



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

Case No: 8066/2014

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED *yes*
04/08/25
DATE SIGNATURE

In the application between:

ISABELLE CATHERINA BEUKES

APPLICANT

And

ROAD ACCIDENT FUND

RESPONDENT

LEAVE TO APPEAL JUDGMENT

BAQWA J:

Introduction

1. This is an application for leave to appeal to the SCA alternatively to the Full Court of this Division against an order of this court handed down on 15 February 2022, awarding the respondent's loss of earnings in the amount of R6 345 112.00
2. The applicant also applies for condonation of the late filing of the application for leave to appeal.
3. Both applications are being opposed by the respondent, who submits in opposition that both applications are fatally defective, lack merit, and should be dismissed with costs on an attorney-and-client scale.

The Facts

4. The RAF did not take any steps within the prescribed period under Rule 49 of the Uniform Rules of Court, which provides for a request for reasons within 10 days and an application for leave to appeal within 15 days thereafter.
5. 800 days after on, 10 May 2024, or more than two years later, RAF filed an application for leave to appeal as stated above.
6. It is not disputed that the RAF's delay has seriously prejudiced the respondent in that it has failed to pay the amount ordered by this court and instead paid the respondent a paltry R250 000.00 of the awarded amount.

Points in Limine

7. The respondent challenges the lack of authority of the deponent to applicant's founding affidavit, Nomadlozi Sihlali who, as the respondent submits failed to provide any resolution or mandate proving authority to institute these proceedings or depose to the affidavit.
8. The applicant omitted to do so despite the provisions of the Rules of Court, which require that an applicant should demonstrate proper authority to act on behalf of a juristic person.
9. Further, In Mall (Cape) (Pty) Ltd V Merino Ko-operasie Bpk¹ it was held by the court that failure to prove authority justified dismissal of an application.

Hearsay Evidence

10. A further point limine by the respondent is that the applicants founding affidavit should be regarded pro non scripto as the deponent Sihlali has no personal knowledge of the facts to which she deposed having not been involved at the trial and not having been copied with the relevant communications.
11. Further in this regard, no confirmatory affidavits from individuals with firsthand knowledge accompanied the affidavit rendering the contents hearsay and inadmissible.

¹ 1957 (2) SA 347 (C).

Condonation

12. Condonation is not simply there for the taking and a full and satisfactory explanation for the entire period of delay is required. This was held in *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited*²
13. The respondent submits and I accept that Raf's delay of over 300 days is egregious in that it far exceeds the 25-day period prescribed in Rule 49. It is trite that in numerous decisions of this court a delay of nine months was deemed unacceptable.
14. In the present case this is made worse by the proffering of a glib explanation that the delay was due to internal processes including a memorandum and head office instructions received in April 2024. Notably no documentary evidence supports these claims and there is no explanation covering the period February 2022 to April 2024.
15. In *Uitenhage Transitional Local Council v South African Revenue Services*³ the court held that condonation is not merely a formality and is not to be had merely for the asking.

² 2017 (6) SA 90 (SCA) at para 26.

³ 2004 (1) SA 292 (SCA) at para 6.

Prospects of success

16. Raf's only ground of appeal is that this court erred in awarding R6 345 112.00.

This glib assertion fails to specify or identify errors of fact or law.

17. Unsurprisingly this flows from Raf's failure to request reason for judgment in terms of Rule 49 (1) curtailing its ability to articulate grounds of appeal.

18. The award by this court was based on expert reports and actuarial calculations which remain unchallenged by Raf's own experts at trial. Therefore, there exists absolutely no basis to suggest that another court would come to a different conclusion.

19. Equally there are no compelling reasons to grant leave as there are no novel legal questions or public interests issues.

20. Notably in both its founding affidavit and in its Heads of Argument, there is a patent attempt by Raf to re-litigate the issues. I consider this to be an unacceptable approach amounting to an abuse of process.

21. In *S v Smith*⁴ Plasket AJA pronounced as follows regarding 'a reasonable prospect of success' "what the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that these prospects are not remote but have

⁴ 2012 (1) SACR 5E7 (SCA) at para 7.

a realistic chance of succeeding. More is required to be established than that there is mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

Costs

22. The respondent seeks costs on an attorney-and-client scale due to Raf’s mala fide conduct in

22.1 a delay of more than two years

22.2 A withdrawn application for stay, tendering wasted costs

22.3 Failure to appoint experts or engage meaningfully since 2019

22.4 Causing prejudice by withholding payment of the bulk of the award.

23. I find that Raf’s conduct is not only recalcitrant and designed to delay justice but that it justifies a punitive costs order to deter future abuse.

24. In the result I make the following order:

24. 1 The application for condonation is dismissed.

24. 2 The application for leave to appeal is dismissed.

24. 3 The applicant is ordered to pay the costs of both applications on an attorney and client scale, including costs of counsel on B scale.



A handwritten signature in blue ink, appearing to be 'Selby Baqwa J', written over the redacted area.

SELBY BAQWA J

JUDGE OF THE HIGH COURT,

GAUTENG DIVISION, PRETORIA

Date of Hearing: Application for Leave to Appeal heard on papers filed

Judgment delivered: August 2025

APPEARANCES: