



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

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED: NO

23 May 2025

DATE

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SIGNATURE

Case Number:27752/2017

In the matter between:

City Of Tshwane Municipality
Municipality

Applicant

and

Moipone Fleet (Pty)Ltd

First Respondent

Absa Vehicle Management Solutions

Second Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 23 May 2025.

JUDGMENT

COLLIS J

INTRODUCTION:

1] The applicant before Court has applied for leave to appeal the whole of the judgment and order of this Court handed down on 21 May 2024.

2] In anticipation of this application this Court requested the parties to file short heads of arguments.

3] In the matter before this Court, the applicant's action was dismissed on the grounds of unreasonable delay and its failure to present evidence in respect of the awarding of the tender. This Court in exercising its judicial discretion concluded that the delay should not be condoned.

4] The applicant has raised several grounds of appeal. On behalf of the applicant, it was submitted that on the grounds upon which it relies, it has satisfied the requirements to be granted leave to appeal as set out in section 17(1) of the Superior Courts Act 10 of 2013 in that there is a reasonable prospect that an appeal would succeed.

5] In *Ramakatsa*, the Court said that the prospects of success must not be remote and that "there must exist a reasonable chance of succeeding."¹ The applicant submits that it has satisfied this requirement.

6] The Superior Courts Act 10 of 2013, and more particularly Section 17(1) thereof, provides:

¹ *Ramakatsa v African National Congress* [2021] ZASCA 31 of 31 March 2021.

Leave to appeal may only be given where the judge or judges concerned are of the opinion that- (i) the appeal would have a reasonable prospect of success; or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

7] This Court in finding that the applicant had unreasonably delayed the instituting of this review application, made a finding of fact and accordingly if the applicant is to succeed in this application for leave to appeal, it must show either that there is a reasonable possibility that another Court may conclude, on the facts, that the delay of the applicant was not unreasonable or that there is a reasonable possibility that another Court may conclude that this Court misdirected itself in declining to condone the unreasonable delay by the applicant.

8] In its judgment, the Court in several paragraphs dealt with why it had concluded that the delay was found to be excessive, unreasonable and not satisfactorily explained.²

² Judgment para 127 to 168.

9] The delay of several years between the applicant's knowledge of its alleged grounds of review and its launch of the review application was plainly unreasonable. None of the witnesses of the applicant had any personal knowledge of the facts relating to these delays,³ and the applicant further elected not to subpoena any of the former officials who possessed such personal knowledge.⁴ Accordingly the unreasonable delays were left wholly unexplained.

10] The Court in refusing to condone the unreasonable delay, had pointed out in its judgment that:

10.1 The issue of prejudice is an important consideration when deciding whether or not to condone an unreasonable delay.⁵

³ Judgment at para 194.

⁴ Judgment at para 205.

⁵ *Wolgroeiërs Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) at 39E- 41D. *Yuen v Minister of Home Affairs* 1998 (1) SA 958 (C) at 968H-J; *Radebe v Government of the Republic of South Africa and Others* 1995 (3) SA 787 (N) at 802H-803D. *Schoultz v Voorsitter, Personeel-Advieskomitee van die Munisipale Raad van George* 1983. Judgment at para 170.

10.2 The delay rule promotes the rule of law by ensuring certainty and finality and protecting parties from suffering prejudice in their reliance on administrative decisions.⁶

10.3 In deciding whether to condone an unreasonable delay, the Courts expect from organs of state a higher duty of complying with legal requirements for review proceedings.⁷

10.4 The applicant has failed dismally to explain its unreasonable delay in launching the review application,⁸ which unreasonable delay is compounded by:

10.4.1 delaying unreasonably in its prosecution of the review application, with the result that, by the time that the review application served before this Court, the PPP Agreement had, to all intents and purposes, already run its course;⁹

⁶ Oudekraal Estates (Pty) Ltd v City of Cape Town and others 2004 (6) SA 222 (SCA) at para 37; Judgment at paras 176-7.

⁷ Altech Radio Holdings (Pty) Ltd v Tshwane City 2021 (3) SA 25 (SCA) at para 71; Judgment at para 179. See also Transnet SOC Ltd v Tipp-Con (Pty) Ltd and Others 2024 JDR 0301 (SCA) at paras 53 to 57.

⁸ See previous section.

⁹ Colvic Marketing and Engineering (Pty) Ltd v Minister of Public Works and Infrastructure and others (21819/2020) [2022] ZAGPPHC 375 (9 June 2022) paras 20 – 24 and 28; Judgment at paras 133-4 and 185; see also Tipp-Con, par 39 @ page 14.

10.4.2 advancing spurious arguments about the departure of the applicant's officials when the Supreme Court of Appeal had already rejected these arguments when they were previously advanced by the applicant.¹⁰

10.4.3 The applicant has behaved unacceptably by continuing to use the vehicles supplied by Moipone and to receive the benefit of the PPP contract, whilst, since 2021, it refused to pay Moipone for these vehicles.¹¹

10.4.4 The delay of the applicant has caused prejudice running into hundreds of millions of rands to Moipone and the second respondent.¹²

10.4.5 the applicant does not have a reasonable explanation that covers the entire period of the delay. The decision to award the tender to Moipone as the preferred bidder was taken in 2014, almost three

¹⁰ Altech Radio Holdings (Pty) Ltd and Others v Tshwane City 2021 (3) SA 25 (SCA) at para 23; Judgment at para 130.8.

¹¹ Judgment at para 203, see also Tipp-Con.

¹² Judgment at paras 138 – 140 and 203-4.

years before the applicant brought its review. The applicant's explanation for the delay should start from this period: the date it became aware of the decision taken; and the applicant's explanation for this period starting from 2014 is woefully inadequate. The applicant has provided no explanation at all, which is compounded by significant passages of time during which absolutely nothing was done with regard to the impugned tender.

11] For the above reasons, this Court concludes that there is no reasonable prospect that another Court would come to a different conclusion on this Court's dismissal of the applicants' action.

12] Consequently, the following order is made:

12.1 The application for leave to appeal is refused, with costs of two counsel where so employed.

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C COLLIS
JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

Counsel for the Applicant: Adv. K. Tsatsawane SC

Adv. K. Magano

Adv. C. Marule

Instructing Attorney: MB Mabunda Inc.

Counsel for the First Respondent: Adv. M. Chaskalson SC

Adv. M. Qofa

Instructing Attorney: Cuzen Randree Dyasi Inc.

C/O: VZLR Attorneys

Counsel for the Second Respondent: Adv. W. Lüderitz SC

Adv. M. Musandiwa

Instructing Attorney: Webber Wentzel Attorneys (C/O Hills Inc.)

Date of Hearing: 17 March 2025

Date of Judgment: 23 May 2025

