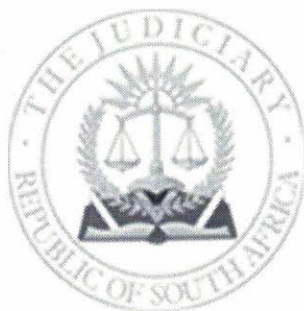




IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO OTHER JUDGES: YES/NO
 (3) REVISED NO

DATE: 11 JULY 2019.....

SIGNATURE:

[Handwritten signature]

Case No. 29501/2014

In the matter between:

HEIKO DRAHT N.O.

FIRST APPLICANT

MARC BRADLEY BEGENSEN N.O.

SECOND APPLICANT

DONOVAN THEODORE MAJIEDT N.O.

THIRD APPLICANT

And

THLANI JOSEPH MANQELE

FIRST RESPONDENT

THE STANDARD BANK OF SOUTH AFRICA

SECOND RESPONDENT

THE MASTER OF THE HIGH COURT,
PRETORIA

THIRD RESPONDENT

JUDGMENT

MILLAR, A J

1. This is an application for leave to appeal against a judgment handed down on 18 March 2019 in terms whereof condonation was granted to the applicants for the late delivery of their declaration, the first respondent was ordered to file a plea within 20 days and the applicants ordered to pay the costs of the application on the scale as between attorney and client.
2. The present application is brought by the first respondent. For convenience I intend to refer to the parties as they were in the main application.
3. The test for the granting of leave to appeal is set out in S 17(1) of the Superior Courts Act ¹ as follows:

¹ Act 10 of 2013

“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;”*

4. This application is brought against the order granting condonation. There are 2 grounds upon which it was brought – firstly that the court found that the first document that the applicants had initially relied upon was not a court order and secondly that condonation was granted for the late filing of the applicants declaration after the courts order had in fact been handed down.
5. That the court only made one order in the matter is a question of fact. The applicant’s reliance on the document it had been given during October 2016 does not detract from the fact that it was not an order of this court. The applicant’s confusion as to which was the correct order ultimately led to the application for condonation.
6. The first respondent does not apply for leave to appeal the punitive costs order granted in his favour but only the granting of condonation. The grant or refusal of condonation in the main action will not affect the outcome of the main case at

all. The main action is one in which the applicant seeks termination of joint ownership over an immovable property of which the first respondent is a co-owner. Were condonation to have been refused, all that would have been achieved would have been unnecessary and wasted costs with the proceedings to have commence *de novo*.

7. It was stated by the full bench in the Western Cape in *Harding & Others v Maclear*² that:

“One sees all too often dilatory tactics and “smart” points of law taken on behalf of parties which do not advance the litigation one jot but only serve to frustrate the opponent from bringing the case to finality. Ultimately, in such circumstances it is only the legal practitioners who are the winners. This sort of practice is to be deprecated and in appropriate circumstances in the future this court will not hesitate to order the practitioner to bear those costs personally.”

8. I have considered the grounds upon which this application for leave to appeal has been brought, the reasons for granting the judgment of 18 March 2019 and the arguments advanced by both the parties and am of the view that there is no reasonable prospect that another court would come to a different conclusion.

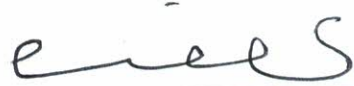
² (A272/2016) [2016] ZAWCHC 172 (24 November 2016) *Gamble and Samela JJ* at paragraph 34

9. In regard to costs, I am of the view that the present application falls into the category referred to above. It is for this reason that I intend to make the order for costs that I do.

10. In the circumstances, I make the following order:

10.1 The application for leave to appeal is dismissed;

10.2 The first respondent's attorney is to pay the applicants costs of this application on the scale as between attorney and client, de bonis propriis.



A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

11 JULY 2019

JUDGMENT DELIVERED ON:

11 JULY 2019

COUNSEL FOR THE APPLICANT:

ADV. JACOBS

INSTRUCTED BY:

VEZI & DE BEER ATTORNEYS INC.

REFERENCE:

MS. C DE BEER

COUNSEL FOR THE FIRST RESPONDENT:	ADV. SEBOLA
INSTRUCTED BY:	SEBOLA NCHUPETSANG SEBOLA INC
REFERENCE:	MS. T SEBOLA

NO APPEARANCE FOR THE SECOND AND THIRD RESPONDENTS