

REPUBLIC OF SOUTH AFRICA



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 10991/2021

DELETE WHICHEVER IS NOT APPLICABLE:

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



DATE: 15 MAY 2024 SIGNATURE:

In the matter between:

MALESELA DANIEL TEFFO

Applicant

and

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Respondent

JUDGMENT FOR LEAVE TO APPEAL

BOKAKO AJ and NYATHI J

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 15 May 2024.

INTRODUCTION

1. This is an application for leave to appeal. The Applicant seeks leave to appeal to the Supreme Court of Appeal (“the SCA”), in terms of section 17(1)(a)(i) of the Superior Courts Act 10 of 2013, against the whole judgment and order of this Court handed down on 16 September 2022. In that judgment, this Court ordered the Applicant’s strike off the roll of legal practitioners. It is that order that the Applicant seeks to challenge before the SCA. The Respondents opposed this application.
2. The grounds for the leave to appeal are succinctly stated in the notice of application for leave to appeal, and we do not intend to restate them in this judgment.
3. It is a trite principle of our law that leave to appeal may only be granted where the Judge or Judges presiding are of the opinion that the appeal would have a reasonable prospect of success or where there is some other compelling

reason why the appeal should be heard, including conflicting judgments on the matter under consideration. (See section 17 (1) (a) (i) and (ii) of the Superior Courts Act, 10 of 2013).

4. In terms of section 17(1)(a)(i) and section 17(1)(a)(ii) of the Superior Courts Act 10 of 2013 (“the Superior Courts Act”), leave to appeal may only be granted where the Judge or Judges concerned believe that:

- (a) The appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard, including if there are conflicting judgments under consideration.

- (b) Regarding the word ‘would’ in s 17 of the Superior Courts Act 10 of 2012 (the Act) sub-section 17(1) (a) (i) above, the Supreme Court of Appeal has found that the use of the word in the section imposes a more stringent threshold in terms of the Act, compared to the provisions of the repealed Supreme Court Act 59 of 1959.

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5. In *MEC Health, Eastern Cape v Mkhitha*¹ the test for section 17 (1) (a) (i) was set out as follows:

“An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is

¹ [2016] ZASCA 176 para 17

not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal”

THE APPLICANT’S CASE

6. The Applicant's representative, Adv. Shakoane SC brought to the Court’s attention two preliminary issues that must be considered before considering the merits. The first issue relates to the absence of the Applicant’s condonation application, and the second relates to the consolidation of two applications.

THE RESPONDENT’S CASE

7. Respondent’s representative, Adv. Ka-Siboto, in response, submitted that according to Rule 49(1)(b), the Applicant’s application for leave to appeal is out of time in that the said application should have been lodged within 15 court days calculated from 16 September 2022, failing which, the Applicant was obliged to apply for condonation.
8. Further, it was contended that on 22 September 2022, the Applicant launched an application for rescission of the strike-off judgment and order. Subsequently, the Applicant abandoned that application before it could be heard. Instead, the Applicant brought a variation application against the strike-off order, which was consequently struck off with costs. On 13 October 2023, Madam Justice Neukircher dismissed the Applicant's application for variation regarding prayer two to seven and upheld prayer one that had to do with clerical corrections. The said court also found that the Applicant was in contempt of Court.

9. The Respondent further contends that it is irregular and ill-conceived of the Applicant to place reliance on Madam Justice Neukircher's judgment as the basis for bringing this belated application. This Court has no jurisdiction nor capacity to entertain other court decisions, as they have no bearing on this matter. I will consider the preliminary point of condonation first.

ANALYSIS

10. It is not in dispute that the Applicant did not seek any indulgence by way of condonation. No substantive explanation was provided regarding the late filing of his application for leave of appeal.

11. Regarding the Rules of this Court, the Applicant had to file his application for leave to appeal within 15 days after delivery of the said judgment, dated 16 September 2022. In this matter, the application for leave to appeal was served on the Respondent's attorneys on 3 November 2023, way outside the time limit prescribed in Rule 49(1) of the Uniform Rules of Court. The Applicant's application for leave to appeal ought to have been filed by 17 October 2022.

12. This is a substantial delay which aggravates the Applicant's obligation in applying for condonation.

13. The Applicant has yet to apply for a condonation for filing his leave to appeal late. It is trite that in terms of Rule 49(1) of the Uniform Rules of Court, Rule 49 of the Uniform Rules of Court dictates the form and process of an application for leave to appeal, and the substantive law about it is to be found in s 17 of the Superior Courts Act.

14. In this case, the reasons provided by the Respondent, which I don't intend to repeat, as to why their application for leave to appeal was not timeously served and filed were simply due to their misinformed, calculated view in awaiting another court's decision on an unrelated issue or hoping and believing that such a projected decision will buy them time. It is unheard of that the process the applicant chose to embark on would serve as a convenient way of extending the time within which to file an application for leave to appeal. It is pertinent that the actions of the Applicant showed no appreciation of the Uniform Rules, and that clearly there was no regard for the Rules of this Court. No genuine effort was exerted to apply for leave to appeal timeously.

15. The law on condonation is well established. The Constitutional Court in *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd & others*² held that factors that usually weigh in, considering condonation, include the degree of non-compliance, the explanation therefore, the importance of the case, a Respondent's interest in the finality of the judgment, the convenience of this Court, and the avoidance of unnecessary delay in the administration of justice.

16. This Court believes that the Applicant needed to explain the degree of lateness in this matter, but he did not sufficiently explain it in detail. The Applicant gives no reasons for the delay other than that he awaited the decision of another court. This is despite the Applicant's submission that he has always been disgruntled with the finding of this Court. There is no explanation for why there was no attempt at an earlier filing. The limited justifications for late

² ZACC 48; 2014 (3) BCLR 265 (CC); 2014 (5) SA 138 (CC)

filing offered by the applicants are inadequate and would generally militate against granting condonation, even if they would have applied for same. Also, lateness is one of many considerations when determining whether condonation may be given.

17. The Supreme Court of Appeal in *Uitenhage Transitional Local Council v South African Revenue Service*³ held that condonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.

18. This Court would have hoped that the many admonitions concerning what is required of an applicant in seeking the indulgence of this Court would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this Court, seeking such indulgence calls for a complete, detailed and accurate account of the causes of the delay and their effects must be furnished to enable this Court to understand clearly the reasons and to assess the responsibility.

19. The Applicant provided no reasonable explanation for his non-compliance with the rules of this Court. *The onus still falls on the Applicant to explain why the matter was referred outside the stipulated time frames.* The delay in prosecuting his leave of appeal in this Court alone amounted to more than a year to prosecute his appeal, even if this Court were to take into account the alleged fact that he genuinely believed that the process of rescission and

³ [2003] ZASCA 76

variation was a procedural way or method in the prosecution of his appeal, this can hardly compensate for the inordinate delay in his application.

20. The Applicant did not take this Court in confidence and bring an application for condonation. Applicant's counsel held the view that there was no need for such an application because they were within the prescribed timeframe. It is trite that condonation of any delay engages the discretionary power of a court to extend the specified time limit for filing an appeal or application. It pertains to the mechanism by which a court may grant clemency for the delay in submitting an appeal or application beyond the stipulated timeframe.

21. The Applicant has failed to comply with procedural requirements by not seeking an indulgence from this Court by asking for condonation for his late application. This results in the dismissal of his application for leave to appeal. Court rules serve as boundaries for litigation. While strict adherence and blatant violation are undesirable, they are essential for maintaining legal certainty.

22. Concerning the second preliminary point regarding consolidating two applications for leave to appeal. It is important to note that the Applicant filed a separate notice of appeal against the judgment delivered by Madam Justice Neukircher on 13 October 2023. In this matter, the Applicant was found to be in contempt of the strike-off order. The second notice dated 3 October 2023, with which we are concerned here, the Applicant seeks to appeal this Court's "strike-off judgment".

21. According to the Respondent, the two appeals should have been determined simultaneously. However, as appears from the correspondence, Madam Justice Neukircher was only made aware of the Applicant's application for leave to appeal against her judgment on 14 March 2024. Furthermore, it appears from the correspondence that the Applicant was made aware of the set down of the application for leave to appeal proceedings on 9 April 2024. Thus, the Applicant had sufficient time to remedy and consolidate the proceedings. However, he chose not to pursue that direction.

22. Consolidation of actions in terms of the Uniform Rule of Court:

22.1 Rule 11 of the Uniform Rules of Court states that where separate actions have been instituted, and it appears to the court convenient to do so, it may, upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon.

- (a) The said actions shall proceed as one action;
- (b) The provision of rule 10 shall *mutatis mutandis*, apply with regard to the action so consolidated and
- (c) The court may make any order which to it seems meet with regard to the further procedure; and may give one judgment disposing of all matters in dispute in the said action.

23. In this matter, there is no application for consolidation before us, and both parties did not persuade the court that convenience favours the consolidation and that such consolidation will not cause substantial

prejudice to the other party. This Court shares the Respondent's view that, as a general principle, matters which contain substantially the same facts or points of law, have to be pronounced upon or tried at a single hearing to prevent a multiplicity of actions and conflicting judgments and to save costs.

23. The Supreme Court of Appeal in *The City of Tshwane Metropolitan Municipality v Blair Atholl Homeowners Association*⁴ stated that:

'The procedure is aimed at facilitating the convenient and expeditious disposal of litigation. The word "convenient" within the context of the subrule conveys not only the notion of facility or ease or expedience, but also the notion of appropriateness and fairness. It is not the convenience of any one of the parties or of the court, but the convenience of all concerned that must be taken into consideration.'

24. This Court has neither jurisdiction nor authority to hear an application for leave to appeal on any issues related to Madam Justice Neukircher's orders, particularly in her absence. It is also clear that the Applicant wants this Court to determine issues that were never canvassed before it. This would be highly irregular. Therefore, this Court is not authorized to entertain nor pronounce on any issues related to orders or judgments of other courts.

CONCLUSION

25. The present application was filed outside the prescribed time, so this Court is excluded from considering the application for leave of appeal. The application stands to be dismissed.

⁴ [2018] ZASCA 176; [2019] 1 All SA 291 (SCA); 2019 (3) SA 398 (SCA)

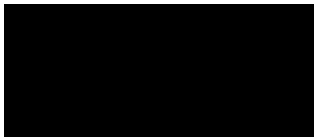
26. In the absence of condonation being granted, the leave to appeal application is dismissed for want of jurisdiction of this Court to consider that application.

27. This court believes that it has considered all the issues raised in this application for leave to appeal in our judgment. We are, therefore, not persuaded that another Court may come to a different conclusion in this case. Put another way, we are of the considered view that there are no reasonable prospects of success in this appeal. Therefore, the application for leave to appeal falls to be dismissed.

28. As regards the issue of costs, nothing was presented to us warranting a departure from the standard rule that costs follow the outcome of litigation.

29. In the circumstances, we make the following order:

The application for leave to appeal is dismissed with costs.



J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria



T.P. BOKAKO

Acting Judge of the High Court

Gauteng Division, Pretoria

APPEARANCES

Counsel for the Applicant

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Counsel for the Respondent

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Attorneys for the Respondent:

Motlhe Jooma Sabdia Inc; Pretoria

Date of Hearing:

25 April 2024

Date of Judgment:

15 May 2024