint. I accordingly find that the filing of the replying affidavit disposed of the need for condonation. This application was unnecessary but same was prompted by SALAPF. In my view an order of costs will not be warranted at this stage seeing that the Municipality sought an indulgence to file an answering affidavit. I make this order:

ORDER

1. The application is struck off the roll.
2. Costs of this application will be costs in the cause.

P.E. MOLITSOANE, J

On behalf of the Applicant:

Adv. N. Ralikhuvhana

Instructed by:

Webbers Attorneys

³ Para [36] (*supra*).

BLOEMFONTEIN

On behalf of the Respondent:

Adv. M.C. Louw

Instructed by:

Peyper Attorneys

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