

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 5781/2024

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO THE JUDGES: YES/NO
(3)	REVISED
DATE	05/12/2024
SIGNATURE	[Redacted Signature]

In the matter between:

PHINEAS KGAHLISHO LEGODI

Applicant

And

DIRECTOR OF PUBLIC PROSECUTION, LIMPOPO

1st Respondent

REGIONAL COURT MAGISTRATE J NGOBENI N.O

2nd Respondent

REGIONAL COURT MAGISTRATE J KGANYAGO N.O

3rd Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be the 5th December 2024

LEAVE TO APPEAL: JUDGEMENT

LEDWABA AJ

- [1] The applicant seeks leave to appeal the whole judgment and orders of the 16th August 2024. Only the first respondent opposes this leave to appeal application (the application).
- [2] It is common cause that the application is nineteen days outside the prescribed fifteen days' period. The applicant applies for the condonation. The first respondent opposes this condonation application and prays for its dismissal.
- [3] The reason for failure to timeously deliver the application is stated as being the result of lack of funds and the absence of Adv Monene as counsel of the applicant's choice. Adv Monene was appointed the acting judge and

was unavailable to attend the hearing. He was not timeously available to consult and settle the application. The applicant avers the prospects of success lies in that the judgment misdirected itself and that another court would come to a different conclusion. The submission is that the interest of justice justifies the granting of condonation application.

- [4] The first respondent submits that although the right to choose a legal representative is a fundamental right guaranteed by section 35(3)(f) of the Constitution, it is limited by the limitation clause of the Constitution, having regard to other considerations. The first respondent submits that the applicant was legally represented by another counsel who could have proceeded with the leave to appeal processes in the absence of Adv Monene.
- [5] The first respondent further submits that the financial challenges could have been overcome by the applicant making the application personally or approaching the Legal Aid Board for financial assistance.
- [6] Rule 27(3) of the Uniform Rules requires a condonation applicant to show good cause for non-compliance to be condoned. Such applicant is required to show good cause for the court to exercise its discretion in

favour of granting the condonation application.

- [7] The discretion to grant or refuse an application arises once an applicant has satisfactorily explained the delay or non-compliance, has proved prospects of success and the absence of prejudice. There is no point in granting condonation where there are no prospects of success. Slight delay and a good explanation may nevertheless help to compensate prospects which are not strong. Unexplained long delay does not need consideration of prospects of success. The interest of justice is the overriding factor.¹
- [8] Luck of funds and the absence of the applicant's own paid counsel of choice justifies this court exercising its discretion in favour of granting condonation application. It is in the interest of the applicant and the first respondent that condonation application for the late delivery of leave to appeal be granted.

¹ Brummer v Gorfil Brothers Investment (Pty) Ltd (2000) ZACC 3 – par 3 ; Grootboom v National Prosecuting Authority & Others (2013)ZACC 37;2014(2)SA 68(CC); – para 20, 22, 23 and 35

[9] Section 17(1)(a) of the Superior Courts Act 10 of 2013 allows the hearing court to grant leave to appeal where the judges concerned are of the opinion that the appeal would have a reasonable prospects of success or there are compelling reasons which exist why the appeal should be heard, such as the interest of justice. If the court is unpersuaded that there are reasonable prospects of success, it must still enquire into whether there are compelling reason to entertain an appeal. If the reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted ².

[10] The order issued by Magistrate Vorster is not attached to the interdict application for it to be read to be against the first respondent deciding to re-instate the charges against the applicant. The concession from the bar by the applicant's counsel that absence the order issued by Magistrate Vorster, it cannot be read to have the effect of taking away the first respondent's constitutional authority to reinstate the criminal proceedings which have been removed from the roll, is well made.

² Ramakatsa & Others v African National Congress & Another (2021) ZASCA 31-par 10

[11] On behalf of the applicant it is submitted that the intended leave to appeal has not only prospects of success, but raises the constitutional fair trial right.

[12] I am still not persuaded that another court would interdict the first respondent which had not been joined in respect of the Gauteng North High Court review application.

[13] I am still also not persuaded that another would find that the applicant has made out a case for an interim interdict. In particular, I still stand by the position that section 35(3) of the Constitution grants the applicant alternative relief. The balance of convenience favours that the applicant should raise with the trial presiding officer any pre-trial issue to be fully ventilated before the start of the criminal proceedings on merits.

[14] Section 35(3) of the Constitution guarantees the applicant fair trial right, including the right to be presumed innocent. The criminal proceedings presiding officer is required to observe this right.

[15] I am not convinced that another court would find that the applicant has proved clear right as he submits.

[16] I am not persuaded that another court would find that there are compelling reasons to grant leave to appeal.

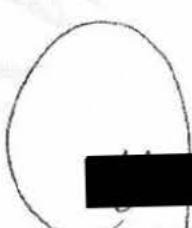
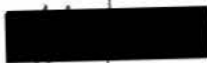
[17] There is no basis to deviate from the general position that the costs should follow the results.

Order

[18] Condonation application is granted.

[19] The application for leave to appeal is declined.

[20] The applicant is ordered to pay the costs of this application on party and party scale.

LEDWABA LGP
ACTING JUDGE OF THE HIGH COURT, LIMPOPO
DIVISION POLOKWANE;

APPEARANCES

FOR THE APPLICANT : ADV G MONENE

INSTRUCTED BY : SIGWAVHULIMU ATTORNEYS INC

FOR THE FIRST RESPONDENT : ADV FJ VAN DER MERWE

INSTRUCTED BY: DIRECTOR OF PUBLIC PROSECUTION: LIMPOPO :

DATE OF HEARING : 29 NOVEMBER 2024

DATE OF JUDGEMENT : 5 DECEMBER 2024

POLOKWANE HIGH COURT