

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 44776/2021

1.	REPORTABLE: YES/ NO
2.	OF INTEREST TO OTHER JUDGES: YES/NO
3.	REVISED: YES / NO
DATE: 19 NOVEMBER 2024	
SIGNATURE OF JUDGE:	

In the matter between:

BUFFELSDRIFT WILD AND NATURE RESERVE (PTY) LTD

APPLICANT

and

MAGALIES WATER BOARD

RESPONDENT

JUDGMENT

MEADEN A J

I refer to the parties herein as cited in the Plaintiff's Particulars of Claim to its Summons issued under the above case number and as Plaintiff and Defendant respectively.

On 10 JUNE 2024 upon hearing counsel for the parties and considering the papers, I handed down the following Order:

[1] "The Respondent / Plaintiff's application for condonation for the late service and filing of the opposing / answering affidavit, be condoned;

[2] the Respondent / Plaintiff be ordered to properly comply with the Applicant / Defendant's Notice in terms of Rule 35(3) and within 10 (ten) days of this Order; by delivering the documents called for, to the Applicant / Defendant in respect of the following paragraphs of the Rule 35(3) Notice:

- 2.1 Paragraph 1;*
- 2.2 Paragraph 3;*
- 2.3 Paragraph 4;*
- 2.4 Paragraph 6;*
- 2.5 Paragraph 7;*
- 2.6 Paragraph 10;*
- 2.7 Paragraph 11;*
- 2.8 Paragraph 12;*
- 2.9 Paragraph 13.*

[3] That should the Respondent / Plaintiff fail to comply with paragraph 2 above, the Applicant/ Defendant be entitled to approach the above Honourable Court on the duly supplemented papers for further relief.

[4] That the Respondent / Plaintiff pay the costs of this Application, such costs to include, but not be limited to the costs of Counsel on Scale B in terms of Rule 69 of the Uniform Rules of Court."

- [1] Hereupon, the Plaintiff on 18 June 2024 and in terms of Rule 49 (1) of the Uniform High Court Rules requested written reasons for the *ex-tempore* order of 10 June 2024. On 16 July 2024 I provided a comprehensive written judgment hereon and which was then received by the Plaintiff on 17 July 2024.
- [2] The 15-day period within which to note Leave to Appeal and in terms of Rule 49(1)(b) of the Uniform High Court Rules lapsed on 07 August 2024.
- [3] The Plaintiff's Leave to Appeal was only uploaded on CaseLines on 03 September 2024.
- [4] As such, the Plaintiff's Leave to Appeal application had been filed as of record and a month out of time. This Leave to Appeal application was not in these circumstances accompanied by a condonation application.
- [5] In contending with the aforesaid, on 12 September 2024 I provided a written directive calling upon the Plaintiff to compile and present a condonation application in re the late uploading of a Leave to Appeal application and outside of the time limits contained in Rule 49(1) of the Uniform High Court Rules. This directive was uploaded to CaseLines on 27 September 2024.
- [6] The Plaintiff failed to immediately respond hereon and only after further delay, proceeded to upload a condonation application to CaseLines on 15 November 2024.
- [7] Rule 27 (1) of the Uniform High Court Rules clearly defines that a court may, upon application on notice and on good cause shown, extend or abridge any time period prescribed by the rules or as referenced in a court order.
- [8] In considering whether condonation should be granted or not, Holmes JA in *Melane v Santam*¹ recorded:

"In deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion to be exercised judicially upon a 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 therefore, the prospects of success, and the importance of the case. Ordinarily these facts are inter-related; they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion ..."

¹ 1962 (4) SA 531 (A) at 532 C - F.

- [9] In applying the ratio in *Melane*, the court in *Academic and Professional Staff Association v Pretorius NO and Others*², summarised the principles for consideration as follows:

"The factors which the court takes into consideration in assessing whether or not to grant condonation are: (a) the degree of lateness or non-compliance with the prescribed time frame; (b) the explanation for the lateness or the failure to comply with time frame; (c) prospects of success or bona fide defence in the main case; (d) the importance of the case; (e) the respondent's interest in the finality of the judgment; (f) the convenience of the court; and (g) avoidance of unnecessary delay in the administration of justice..."

- [10] In having regard to the circumstances of the action launched under the above case number, as far back as 10 June 2024 an order was granted by my person compelling the Plaintiff to provide further and better discovery. This flowed from an interlocutory application launched by the Defendant against the Plaintiff and in which the Defendant sought the production of further and better discovery.
- [11] In the interim, the Plaintiff has not abided and given effect to the above court order, thus placing itself in contempt thereof. Instead, the Plaintiff has proceeded in launching an out of time, ill-conceived and defective Leave to Appeal application.
- [12] This application is out of time by some four weeks and is further ill-founded and given that in the ordinary course and in the absence of extraordinary circumstances, interlocutory court orders handed down and which do not bring finality to a matter are not appealable. (*South African Druggists: Beechem Group* 1987 (4) SA 876 (T).) To this end, the Leave to Appeal is fatally defective.
- [13] The aforesaid is aggravated and in the absence of the late Leave to Appeal incorporating a condonation application and which the Plaintiff then launched belatedly and following on my directions so to do.
- [14] In considering the content of this condonation application and including the explanations contained therein for lateness and failure on the part of the Plaintiff to comply with the time frames in which to proceed with such Leave to Appeal process, as well as the prospects of success in proceeding with the Leave to Appeal; the Plaintiff for its part fails to take the court into its confidence and account fully and on a day by day basis regarding the ensuing delay in launching such process as well as in the presenting a

² (1997) 18 ILJ 367 (LAC) at para 369.

necessary condonation application. There is actually a paucity of insight provided here and the allegation of not being able to upload to CaseLines is unsustainable.

[15] The Plaintiff is abusing court process and timelines in proceeding as above and while perpetuating its contempt of the Court Order handed down back on 10 June 2024.

[16] These attendances on the part of the Plaintiff do not bring the above matter any closer to finality and are serving only to unnecessarily delay the administration of justice and with that the conduct of the above matter to trial in due course and in the process frustrate the Defendant in the conduct of its defence and counterclaim and continuation of this action.

[17] Presented with these circumstances I make the following order:

ORDER

[1] The application for condonation in re the application for Leave to Appeal be refused and dismissed;

[2] The Plaintiff pay the costs of this condonation and defective Leave to Appeal applications on the scale of attorney and own client, including the cost of legal counsel on scale B in terms of Rule 69 of the Uniform High Court Rules;

[3] The Court Order granted on 10 June 2024 remains of full force and effect and should the Plaintiff fail to comply with paragraph 2 thereof, then the Defendant be entitled to approach the above Honourable court on duly supplemented papers for further relief.

MEADEN J R

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 15h30 on this 19th day of November 2024.

Appearances**For Plaintiff:**

Adv N Kekana

Instructed by:

Leepile Attorneys Inc.

For Defendant:

Adv C.M Dredge

Instructed by:

Hendrik Malan Attorneys

Date of Hearing:

19 November 2024

Date of Judgment:

19 November 2024

