**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA,**

**GAUTENG DIVISION, PRETORIA**

**Case No:** 39600/2022

Reportable: No
Of interest to other Judges: No
Revised: No
[redacted]
SIGNATURE

Date: 4/03/2025

In the matter between:

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| UNIVERSAL SERVICE AND ACCESS AGENCY | Applicant (Respondent) |
| and | |
| MT CREATIONS TRADING ENTERPRISE PTY (LTD) & 16 OTHERS | Respondents (Applicants) |

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**JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL**

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MOOKI J

1 The applicant seeks leave to appeal the order that the applicant pay the respondents the sum of R5 730 679.41, with interest. The applicant also seeks condonation for its failure to comply with the Practice Directive in relation to the filing of an application for leave to appeal. The respondents oppose the applications.

2 The court delivered judgement in favour of the respondents on 13 August 2024. The applicant served the respondents with the application for leave to appeal on 3 September 2024. The application was filed by being uploaded to Caselines on 13 November 2024. It should have been filed by 30 August 2024.

3 The applicant filed the condonation application on 28 February 2025. The respondents filed an answer, opposing condonation. The applicant did not reply to the opposition.

4 The applicant's explanation is essentially that the assigned attorney at the State Attorney's office work e-mail was not operational during the period September to October 2024, and that she had intermittent e-mail availability on the work e-mail during that period and relied on her Gmail e-mail address. The suggestion was that she could not upload the application to Caselines without access to her work e-mail.

5 The respondents pointed out, in their answer, that access to e-mail is not required to upload documents to Caselines. They also pointed out that the attorney's Gmail address was associated with access to Caselines. The point being that the attorney should have used her Gmail address to upload the application if her work e-mail address was not operational for the uploading.

6 The respondents take issue with the applicant's averment regarding the prospect of success – in that the applicant's claim for such prospects is unsubstantiated. The

respondents also dispute that they are not prejudiced, given that they became obliged to incur additional costs in opposing the application.

7 The applicant raised several grounds for leave to appeal in its notice, but moved the application on one ground. The essence of the ground is that the respondents were not entitled to seek payment because the parties had settled their dispute; with the settlement agreement made an order of court. The applicant thus contended that the respondents were re-litigating an issue previously determined by a court.

8 It was submitted on behalf of the applicant that the court ought not to have ordered payment of the amount of R5 730 679.41, because the parties had settled their dispute.

9 It was submitted for the respondents that the applicant did not plead that the respondents were not entitled to payment because the parties had settled their dispute. The Court was referred to the averment by the applicant's CEO, in the answering affidavit, that the payment of R5 730 679.41 was subject to a verification process; with the applicant contending that the verification was ongoing. The respondents, on the other hand, contended that verification had been completed, and relied on the stock count report.

10 The condonation application limps. The court, however, will grant condonation in the interests of justice.

11 The applicant seeks leave to appeal on an issue that was not pleaded and that was not raised when the court first heard the matter. Counsel for the applicant sought to demonstrate that the issue was pleaded. This was unpersuasive. More fundamentally, counsel for the applicant, in his reply, did not address submissions on behalf of the respondents concerning averments by the applicant's chief executive officer about the

nature of the dispute between the parties. The court was instead referred to several clauses in the settlement agreement, as somehow showing that the respondents were not entitled to payment.

12 The applicant's contention that there was no dispute for the court to consider is hopeless. That was not the applicant's case. The case advanced in this application is wholly at odds with the issues that were presented to the court. More fundamentally, the applicant's chief executive officer accepted that there was a dispute as to whether the respondents had made-out a case to be paid the amount of R5 730 679.41. The case made in the application for leave to appeal is that there was no dispute at all about the respondents being paid any sum of money.

13 A litigant is not allowed to make a new case in an application for leave to appeal. The applicant has not met the test for the granting of leave to appeal. There are no prospects of success and there is no compelling reason to grant leave. [1]

14 Counsel for the applicant submitted that the respondents be mulcted with a punitive cost order. That was because, it was submitted, the respondents' opposition to the application for leave to appeal is frivolous.

15 The applicant brought a meritless application. The applicant has had the benefit of legal representation throughout. The applicant ought to have appreciated that it was futile of the applicant to seek leave to appeal by relying on an issue that was not pleaded.

16 I make the following order:

(1) The application for condonation is granted.

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[1] Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31 (31 March 2021), para 10

(2) The application for leave to appeal is dismissed.

(3) The applicant is ordered to pay costs in the application for leave to appeal and in the condonation application, such costs to be on an attorney and client scale.

[redacted]

**OMPHEMETSE MOOKI**

**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

Appearance:

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|---|---|
| On behalf of the applicant | C Setlhako |
| Instructed by: | The State Attorney, Johannesburg |
| | |
| On behalf of the respondents | T Mphahlane |
| Instructed by: | Madima Attorneys |

Heard: 4 March 2025

Decided: 4 March 2025