

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: **08 October 2024** Signature: _____

Case no. **30135/2019**

In the matter between:

130 FOX STREET INVESTMENTS (PTY) LTD

FIRST APPLICANT

FANUEL MOTSEPE

SECOND APPLICANT

And

RIO RIDGE 1121 (PTY) LTD

RESPONDENT

In re the application between:

RIO RIDGE 1121 (PTY) LTD

APPLICANT

And

130 FOX STREET INVESTMENTS (PTY) LTD

FIRST RESPONDENT

FANUEL MOTSEPE

SECOND RESPONDENT

Coram: Dlamini J

Date of hearing: 06 August 2024

Delivered: 08 October 2024 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 08 October 2024.

JUDGMENT

DLAMINI J

Introduction

- [1] This is an application for leave to appeal the judgment and order that I handed down on 26 March 2024. This application is also accompanied by an application for condonation for the late filing of the leave to appeal application.
- [2] It is trite that where an application for condonation is sought, the condonation application must be dealt with as it might have a bearing on the main application.

Condonation

- [3] The established principle of our law is that the court has a discretion to grant condonation based on fairness to both sides and the following factors need to be taking into account; the degree of lateness, the explanation for the delay, the prospects of success, the importance of the case, the respondents interest in finality, convenience of the court and avoidance of unnecessary delay. Our courts have held that condonation is not merely for the asking and an applicant is expected to bring an application for condonation without delay and as soon as possible once they realise that there has been non - compliance with the Rules of Court.
- [4] The common cause facts are that the judgment was delivered on 26 March 2024 and the application for leave to appeal and the application requesting condonation for the late filing of the application for leave to appeal were served on 19 June 2024 some estimated 3 months after the due date for filing the application for leave to appeal.
- [5] Having regard to the testimony of the applicant and in the interest of justice I am satisfied that applicant has provided cogent reasons for the delay. Therefore, condonation is granted.

Grounds of appeal

- [6] The applicant's grounds of appeal, the parties' heads argument, this Court judgment including the entire record of appeal must be deemed to be incorporated in this judgment.
- [7] In my view the applicant has raised the same submission that were argued during the trial. I have dealt extensively with all the applicant's submission in my judgment and these submissions were dismissed.
- [8] In light of the above, based on Section 17 of the Superior Court Act, and the factual matrix of this matter, I am not persuaded that there are any reasons or

extraordinary circumstances in this matter that warrants the grant of leave to appeal which would have reasonable prospects of success or that there are any other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

- [9] In my view, the applicant has not presented any facts that demonstrate that it has any prospects of success and therefore it would not be in the interest of justice to grant leave to appeal to the applicant.

ORDER

1. The applicant's application for condonation is granted.
2. The applicant's application for leave to appeal is dismissed with costs.



J DLAMINI
Judge of the High Court
Gauteng Division, Johannesburg

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