



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-047735

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

21 JULY 2025

SIGNATURE

DATE

In the condonation application of:

TSHEPO LUCKY MONTANA

Applicant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

In re:

The sequestration application of:

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Applicant

and

TSHEPO LUCKY MONTANA

Respondent

JUDGMENT

LABUSCHAGNE AJ

- [1] The applicant, Mr Montana, is a taxpayer who is facing sequestration proceedings by the respondent on the strength of an unpaid tax liability. The tax liability is fixed as the period for challenging it has passed.
- [2] The sequestration application was served by publication in terms of court authorised substituted service on 27 March 2024. Mr Montana filed a notice of opposition on 5 April 2024. His answering affidavit in the sequestration proceedings was due on 26 April 2024. At his request an extension was granted by SARS until 6 May 2024. He again requested an extension, which SARS refused.
- [3] The reason why the further extension was sought, according to Mr Montana, was that his counsel was unavailable due to illness for three weeks. Mr Montana then brought a condonation application for the late filing of his answering affidavit. This application was however brought without attaching the answering affidavit to which the condonation application pertained. SARS filed an answering affidavit to the condonation application on 11 July 2024 and Mr Montana filed a replying affidavit to the aforesaid answering affidavit. In proceedings serving before me I have to consider the aforesaid application for

condonation together with an application to strike out certain matter in Mr Montana's replying affidavit in the condonation application.

CHRONOLOGY

- [4] The following chronology sets out the history of the tax liability, and the sequestration proceedings proceedings.
- [5] On 5 November 2020 SARS commenced engagement with Mr Montana in respect of an income tax audit for the period 2009 to 2019.
- [6] On 18 November 2020 Mr Montana requested an extension in order to respond to SARS's request for documentation.
- [7] SARS granted an extension until 31 January 2021.
- [8] His failure to comply resulted therein that SARS issued a final demand to Mr Montana to submit his requested information by no later than 9 February 2021. Mr Montana failed to do so.
- [9] On 7 July 2021 SARS issued its letter of audit findings adjusting Mr Montana's tax debt to an amount in excess of R15 million. Mr Montana responded to SARS's audit findings on 16 August 2021 and correspondence ensued between the parties thereafter.
- [10] On 31 May 2022 Mr Montana filed a partial objection to the assessment, coupled with a request to file a complete objection by 1 July 2022. The supplemented submission was not filed by 1 July 2022 and Mr Montana

requested further extensions. SARS refused further extensions and issued a final assessment on 11 July 2022 and demanded the outstanding taxes from Mr Montana.

[11] On 20 September 2022 Mr Montana delivered a letter which he describes as *“the final objection to the assessments”*.

[12] On 23 September 2022 Mr Montana addressed a letter to SARS’s attorneys, lamenting the execution of warrants at his residence. On 30 November 2022 SARS filed a notice of an invalid objection pertaining to the document submitted by Mr Montana.

[13] On 22 May 2023 SARS launched an application to sequester Mr Montana’s estate. Due to Mr Montana not being available for service, SARS obtained an order for substituted service and the application for substituted service was published on 27 March 2024. Mr Montana responded to such publication by delivering a notice of opposition to the application for sequestration on 5 April 2024.

[14] On 12 April 2024 Mr Montana’s attorneys requested a copy of the application for substituted service and sought an extension to file his client’s answer to the sequestration application for three weeks. SARS granted an extension until 6 May 2024. A further request for an extension was made by Mr Montana on 7 May 2024, which request was refused.

[15] On 15 May 2024 SARS informed Mr Montana that it will not grant him condonation and that a formal request for condonation could be incorporated

into his answering affidavit. On 16 May 2024 Mr Montana's legal representative informed SARS that a separate condonation had been prepared and will be launched immediately. On 31 May 2024 Mr Montana launched the condonation application that currently serves before this Court. On 11 July 2024 SARS opposed the application for condonation and filed its answering affidavit, and Mr Montana filed his replying affidavit on 24 July 2024.

STRIKE OUT APPLICATION

- [16] SARS has brought a strike out application in respect of objectionable matter in the replying affidavit. There are 27 paragraphs in which sentences or entire paragraphs are sought to be struck out. Not all of them meet the test for striking out, but some do.
- [17] It is trite that the basis of a strike out application in motion proceedings does not just include the identification of objectionable matter that is irrelevant, scandalous or vexatious but in addition prejudice needs to be shown in conducting the proceedings if the strike out were not granted (See rule 6(15).
- [18] Scandalous allegations are allegations that may or may not be relevant but are formulated to be abusive or defamatory. Vexatious allegations may or may not be true but are formulated in a manner to convey an intention to harass or annoy. Irrelevant allegations do not apply to the matter and do not assist in deciding the matter (see **Vaatz v Law Society of Namibia** 1991 (3) SA 563 (Nm) at 566C-E).

- [19] In this instance it bears noting that the context of the allegations is to seek condonation to file an answering affidavit which has not yet been filed. That provides the backdrop to the test for relevance. From the list of paragraphs in the strike out notice the following fall to be struck out.
- [20] In Par 20 of the replying affidavit Mr Montana accuses SARS of arrogant conduct that disregards legitimate objections and denies constitutional rights administrative justice and fairness. This is not relevant and is vexatious.
- [21] In Par 28.5 Mr Montana accuses SARS of maladministration and abuse of power. In par 29.4 and par 42 he accuses SARS of indulging in a witch hunt against him, motivated by a political agenda. In par 33 he contends that SARS persisted in pursuing false claims that he bought properties to the value of R36 million in order to “nail” him. In par 38 he alleges that SARS was part of a dirty campaign of a Johannesburg firm of attorneys to target persons like him by pursuing false allegations. In par 41 he accuses SARS of breaking into his house and acting like a criminal gang. All these allegations are scandalous and vexatious. They are also not relevant to condonation.
- [22] SARS argues that it is prejudiced by such allegations. Not only are the allegations scandalous, vexatious or irrelevant, but SARS has no right to respond. Further it faces institutional reputational harm, to the detriment of the tax administration scheme in South Africa if such allegations are not struck out.
- [23] I am satisfied that SARS has established a right to strike out the above material identified in its strike out notice. The allegations are emotive and

intemperate, unsupported by facts and constitute gratuitous abuse. They are irrelevant to the issue of whether this court should condone the late filing of an answering affidavit.

- [24] While the court is mindful not to stifle robust debate, such allegations fall to be deprecated as irrelevant, unhelpful and calculated to harm. Such conduct warrants a punitive cost order.

THE CONDONATION APPLICATION

- [25] By its very nature, an application for condonation for the late filing of an answering affidavit has to cover the full period of non-compliance with the Rules and to provide a full explanation for non-compliance. In addition the court needs to assess the interests of justice by ascertaining whether a valid defence is being raised. The court needs to be apprised of relevant facts in order to be able to assess the conduct of the applicant in order to exercise a discretion to come to the assistance of the applicant.

- [26] Mr Montana's answering affidavit was due in the sequestration proceedings on 26 April 2024. Since then, he has failed to file the answering affidavit or to indicate in papers when it would be filed. Either way, the lapse of more than a year since the due date of the answering affidavit is sufficient an indicator that Mr Montana is playing for time. He appointed new attorneys and counsel on 2 May 2025, who valiantly sought to argue his case.

- [27] The failure to file an answering affidavit together with the condonation application means that the full extent of the period of non-compliance cannot

be determined on the papers. An explanation for the failure to comply can only be up to the date of the hearing but cannot cover a further delay thereafter. The court will condone a specific period of non-compliance , but will not grant an open-ended condonation covering the future.

[28] The answering affidavit is relevant to ascertain whether there is a *bona fide* defence to the sequestration proceedings. It is also required for purposes of determining whether the Court should exercise its discretion in favour of granting condonation in the current proceedings. It suffices that, in the absence of an answering affidavit, this Court cannot determine whether a *bona fide* defence has been raised. It is therefore not possible to consider granting a condonation on the facts currently available. On the current facts the interests of justice favour the dismissal of the application.

[29] In the premises I make the following order:

ORDER

1. The strike out application is granted in respect of the objectionable matter identified in the notice of strike out pertaining to the following paragraphs in the replying affidavit:

- par 20;
- par 28.5;
- par 29.4;

- par 33;
- par 38;
- par 41;
- par 42.

[30] The costs of the strike application out are to be paid on a punitive scale of attorney and client, including the costs of two counsel, Scale C, where so employed.

[31] The applicant's condonation application is dismissed with costs, such costs to include the costs of two counsel where so employed, on Scale C.



LABUSCHAGNE J

JUDGE OF THE HIGH COURT

APPEARANCES:

ATTORNEYS FOR APPLICANT: DUN & ASSOCIATES ATTORNEYS

COUNSEL FOR APPLICANT : ADV M MACHETE

ATTORNEYS FOR RESPONDENT: VZLR INCORPORATED ATTORNEYS

COUNSEL FOR RESPONDENT: ADV SNYMAN SC