

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 4696/2014

In the matter between:-

BATHO SEVENTH-DAY ADVENTIST CHURCH
SIYABONGA MAGADLELA

1st Applicant

2nd Applicant

and

ABRAM MPAPI SETSIBA

1st Respondent

DAVID MOKHELE

2nd Respondent

SIDNEY MOSEMEGE

3rd Respondent

DINEO MOSEMEGE

4th Respondent

OUPA MOFOKENG

5th Respondent

SYLVIA KHOBOKO

6th Respondent

COCONG KHOBOKO

7th Respondent

PINKI LEETO

8th Respondent

LERATO LEETO

9th Respondent

GRACE MOSIA

10th Respondent

LERATO KOBILE

11th Respondent

KETSITSENG KOBILE

12th Respondent

ROSE MOROKA

13th Respondent

SAMUEL TAGOE

14th Respondent

MATSHIDISO MOKHELE

15th Respondent

MPHO MARUMO

16th Respondent

PALESA MARUMO

17th Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

JUDGMENT BY: KRUGER, J

DELIVERED ON: 3 SEPTEMBER 2015

- [1] This is an application for leave to appeal against my judgment of 30 April 2015. Both counsel filed written submissions as is the practice in this division where the parties agree to do so. In my judgment I dismissed the applicants' interlocutory application in terms of Rule 30 dated 1 April 2015 asking that the answering affidavit and its annexures be stuck out with costs.
- [2] The main reason why I dismissed the Rule 30 application was the absence of prejudice, as appears from my judgment of 30 April 2015.
- [3] In the notice of appeal the applicants say in paragraph 2 that I erred in finding that the respondents had made a condonation application subsequent to the court order of CJ Musi AJP of 5 February 2015. In the court file there is a notice of motion dated 18 February 2015, served on applicant's attorneys on 18 February 2015 asking condonation for the late condonation application and the late filing of the answering affidavit, to be heard on 19 February 2015. On 20 February 2015 the answering affidavit was filed. There is no indication that it has been accepted by the court.

- [4] The applicants responded to the condonation application of 18 February 2015 on 25 February 2015 by serving a notice under Rule 30(2)(b) to remove the answering affidavit filed on 19 February 2015. When the respondents did not react to the Rule 30(2)(b) notice the applicants brought the present Rule 30 application to strike out the answering affidavit.
- [5] In the notice of appeal the applicants say they are prejudiced by the admission of the answering affidavit. The applicants are wrong to say that the answering affidavit has been admitted. That can only be done once condonation has been granted. It is not unusual that affidavits in respect whereof condonation for the late filing is sought, are filed before argument is heard. The document is admitted only after the court has granted condonation. The fact that the affidavit is filed has no consequence until it has been accepted by the court. The filing has the effect that the Registrar's date stamp is on it. Usually an affidavit in respect whereof condonation is required is not filed before condonation is granted. The fact that it has been filed with the registrar does not mean that it is before the court until condonation has been granted. If it were otherwise the condonation application would be pointless. I am not convinced that the filing with the registrar of an affidavit while a condonation application in respect of the late filing thereof is pending, is a further step in the proceedings for purposes of Rule 30. Even if it is a further step (and I think it is not) I fail to see any prejudice, which is also not alleged in the founding affidavit supporting the Rule 30 application.

[6] Mr Ayayee, for the respondents, in his heads of argument points out that my judgment was on interlocutory matters and no final pronouncement was made on the rights of the parties.

[7] In my view there are no reasonable prospects that another court will come to a different conclusion.

ORDER

The application for leave to appeal is dismissed with costs.

A. KRUGER, J

On behalf of Applicants: Adv N Snellenburg
Instructed by:
Rossouws
BLOEMFONTEIN

On behalf of Respondents: Adv A E Ayayee
Instructed by:
Matee Attorneys
BLOEMFONTEIN

