



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE HIGH COURT, KIMBERLEY)**

Case No: 2018/2013

Heard on: 28/08/2018

Delivered on: 24/10/2018

In the matter between

CHRISTIAAN NICOLAI LAUBSCHER

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

JUDGMENT

PAKATI J

- [1] The applicant, the Road Accident Fund, applies for leave to appeal the whole order I granted on 16 November 2017 and against the judgment dismissing the application in terms of Rule 42 granted on 14 June 2018. The applicant also applies for condonation for the late filing of the application for leave to appeal. This application was supposed to have been filed by 06 July 2018 but was received by the Registrar on 03 August 2018.
- [2] In its affidavit in support of the condonation application the applicant explains that it is a parastatal dealing with tax payer's funds and conducts hundreds of cases every day in respect of various jurisdictions and Divisions in South Africa. Due to the lapse of time since the applicant's Rule 42 was argued on 25 January 2018 the plaintiff's file was archived after three months of inactivity. It had to be located and retrieved which took considerable time and administrative exercise. The motivation for the application for leave to appeal had to be endorsed and signed by not less than seven signatories including the senior claim's handler, manager, senior manager, regional and branch managers. The motivation had to be sent to the applicant and the first signature for approval was obtained on 20 July 2018 and the final one on 26 July

2018. It was only then that the legal representative of the applicant was instructed to proceed with the application.

- [3] The applicant explained further that upon receipt of the motivation for the application for leave to appeal it had to go through various lines and levels of the Road Accident Fund personnel before its approval. The motivation has to be received by the claim's handler, the senior claim's handler and then the team leader of the group. It proceeds to the legal costs department for costs consideration and back to the litigation department for consideration and endorsement, thereafter to the senior manager of operations. It is then referred to the office of the regional general manager, and finally for approval by the chief operations officer.
- [4] Mr Botha, on behalf of the plaintiff, submits that the defendant has failed to provide the court with an explanation for the delay or any reasons why condonation should be granted. He submits further that the defendant should approach court by way of a substantive application on notice to the other party, supported by an affidavit explaining the delay. For this assertion he relies on Rule 27 (1)¹ which provides:

'27 Extension of time and removal of bar and condonation

- (1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.'
- [5] The Constitutional Court in **VAN WYK v UNITAS HOSPITAL**² had this to say about condonation:

'[20] This court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause 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.

[22] An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable.'

¹ Uniform Rules of Court

² 2008 (2) SA 472 (CC) at 477 paras [20] & [22]

- [6] Even though the applicant did not give a full explanation covering the whole period, I granted condonation considering the fact that it is in the interests of justice to do so and there are prospects of success on appeal. A possibility exists that another court might come to a different decision.

ORDER

- 1. Condonation is granted;**
- 2. The applicant's application for leave to appeal is granted against the order granted on 16 November 2017 and the judgment dismissing the application in terms of Rule 42 granted on 14 June 2018 to the Full Court of this Division.**

BM PAKATI
JUDGE-NORTHERN CAPE DIVISION, KIMBERLEY

On Behalf of the Applicant: ADV BOTHA
Instructed by: ELLIOTT MARIS WILMANS & HAY

On Behalf of the Respondent: ADV EIA
Instructed by: ROBERT CHARLES ATTORNEY