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REPUBLIC OF SOUTH AFRICA



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

Case Number: 008172/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES/NO

DATE: 07/08/25

SIGNATURE

In the matter between:

CITY OF TSWANE METROPOLITAN MUNICIPALITY

First Appellant

MMASEABATA MUTLAMENG

Second Appellant

and

PRETORIA EDUCATIONAL CENTRE CC

Respondent

JUDGMENT

Joyini AJ

INTRODUCTION

- [1] This is an application for leave to appeal against the Judgment (Case Number 008172/2022) of this Court that was handed down on 28 January 2025. In terms of Rule 49(1) of the Uniform Rules of Court, the Appellants' application for leave to appeal ought to have been served and filed on 17 February 2025. However, it was filed three months later on 19 May 2025. An application for condonation for its late filing was filed on 28 May 2025. On that score, there are two applications by the Appellants before this Court, namely, (i) an application for condonation for the late filing of the leave to appeal and (ii) an application for leave to appeal.
- [2] Both the condonation and leave to appeal applications are opposed by the Respondent.
- [3] Both parties were legally represented and appeared before me on 25 July 2025. The Court appreciates the insightful and engaging submissions from both parties' legal representatives, which greatly assisted in adjudicating this matter.

PARTIES

- [4] The First Appellant is the City of Tshwane Metropolitan Municipality ("the City"), a category "A" municipality established in terms of Section 4 of the Local Government: Municipal Structures Act of 1998. Its main place of business is situated at Tshwane House, 3[...] M[...] Street, Pretoria.
- [5] The Second Appellant is Mmaseabata Mutlameng, an adult female, who is cited in this application in her official capacity as the City Manager of the First

Appellant. She was employed as such at the office address of the First Appellant cited above during the time of the main application.

- [6] The Respondent in this matter is Pretoria Educational Centre CC ("PEC"), a Close Corporation duly registered in terms of the Close Corporations Act of 1984 under registration number: 1990/025759/23. Its main place of business is situated at 4[...] J[...] R[...] Street at the corner of E[...], H[...] and J[...] R[...] Street, Arcadia, Pretoria.

BACKGROUND FACTS

- [7] These background facts provide the context. The First Appellant i.e. the City of Tshwane Metropolitan Municipality is the owner of certain immovable properties within its jurisdiction. On 7 July 2006, the City and PEC entered into an "interim lease agreement", to operate pending the conclusion of a sale agreement and the transfer to PEC of certain identified immovable properties. The City refused to transfer the properties to PEC. As a result, in 2007, an application was brought before this Court under case number 7440/2007 to compel the City to perform in terms of the sale agreement with PEC.
- [8] The City opposed the application to compel it to transfer the Properties. At that stage, its only defence of substance was that it required the properties for social housing purposes.
- [9] On 28 August 2007, Du Plessis J granted a Court Order in favour of PEC.
- [10] In effect, by agreeing to the Order, the City abandoned its defence that certain of the properties were needed for social housing but raised the need for compliance with the statutory measures. The terms of the Order indicate strongly that the need to comply with the two statutory measures was not an impediment to the transaction but merely a formality which might delay its completion.

[11] After 13 years of what can only be described as bureaucratic dithering, the City brought the rescission to set aside the Order. The legal basis upon which the City sought rescission was that complying with the Order would force the City into noncompliance with s 79(18) of the Ordinance on Local Authority 17 of 1939, which requires valuation and advertisement of an intention to dispose of municipal property and **s 14** of the **Local Government: Municipal Finance Management Act, 56 of 2003**, which prescribes certain processes before property can be sold or transferred by a municipality such as the City. The matter was allocated to Tuchten J.

[12] On 22 May 2024, Tuchten J, in dismissing the rescission application in City of Tshwane Metropolitan Municipality v Mandela Development Corporation (Pty) Ltd and Others¹ said the following:

“22. The basis upon which the City seeks rescission is that complying with the Order would force it to act contrary to law. I am satisfied that this is not so. The structure of the Order implies that on the date it was granted, the City was satisfied with the amount of R3 million offered in the draft and that this amount was market related. Otherwise, there would have been no point in consenting to the Order, because no amount of administrative activity could ever have led to compliance with s 79(18).

23. Moreover, PEC has leased the Parcel from the City at a substantial monthly rental pending the conclusion of a sale agreement and transfer away from the City, amounting to more than R16 million.

24. When these simple facts are conjoined to the extraordinary delays in bringing the application for rescission, even after the City on its own version had determined a market value for the Parcel, I am driven to the conclusion that no good cause for the delay has been shown. The rescission was precipitated by an application brought recently against the City in this court under case no. 8172/2022 to compel transfer of the properties for which it had introduced purchasers to the City. I conclude that the City only brought the rescission in response to commercial pressure placed on it to implement the

¹ (7440/2007) [2024] ZAGPPHC 507 (22 May 2024).

Order and that but for this pressure, the City would have continued to let things slide.

25. To summarise: the City had to show good cause for the rescission it seeks. This would require it demonstrating that it had a basis in law for its refusal to comply with the Order and an acceptable explanation for its delay in bringing the application for rescission. The City has shown neither. The application cannot succeed.

26. The respondents have asked for punitive costs. I have found that the application for rescission was misconceived and inadequately thought through. The fundamental flaw in the application for rescission, from a costs perspective, is that no consideration appears to have been given to establishing a basis for the assertion that the Proposed Purchase Price of R3 million would not, at the relevant time, have constituted fair market value for the proposed sale properties. Although these considerations would justify a punitive costs order, I am persuaded by counsel for the City that the City was motivated by a desire to obtain clarity from a court regarding a situation which its officials found confusing and to uphold, rather than break, the law. I have therefore decided not to impose a punitive costs order on the City. Should the City persist in its determination not to comply with the Order, it might not be so fortunate the next time this matter comes before the court."

[13] The Respondent in this matter brought an urgent application for an order declaring First and Second Appellants in contempt of the Orders of this Court under Case Numbers 7440/2007 dated 28 August 2007; 8172/2022 dated 28 January 2025 and in effect, also 7440/2007 dated 22 May 2024. The matter was allocated to Nthambelenin AJ who presided over the matter on 17 June 2025 and handed down the Judgment on 8 July 2025 wherein the First and Second Appellants were declared in contempt of the Orders of this Court under Case Numbers 7440/2007 dated 28 August 2007; 8172/2022 dated 28 January 2025 and in effect, also 7440/2007 dated 22 May 2024.

[14] The First and Second Appellants are now applying for leave to appeal against the judgment of this Court that was handed down on 28 January 2025 (Case Number 008172/2022). In terms of Rule 49(1) of the Uniform Rules of Court,

the Appellants' application for leave to appeal ought to have been served and filed on 17 February 2025. However, it was filed three months later on 19 May 2025. An application for condonation for its late filing was filed on 28 May 2025.

- [15] There are therefore two applications by the Appellants before this Court, namely, (i) an application for condonation for the late filing of the leave to appeal and (ii) an application for leave to appeal. I will start with the condonation application.

PARTIES' SUBMISSIONS ON CONDONATION APPLICATION

- [16] Counsel for the Appellants submitted that the delay in the filing of the application for leave to appeal was largely due to the unfolding of events and the appreciation that the Judgment that was handed down on 28 January 2025 had to be challenged albeit belatedly.

- [17] The gist of the Appellants' explanation for the late filing of the application for leave to appeal is captured in paragraph 7 of the condonation application and it reads as follows: *"It is worth mentioning at the outset, that the trigger for the consideration to approach the Honourable Court with the application for leave to appeal was impelled upon receipt and consideration of proceedings instituted by the Applicants (meaning the Respondent in casu) against the Municipality under Case Number 016542/2025 and 136811/2024. I say this because initially the Municipality took no issue with the decision and orders granted by the Honourable Court because the decision to enter into the deed of sale of the properties dated 5 August 2024, was initially, and it appears correctly, predicated upon the orders granted by the Court in these proceedings, but mainly prompted by the outcome of the rescission application proceedings under case number: 7440/2007 handed down on 20 May 2024 ("Tuchten, J 2024 judgment")."*

- [18] The response to the Appellants' explanation by the Counsel for the Respondent is that the proceedings under case number 016542/2025, is an

action instituted by Respondent against First Applicant for damages by way of a combined summons which was served on First Applicant on 24 February 2025. Counsel for the Respondent contends that the First Applicant was forewarned of Respondent's intention to institute these proceedings by way of letters dated 4 July 2024 and 2 December 2024, respectively. These proceedings were accordingly instituted three months prior to the application for leave to appeal having been served. The proceedings under case number 136811/2024, is an application applying for an order to compel First Applicant to take certain steps in relation to the immovable properties, which was served on First Applicant on 13 December 2024. First Appellant was also informed of the Respondent's intention to institute these proceedings by way of a letter of demand dated 29 February 2024. These proceedings were accordingly instituted against the First Applicant more than a month prior to the Judgment, and six months prior to the application for leave to appeal.

- [19] Counsel for the Respondent submitted that the Appellants' attempt to persuade the Court that the decision to approach the Court with the application for leave to appeal was prompted by the proceedings instituted by Respondent under case numbers 016542/2025 and 136811/2024, when these proceedings were already served on the First Appellant as far back as 24 February 2025 and 13 December 2024 respectively does not make sense. Counsel for the Respondent submitted: *"In the circumstances, the explanation is, on a factual basis, simply devoid of any merit, nonsensical and no explanation, whatsoever, is provided for the interposing period between 24 February 2025 and 19 May 2025 (i.e. being a three-month period)."*

LEGAL PRINCIPLES GOVERNING CONDONATION APPLICATION

- [20] The primary principles governing consideration of a condonation application where a party is barred from proceeding because they have failed to comply with the time limit for filing some form of legal process were confirmed in *Melane v Santam Insurance Co Ltd*:² *"In deciding whether sufficient cause*

² **1962 (4) SA 531** (A), at 532C-G.

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 it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation thereof, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interest in finality must not be overlooked. I would add that discursiveness should be discouraged in canvassing the prospects of success in the affidavits."

- [21] Since that Judgment, the test has been slightly broadened. Now the test for determining condonation is whether it would be '*in the interests of justice*' to do so. The Constitutional Court acknowledged in *Grootboom v National Prosecuting Authority & another*³ that this is a very elastic term. Bosielo AJ writing for the majority of the court, stated: "*I read the judgment by my colleague Zondo J. I agree with him that, based on Brummer and Van Wyk*⁴, *the standard for considering an application for condonation is the interests of justice. However, the concept 'interests of justice' is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be those*

³ (2014) 35 ILJ 121 (CC).

⁴ The cases referred to are *Brummer v Gorfil Brothers Investments (Pty) Ltd & others* [2000] ZACC 3; 2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC) at para 3 and *Van Wyk v Unitas Hospital & another* (Open Democratic Advice Centre as Amicus Curiae) [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) at para 20.

mentioned above. The particular circumstances of each case will determine which of these factors are relevant.”

- [22] Zondo J, (as he then was) expressed the test for determining condonation in the following terms as it applied in the Constitutional Court: “[50] *In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that enquiry include: (a) the length of the delay; (b) the explanation for, or cause for, the delay; (c) the prospects of success for the party seeking condonation; (d) the importance of the issue(s) that the matter raises; (e) the prejudice to the other party or parties; and (f) the effect of the delay on the administration of justice. Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation. [51] The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.*”

ANALYSIS

- [23] Legal principles governing applications for condonation of late-filed leave to appeal centre on "good cause" and whether granting condonation is in the "interests of justice," requiring the Appellants to provide a full, reasonable, and

acceptable explanation for the delay, considering factors such as its extent, the reasons for it, its effect on the administration of justice, prejudice to the Respondent, and the prospects of success on appeal.

[24] It is also trite that a condonation application must give a full explanation for the delay, which must cover the entire period of delay and be reasonable. In *Uitenhage Transitional Local Council v South African Revenue Service*,⁵ the Supreme Court of Appeal noted that ‘*an application for condonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished to enable the court to understand clearly the reasons and to assess the responsibility.*’ The court noted that ‘*if the non-compliance is time-related, then the date, duration, and extent of any obstacle on which reliance is placed must be spelled out.*’

[25] It is my considered view that the Appellants did not provide the Court with a full, detailed and accurate account of the causes of the delay and their effects. All these ought to be furnished in order to enable the Court to understand clearly the reasons and to assess the responsibility. Since the Appellants’ non-compliance is time-related, then the date, duration, and extent of any obstacle on which reliance is placed must be spelled out. All these were not done by the Appellants. Therefore, I am inclined to align myself with the submission made by the Counsel for the Respondent: “... *the Appellants’ attempt to persuade the Court that the decision to approach the Court with the application for leave to appeal was prompted by the proceedings instituted by Respondent under case numbers 016542/2025 and 136811/2024, when these proceedings were already served on the First Appellant as far back as 24 February 2025 and 13 December 2024 respectively does not make sense.*” Counsel for the Respondent further submitted: “*In the circumstances, the explanation is, on a factual basis, simply devoid of any merit, nonsensical and no explanation, whatsoever, is provided for the interposing period between 24 February 2025 and 19 May 2025 (i.e. being a three-month period).*” I am also inclined to align myself with this submission by Counsel for the Respondent.

⁵ [2003] 4 All SA 37 (SCA) para 6.

PREJUDICE

- [26] There is a question of prejudice that the Appellants overlook. The issue of prejudice has to be taken into account. The prejudice to the Respondent becomes even more acute when regard is had to the fact that *“no explanation, whatsoever, is provided for the interposing period between 24 February 2025 and 19 May 2025 (i.e. being a three-month period).”* Gautchi AJ, on behalf of the full bench of this division, in *Aymac*⁶ stated: *“Inactivity by one party affects the interest of the other party in the finality of the matter. See in this regard Federated Employers Fire & General Insurance Co Ltd and Another v McKenzie*⁷ *in which Holmes JA said the following concerning the late filing of a notice of appeal: ‘The late filing of a notice of appeal particularly affects the respondent’s interest in the finality of his judgment - the time for noting an appeal having elapsed, he is prima facie entitled to adjust his affairs on the footing that his judgment is safe; see Cairns’ Executors v Gaarn*⁸ *in which Solomon J.A., said: ‘After all the object of the Rule is to put an end to litigation and to let parties know where they stand.’ See also Minister of Land Affairs and Agriculture and Others v D&F Wevell Trust and Others.*⁹”
- [27] The history of this matter stated under the background facts above clearly demonstrates that the Appellants had not had any regard to the Respondent’s rights and interests in the finality of the matter.
- [28] Steyn CJ, in *Saloojee*,¹⁰ when considering a condonation application for the late delivery of a notice of appeal held: *“What calls for some acceptable explanation, is not only the delay in noting an appeal and in lodging the record timeously, but also the delay in seeking condonation. As indicated, inter alia,*

⁶ *Aymac CC v Widgerow* 2009 (6) SA 433 (W) at [40].

⁷ 1969 (3) SA 360 (A) at 363A.

⁸ 1912 AD 181 at p. 193.

⁹ 2008 (2) SA 184 (SCA) at 199B – D.

¹⁰ At 138 H to 129 A; *Commissioner, South African Revenue Service v van der Merwe* 2016 (1) SA 599 (SCA) at 609 F, citing *Commissioner for Inland Revenue v Burger* 1956 (4) SA 466 (A) at 449 G – H.

in Commissioner for Inland Revenue v Burger,¹¹ an appellant should, whenever he realises that he has not complied with a Rule of Court, apply for condonation without delay. A perusal of the Rules of this Court should have disclosed to the applicants' attorneys that, when they obtained consent to an appeal direct to this Court on 8th October, the time for noting an appeal had already expired. By 18th October, 1963, they knew that the notice of appeal tendered had been rejected by the Registrar as being out of time. From then onwards it must have been quite clear to them that an application for condonation was necessary." In casu, the Appellants' application for leave to appeal ought to have been served and filed on 17 February 2025. However, it was filed three months later on 19 May 2025. An application for condonation for its late filing was filed on 28 May 2025. The Court was not taken into confidence as to why the application for condonation was filed much later than the application for leave to appeal.

- [29] I am of the view that the applicant's failure to explain in any meaningful manner, "... *the date, duration and extent of any obstacle on which reliance is placed...*" leads to the inference that the Appellants were lackadaisical.¹² The Appellant's explanation is wholly inadequate and perhaps even lacking in candour. It is my considered view that the three-months delay will definitely cause prejudice to the Respondent should condonation be granted.

CONCLUSION

- [30] The First Appellant (City of Tswane Metropolitan Municipality), as an organ of state, is duty-bound to comply with the Orders of this Court, as it is with all of its obligations under the Constitution. It needs to be stressed that the Constitution enjoins organs of state, like the Municipality, to adhere and give effect to its principles and provisions, as they must to the Court Orders. Where an organ of state fails in its duty, a Court must assume an "invidious position of having to oversee state action, to address and correct the failures.

¹¹ 1956 (4) SA 446 (AD) at p. 449, and in *Meintjies' case*, *supra* at p. 264.

¹² **Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others** [2013] 2 All SA 251 (SCA) at [13]; **Commissioner, South African Revenue Service v van der Merwe** 2016 (1) SA 599 (SCA) at 611 I/J.

- [31] The Courts must not hesitate to enforce their Orders. Courts have the power to ensure that their Decisions or Orders are complied with by all and sundry, including organs of state. In doing so, Courts are not only giving effect to the rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest.
- [32] The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the Courts be upheld. This is crucial, as the capacity of the Courts to carry out their functions depends upon it. As the Constitution commands, Orders and Decisions issued by a Court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the Courts. It follows from this that disobedience towards Court Orders or Decisions risks rendering our Courts impotent and judicial authority a mere mockery. The effectiveness of Court Orders or Decisions is substantially determined by the assurance that they will be enforced and complied with.
- [33] The remarks of Justice Brandeis in *Olmstead et al v United States* which have been endorsed by this Court, remain apposite here: *"In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. If the government becomes a law-breaker, it breeds contempt for the law; it invites every man or woman to become a law unto himself or herself; it invites anarchy."*
- [34] In determining this matter, I must be guided by the well-established principles applicable to applications of this nature. In this regard, I need to draw certain inferences and weigh probabilities as they emerge from the parties' respective submissions, affidavits, heads of arguments and oral arguments by their counsel.
- [35] On a conspectus of all the evidence placed before Court, I am satisfied on a holistic evaluation of the evidence presented that the Appellants have not

made out a case for the relief sought. I must emphasise that the Appellants have not provided a sufficient explanation for the lateness of the application according to the established legal principles discussed above.

[36] Based on the explanation and submissions provided by both parties, it is evident that there are significant gaps in the Appellant's version of events that remain unexplained. The Appellants did not provide the Court with a full, detailed and accurate account of the causes of the delay and their effects. All these ought to be furnished in order to enable the Court to understand clearly the reasons and to assess the responsibility. Since the Appellants' non-compliance is time-related, then the date, duration, and extent of any obstacle on which reliance is placed must be spelled out. All these were not done by the Appellants. Therefore, I am inclined to dismiss the condonation application.

[37] As indicated above, Zondo J, (as he then was) expressed the test for determining whether condonation should be granted or refused in the following terms as it applied in the Constitutional Court: "*Where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success.*" Having considered the history, background, and circumstances of this case and in an endeavour to strike a balance between the interests of the parties, I align myself with this test: "*Where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success.*" I am convinced that it does not serve any purpose to consider the prospects of success considering the significant gaps in the Appellant's version of events that remain unexplained.

COSTS

[38] The Respondent has asked for punitive costs. One of the fundamental principles of costs is to indemnify a successful litigant for the expense put through in unjustly having to initiate or defend litigation. The successful party

should be awarded costs.¹³ The last thing that our already congested court rolls require is further congestion by an unwarranted proliferation of litigation.¹⁴

[39] It is so that when awarding costs, a Court has a discretion, which it must exercise after a due consideration of the salient facts of each case at that moment. The Court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstances which may have a bearing on the issue of costs and then make such order as to costs as would be fair in the discretion of the Court.

[40] The Respondent purchased the properties referred to above more than 18 years ago and they are still not yet transferred to the Respondent. This is as a result of the First Appellants' obstinate conduct by refusing to give effect to the sale agreement of 2006 and the subsequent Court Orders. In this regard, the conduct of the Appellants in this matter really leaves much to be desired.

[41] The First Appellant was warned by Tuchten J (see paragraph 12 above) in the following words: *"I have therefore decided not to impose a punitive costs order on the City. Should the City persist in its determination not to comply with the Order, it might not be so fortunate the next time this matter comes before the court."*

[42] In light of these considerations, I am accordingly inclined to grant costs in favour of the Respondent on a scale as between attorney and client, including the cost of two counsel where so employed.

ORDER

[43] **In the circumstances, I make the following order:**

¹³ Union Government v Gass 1959 4 SA 401 (A) 413.

¹⁴ Socratous v Grindstone Investments (149/10) [2011] ZASCA 8 (10 March 2011) at [16].

[43.1] The condonation application is dismissed.

[43.2] The First Appellant (City of Tshwane Metropolitan Municipality (“the City”), is ordered to pay the costs of the application on a scale as between attorney and client, including the cost of two counsel where so employed.

T E JOYINI
ACTING JUDGE OF THE HIGH COURT, PRETORIA

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Date of Hearing: 25 July 2025

Date of Judgment: 7 August 2025

This Judgment has been delivered by uploading it to the Court online digital data base of the Gauteng Division, Pretoria and by e-mail to the Attorneys of record of the parties. The deemed date and time for the delivery is 7 August 2025 at 10h00.