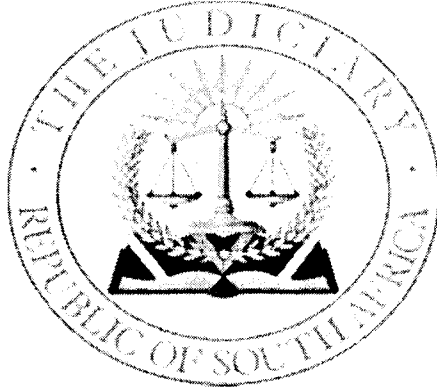




REPUBLIC OF SOUTH AFRICA
IN THE GAUTENG HIGH COURT DIVISION, PRETORIA

JUDGMENT

31/7/15

Reportable/Not reportable

Case no: 15679/14

In the matter between:

JOHANNES JURGENS HENDRICKS

Applicant

and

NICOLAAS JACOBUS VAN NIEKERK
(ID No. 370606 5041 088)

1st Respondent

THE NICK VAN NIEKERK FAMILY TRUST
(IT No. 3859/04)

2nd Respondent

ICON HUNTING SAFARIS

3rd Respondent

TRINICK BELEGGINGS (PTY) LTD
(Reg No. 2005/009194/07)

4th Respondent

JUDGMENT

MNGQIBISA-THUSI, J

- [1] The applicant is seeking leave to appeal against an order granted on default on 18 November 2014, in terms of which an eviction order on terms as set out

in the notice of motion dated 18 February 2014. The only amendment to the original prayers as set out in the notice of motion was in prayer 4, wherein the respondents sought the eviction of the applicant within 14 days of the order. The order granted allowed for the applicant to vacate the property within 30 days of the order.

- [2] The applicant further seeks condonation for the late filing of the application for leave to appeal. With regard to condonation, the applicant claims that it only became aware of the eviction order on 25 November 2014 when the order was served on its attorneys. The applicant filed its application on 15 December 2014 instead of 9 December 2014. As correctly pointed out by Mr De Beer, counsel for the respondents, the claim by the applicant that it only got knowledge of the eviction order when it was served is incorrect.
- [3] At the hearing of the eviction application, the applicant sought a postponement of the hearing of the application in that it had not filed its answering affidavit timeously as per an order granted on 30 July 2014 by Molopa-Sethosa J. In terms of the order of 30 July 2014, the eviction application was postponed *sine die* and the applicant was ordered to file its answering affidavit within 10 court days of the order, where after the normal rules of court pertaining to time periods, including amongst others, the filing of further pleadings. When the application for a postponement was dismissed, the applicant, an attorney by profession was present in court. Mr Du Preez, the applicant's legal representative and the deponent to the applicant's founding affidavit in the condonation application, decided to leave court after the application for a postponement was dismissed. Furthermore, the applicant stayed in court and was present when the order was granted. As appears from the confirmatory affidavit filed by Mr Steyn, the respondent's attorney, as soon as the eviction order was granted Mr Du Preez came back into the court and inquired from the respondents' counsel about the period given for the applicant to vacate the property. Therefore, the allegation that the eviction order was granted in the absence of the applicant is far from the truth.

- [4] As appear from the affidavit deposed to by Mr Du Preez, the applicant was under the impression that the eviction order stipulated that he should vacate the property after 30 days. It was only after the applicant was phoned by the sheriff of the court on 11 December 2014 that they realised that there are grounds to challenge the order on the ground that no date for vacation has been stipulated in the order in accordance with section 4(8) of the Prevention of Illegal Evictions from and /or Occupation of Land 19 of 1998 (the PIE). Furthermore, Mr du Preez alleged that it was the applicant's intention to apply for the rescission of the eviction order.
- [5] With regard to the application for leave to appeal, the applicant contends that the court failed to determine a just and equitable date for the applicant to vacate the premises and to consider the just and equitable conditions under which the applicant should vacate the property.
- [6] In an application for condonation, a court has a discretion that is to be exercised judiciously, taking into consideration all the facts before it. The onus is on the applicant to show that if condonation is granted, it will not adversely affect the respondent. The court in exercising its discretion whether or not to grant condonation has to take into account (i) the degree of lateness or non-compliance; (ii) the explanation thereof; (iii) the prospects of success; (iv) the importance of the case; (v) the respondent's interest in the finality of the matter¹.
- [7] Having read the respondents' founding affidavit in the eviction application, in the absence of an answering affidavit from the applicant, I am satisfied that the requirements for the eviction of the applicant were satisfied and the time within which the applicant should vacate the property was clearly stipulated in the order granted. I am of the view that there is no reasonable possibility that another court could come to a different conclusion. Furthermore, I am

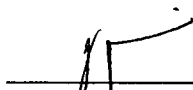
¹ *Melanie v Santam Insurance Company Limited* 1962 (4) SA 531 (A) at 532 C-F; *Dial Tech CC v Hudson & Another* (2007) 28 ILJ 1237 (LC) .

satisfied that the applicant has not shown good cause why condonation should be granted.

[8] Taking into account the distortions in the applicant's founding affidavit, in particular, the issue as to when the applicant became aware of the eviction order and the allegation that the order was granted in the absence of the applicant, and bearing in mind that the applicant was in court and his attorney came inside the court after the order was granted, the applicant and his attorney have not been honest with the court. To show the court's displeasure with the conduct of the applicant and Mr Du Preez, both of whom are officers of this court, a punitive cost order is warranted.

[9] Accordingly the following order is made:

1. The application for condonation is dismissed with costs.
2. The application for leave to appeal is dismissed with costs on an attorney and client scale.



MNGQIBISA-THUSI J

Appearances:

For Applicant: Mr L Du Preez

Instructed by: Du Preez attorneys

For Respondent: Adv De Beer

Instructed by: Steyn Strydom & Viljoen Inc