



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024-067842

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

29 October 2024

DATE:

SIGNATURE:

In the matter between:

LESEDI LOCAL MUNICIPALITY

Applicant

and

MUNICIPAL GRATUITY FUND

First Respondent

MAHLOGONOLO MPHAHLELE

Second Respondent

Delivered: 29 October 2024 – This judgment is handed down electronically by circulation to the parties' representatives via email, uploading it to CaseLines and releasing it to SAFLII.

ORDER

1. The application for condonation of the late delivery of the application for leave to appeal against the judgment handed down on 16 August 2024, under this case number, is dismissed with costs, including the costs of counsel at scale B.
2. The application for leave to appeal is struck from the roll with costs, including the costs of counsel at scale B.

JUDGMENT (LEAVE TO APPEAL)

BESTER AJ:

[1] The Lesedi Local Municipality applied for an interdict restraining the first respondent, a fund registered in terms of the Pension Funds Act, 24 of 1956, from processing the second respondent's claim to have her pension benefits paid out to her. On 16 August 2024, I dismissed the application with costs.

[2] On 30 September 2024, the applicant delivered a notice of application for leave to appeal. The application was thus delivered 31 days after judgment, outside of the 15 days allowed by Rule 49(1)(b). On 14 October 2024, the day before the hearing date allocated for the application for leave to appeal, the applicant delivered an application for condonation.

[3] In *Van Wyk*¹ the Constitutional Court explained the standard for considering an application for condonation in the following terms:

*"[20] This court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. The factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success."*²

¹ *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) at para 20, referring to *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* 2000 (2) SA 837 (CC) at para 33.

² Footnotes omitted.

[4] In the same judgment,³ the Constitutional Court made it clear that an applicant for condonation must give a full explanation for the delay, which must cover the entire period of the delay, and which explanation must be reasonable.

[5] The applicant's Municipal Manager deposed to the affidavit in support of the application for condonation. He explains as follows:

"8. I was informed of the outcome concerning the Judgment on 17 August 2024. As a result, I have asked the applicant's legal representatives to arrange a consultation to discuss the Judgment and its implication against the applicant. The meeting was initially agreed to take place on 03 September 2024. However, it was later postponed due to my nonavailability. I had to attend various meetings and other council business with different stakeholders as Municipal Manager.

9. I only became available on 16 September 2024. I then requested to again meet with the applicant's legal representatives. The consultation took place on 18 September 2024. It was during this consultation that I appreciated the implications of the Judgment on the applicant. Accordingly, I gave them instructions to institute an application for leave to appeal.

10. On 20 September 2024, the applicant lodged the application for leave to appeal. The applicant could not timeously bring the application for leave to appeal because of the reasons advanced above. It was only brought after I have consulted, and having considered the implications of Judgment."

[6] The application for leave to appeal bears the manuscript date of 20 September 2024, but the electronic date stamp from CourtOnline of 30 September 2024. The deponent explains that the applicant's attorney attempted to load the application on 20 September 2024, but that *"there was a problem which occurred on CourtOnline on the side of the court"*, and that the problem was only resolved on 30 September 2024. He alleges that the applicant's legal representative made several attempts to resolve the problem, *"including follow ups"*. However, the only communication attached is an

³ Van Wyk above in para 22; see also *Brummer* above in para 3.

email from the applicant's attorney to a judiciary email address, informing the court official:

"We have since attempted to upload the notice for leave to appeal on the 20th September 2024 and to date, the system has been indicating 'pending'.

Kindly assist in directing us on what we should do since we need to issue, get a case number and then serve the relevant parties."

[7] There is no affidavit by the attorney. The email, contrary to the Municipal Manager's statement, suggests that there had been no communication between the applicant's attorneys and the CourtOnline personnel between 20 September and the date of the email, 30 September 2024. It is unclear why a case number had to be obtained, as suggested in the email. The delay from 20 to 30 September is not explained. The further delay until 14 October, when the condonation application is delivered, is also not explained.

[8] I conclude that the applicant has not given a full explanation of the cause of the delay, and the explanation does not cover the entire period.

[9] The grounds of appeal advanced by the applicant are narrow. First, it contends that I erred in concluding that it did not establish a *prima facie* right, because the applicant had established *prima facie* that the second respondent was dismissed for fraud or dishonesty based on the same cause of action that the applicant seeks to pursue and sought the interdict in respect of. However, Mr Nthombeni conceded in argument that my finding, in paragraph 25 of the Judgment, that the findings of the Chairperson of the Disciplinary Inquiry, do not include a finding related to the misappropriation of bursary funds, cannot be challenged. The concession, appropriately made, is destructive of the proposed ground of appeal.

[10] The applicant further contends that it had established a *prima facie* right based on the earlier judgment of Jordaan AJ under case number 0476652/2024, dated 10 May 2024 in this Division. This ground was narrowed down to the argument that the costs order obtained under the 10 May 2024 order is an amount that falls within

the ambit of Section 37D. The argument would have it that the existence of that cost order in itself is sufficient to establish the applicant's *prima facie* right for an interdict.

[11] In my view the argument has no merit. Such an approach would strain the wording of the section. An application to interdict funds to secure a costs order that was obtained as part of an earlier interdict of the same nature seems to be no more than an application for security for costs. The applicant has not established such a case.

[12] A final attempt to rely on the earlier judgment of Jordaan AJ is the applicant's contention that there are now two conflicting judgments and that this must be resolved on appeal. I disagree with the proposition. The conflict, such as it is, pertains to the analysis of the factual information placed before two courts. There have been no conflicting pronouncements on any legal principle, and thus the attention of a court of appeal is not required.

[13] I do not find any merit in the application for leave to appeal. In my view, no other factors outweigh the combined effect of the poor prospects of success on appeal and the absence of an explanation for the late delivery of the application for leave to appeal. I conclude that the application for condonation must fail.

[14] In the result, I make the following order:

- a) The application for condonation of the late delivery of the application for leave to appeal against the judgment handed down on 16 August 2024, under this case number, is dismissed with costs, including the costs of counsel at scale B.
- b) The application for leave to appeal is struck from the roll with costs, including the costs of counsel at scale B.

A Bester
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

Heard on:	15 October 2024
Judgment Date:	29 October 2024
Counsel for the Applicant:	Mr P Mthombeni, Instructed by Raphela Attorneys Inc.
First Respondent:	No appearance
Counsel for Second Respondent:	Mr LM Moloi, instructed by Masekwameng Inc.