



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

CASE NO: 46276/2020

DELETE WHICHEVER IS NOT APPLICABLE

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

14/1/2025
DATE

[REDACTED]
SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

LARNO EWANDERY DE BRUIN

Respondent

JUDGMENT – APPLICATION FOR CONDONATION

MOGOTSI AJ

Introduction

1. This is an opposed application for condonation for late filing of an appeal. The court order in casu was granted in favour of the respondent on 6 March 2023. The applicant launched an application for leave to appeal on 18 October 2024. It is common cause that the application for leave to appeal seven months out of time.

The law

2. An application for condonation must set out justifiable reasons for non-compliance. In *Melane v Sanlam Insurance Co Ltd* 1962 (4) SA 531 (A) at C-F, Holmes JA articulated the principle as follows:

"In deciding whether sufficient cause has been shown, the basic principle is that the court has the discretion to be exercised judicially upon consideration of all the facts and, in essence, is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation thereof, the prospect of success, and the importance of the case. Ordinarily, these facts are interrelated, they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion..."

3. Similarly, *Froneman J in Foster v Stewart Scott Inc.* (1997) n18 ILJ 367 (LAC) at para 369, stated the principle in the following terms:

"It is well settled that in considering applications for condonation the court has a discretion, to be exercised judicially upon consideration of all the facts. Relevant considerations may include the degree of non-compliance with rules, the explanation thereof, the prospect of success on appeal, the importance of the case, the respondent's interest in the finality of the judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice, but the list is not exhaustive. These factors are not individually decisive but are interrelated and must be weighed one against the other. A slight delay and a good explanation for the delay may help to compensate for the prospect of success which is not strong. Conversely, a very good prospect of success on appeal may compensate for an otherwise perhaps inadequate explanation and long delay."

4. The absence of prejudice against the other party is also a factor considered, particularly where the prejudice may not be cured by an order of costs. In *National Union of Mine Workers v Council for Mineral Technology* [1998] ZALAC at 211 0-212 at para 10, the court stated the legal position thus:

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"The approach is that the court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence, it is a matter of fairness to both parties. Among the facts usually relevant are the degrees of lateness, the explanation therefore, the prospect of success and the importance of the case. These facts are interrelated, they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and the strong prospect of success may tend to compensate for a long delay. There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without the prospect of success, no matter how good the explanation for the delay, an application for condonation should be refused."

The submissions of the applicant's counsel

5. To begin with, the plaintiff's counsel submitted that the main reason for the delay in launching the application for appeal is the cumbersome process RAF employs after receipt of a stamped court order. According to him, after receipt of the same the file is discussed to decide what course to take and referred to the management for a final decision. Depending on the management decision, the office of the state Attorney is tasked to appoint counsel and this process is also time-consuming because of the bidding process the State Attorney employs to appoint counsel.
6. The applicant's counsel submitted that, in casu, a court order which did not bear a stamp was submitted and RAF had to wait for the stamped one. Initially, RAF decided to launch an application for rescission and this decision was referred to the management for decision. The state attorney appointed counsel to deal with the matter on 23 August 2023 by Ms Elaine van Zyl. The latter advised RAF to launch an appeal application.
7. In addition, the plaintiff's counsel submitted that reasonable prospects of success on appeal exist because the court erred in finding that the respondent established a case for loss of earnings. According to him, there is no factual basis for the summation that the respondent will lose his employment in two years and that from that point onwards he will be unemployed and that the court overlooked the fact that the respondent is a loan shark and there's no indication that he intends to stop the business two years later.
8. Furthermore, counsel submitted that the court applied a 35 % contingency spread even though there was no proper basis for it, the court misdirected itself by

applying the 15% contingency when the facts of the respondent's case dictate that a higher contingency should be applied post-morbid which could have mitigated the amount awarded.

9. Finally, counsel submitted that the respondent will not suffer prejudice should the application for condonation be granted, and that should the appeal not succeed the respondent is entitled to be paid interest. The applicant, on the other hand, will suffer prejudice because he will be denied the right to be heard.

Evaluation

10. The explanation for the delay is not persuasive because no litigant is at liberty to deliberately ignore the Rules of the Court. Regarding the prospects of success, I am not persuaded that there are such prospects because the court's decision is based on the expert evidence that was presented by the respondent which was not gainsaid. The seven-month delay coupled with the no prospects of success does not enhance the applicant's case either. To delay the matter further, will in my view, delay the administration of justice. Therefore, the objective conspectus of the facts before me warrants the refusal of this application.

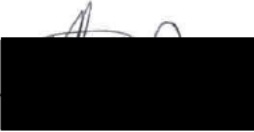
Costs

11. I find no reason to deviate from the trite law the costs must follow the results. I view a wilful disregard for the Rules of this Court in a serious light and in my view a punitive cost order is appropriate.

Order

In the result, I make the following order:

1. The application for the condonation of the late filing of the application for leave to appeal is dismissed with costs on attorney and client scale.


P J M MOGOTSI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant: The State Attorneys

Counsel for Respondent: Ehlers Attorneys

Date of hearing: 18 October 2024

Date of Judgment: 14 January 2025