



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

Case No. 90554/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED


SIGNATURE

16 JULY 2024
DATE

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

JONATHAN VAN RENSBURG

Respondent

JUDGMENT

KUBUSHI J

[1] The Road Accident Fund has in terms of rule 49(1)(c) of the Uniform Rules of Court delivered an application requesting reasons for the Court Order granted on 16 November 2023. The application is dated 6 April 2024 and was emailed to the Judge's clerk on 12 April 2024.

[2] Rule 49(1)(c) provides that

“When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within ten days after the date of the order.”

[3] The application was delivered well out of the ten-day period prescribed in rule 49(1)(c). The application, whilst delivered out of time, had no accompanying application for condonation requesting the court's indulgence for the late delivery of the application.

[4] It is trite that a pleading can only be delivered out of the time prescribed in the rules with the indulgence of the court. Where such an indulgence has not been sought, the pleading cannot be entertained by the court. The applicant, in this instance, delivered the application late without requesting the court's indulgence to do so.

[5] The requisites for the condonation for non-compliance with the rules are regulated in terms of rule 27. The salient provisions of the rule for purposes of this judgment, provide that –

“(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 period prescribed by these rules 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. . .

(3) The court may, on good cause shown, condone any non-compliance with these rules . . .”

[6] The sub-rules clearly envisage that an application for an order either extending or abridging any time period prescribed by these rules or fixed by an order of court or condoning any non-compliance with the rules, is a necessity. Furthermore, sub-rule 27(3) authorises the court to condone any non-compliance with the rules. An application for condonation for non-compliance with the rules is, thus, a requirement.

[7] The author *Erasmus*,¹ correctly so, states the following

“Condonation of the non-observance of the rules is by no means a mere formality. It has been held that it is for the applicant to satisfy the court that there is sufficient cause for excusing the applicant from compliance, and the fact that the respondent has no objection, although not irrelevant, is by no means an overriding consideration.

Extension of time and condonation must, therefore, normally be sought by way of a substantive application on notice of motion to the other parties supported by affidavits setting out the relevant facts. The reason why the indulgence is sought should be set out and where the cause of the delay has been the mistake or default of a third party (e.g. the applicant’s attorney) there should be an affidavit by such party. The fullest disclosure should be made of all the facts relevant to the matter.

An application for condonation should be lodged without delay as soon as it is realised that there has not been compliance with a rule of court”.

[8] As already stated, the applicant filed the application more than four months out of the prescribed time period of ten days. The applicant ought to have been aware that the application is out of time, and applied for condonation. As stated above, condonation is by no means a formality and a court cannot, *mero motu*, grant condonation. Without the court having granted the applicant leave to file the application late, there is no proper application requesting reasons for the Court Order of 16 November 2023, before court.

[9] Consequently, the application is dismissed.




KUBUSHI J
Judge of the High Court
Gauteng Division

¹ See Erasmus: Superior Court Practice Volume 2 at D1-677 and the cases referred to therein.

Appearances:

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Date of argument: 12 April 2024

Date of judgment: 16 July 2024