

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

**Case No: A196/24**

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **YES**

**DATE: 22/8/2025**

**SIGNATURE**

In the matter between:

**H[...] B[...] (nee D[...] J[...])**

Appellant

And

**R[...] J[...] B[...]**

Respondent

---

**NEUKIRCHER J:**

1] On 27 January 2022 the present respondent<sup>1</sup> brought an application to “revoke” a Writ of Execution issued by the Registrar of this Court on 3 November 2021 in the amount of R302 900.<sup>2</sup> That application was granted with costs. The judgment was handed down by Ceylon AJ on 22 May 2023.

3] An application for leave to appeal was launched, and on 2 April 2024 Ceylon AJ granted leave to appeal to the Full Court of this Division.

---

<sup>1</sup> The parties will be referred to as they are in the appeal itself

<sup>2</sup> This is for allegedly arrear maintenance owed to the appellant by the respondent in respect of a Rule 43 order

4] The argument on appeal was not confined to the facts that served before the court *a quo*. This is because the appellant failed to comply with Rule 49 in several respects.

5] On 29 July 2024, the respondent filed a notice in terms of Rule 30 and Rule 30A. The grounds on which that notice is based are the following:

- a) leave to appeal having been granted on 2 April 2024, the Notice of appeal was to have been delivered on or before 30 April 2024<sup>3</sup>;
- b) the notice of appeal was only delivered on 15 July 2024, some 52 court days out of time;
- c) the appellant has failed to show good cause for the extension of the period set out in rule 49(2);
- d) the notice of appeal is, in any event, defective as:
  - (i) the “attached Court Order” mentioned in the Notice of Appeal is not attached;
  - (ii) the Notice of Appeal sets out deficient appeal grounds.

6] On 13 August 2024, the appellant launched an application for condonation for the late filling of the Notice of Appeal and sought re-instatement of the appeal in terms of Rule 49(6)(b)<sup>4</sup>.

7] The explanation provided by the appellant’s attorney of record for the late noting of the appeal is, briefly, that the registrar of appeals refused to allow him to file the Notice of Appeal before a self-standing and separate Court Order granted by Ceylon AJ was filed. His efforts commenced on 15 April 2024 and despite his best efforts and various enquiries made, the court order was only uploaded to Caselines on 9 July 2024. This was 49 days after the judgment and order was handed down. The appellant’s attorney submits that the delay was not willful or deliberate but rather occasioned by what he terms “jurisdictional factors of ensuring that the court order was attached to the notice of appeal.”

---

<sup>3</sup> Rule 49(2) :“If leave to appeal to the full court is granted the notice of appeal shall be delivered to all the parties within 20 days after the date upon which leave was granted or within such longer period as may upon good cause shown be permitted.”

<sup>4</sup> 49(6)(b) “The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed.”

8] But the appellant's woes do not stop with the late filing of the Notice of Appeal. The appellant also failed to:

- a) make written application to the registrar for a date of hearing in terms of Rule 49(6a)<sup>5</sup>;
- b) file three copies of the appeal record within 60 days in terms of Rule 49(7)(a)<sup>6</sup>;
- c) furnish two copies of the record to the respondent in terms of Rule 49(7)(a);
- d) file a power of attorney with the registrar in terms of rule 7(2)<sup>7</sup>;
- e) furnish security in terms of Rule 49(13)(a)<sup>8</sup>.

9] Whilst there is an application for reinstatement and extension of time in respect of the late filing of the Notice of Appeal, there is no condonation application filed in respect of any of the other serious defects in the prosecution of this appeal – in fact, the silence in respect thereof is deafening.

---

<sup>5</sup> 49(6)(a) Within sixty days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal and if the appellant fails to do so a respondent may within ten days after the expiry of the said period of sixty days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs.

<sup>6</sup> “49(7)(a) At the same time as the application for a date for the hearing of appeal in terms of subrule (6)(a) of this rule the appellant shall file with the registrar three copies of the record on appeal and shall furnish two copies to the respondent. The registrar shall further be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents: Provided that such omissions shall be referred to in the said index. If the necessary copies of the record are not ready at that stage, the registrar may accept an application for a date of hearing without the necessary copies if-

- (i) the application is accompanied by a written agreement between the parties that the copies of the record may be handed in late; or
- (ii) failing such agreement, the appellant delivers an application together with an affidavit in which the reasons for his omission to hand in the copies of the record in time are set out and in which is indicated that an application for condonation of the omission will be made at the hearing of the appeal.”

<sup>7</sup> “7(2) The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.”

<sup>8</sup> “49(13)(a) Unless the respondent waives his or her right to security or the court in granting leave to appeal or subsequently on application to it, has released the appellant wholly or partially from that obligation, the appellant shall, before lodging copies of the record on appeal with the registrar, enter into good and sufficient security for the respondent's costs of appeal.”

10] In *United Plant Hire (Pty)(Ltd) v Hills*<sup>9</sup> the court laid down the principles upon which the court exercises a discretion to reinstate an appeal that has lapsed:

“It is well settled that, in considering applications for condonation, the court has a discretion, to be exercised judicially upon a consideration of all the facts; and that in essence it is a question of fairness to both sides. In this enquiry, relevant consideration may include the degree of non-compliance with the rules, the explanation therefor, the prospects of success on appeal, the importance of the case, the respondent’s interest in the finality of his judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive.”

12] These principles were re-stated in *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as amicus curiae)*<sup>10</sup>

“This court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends upon the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to 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 raised in the intended appeal and the prospects of success.”

13] All these factors are not individually decisive, but are interrelated and must be weighed against the other. Thus a slight delay and a good explanation may be held to compensate against prospects of success which are not strong.<sup>11</sup>

14] In *Aymac CC and another v Widegrow*<sup>12</sup> the court of appeal was faced with similar circumstances to those that face this court:

“[6] The application for a date of hearing is that referred to in rule 49(6)(a). The effect of these two rules is that, simultaneously with making written application to the registrar for a date for the hearing of the appeal, the

---

<sup>9</sup> 1976 (1) SA 717 (A) at 720E-G

<sup>10</sup> 2008 (2) SA 472 (CC) at 477A-B

<sup>11</sup> *United Plant Hire* at 720E

<sup>12</sup> 2009 (6) SA 433(W)

appellant's attorney (if he is represented by one) shall file the power of attorney. Unless the power of attorney is filed together with the application for a date of hearing, the appellant cannot be considered properly to have made written application in terms of rule 49(6)(a). See *Corlett Drive Estate Ltd v Boland Bank Ltd and Another* 1978 (4) SA 420 (C) at 425D - F. In the absence of a proper making of an application for a date for the hearing of the appeal, the appeal is not properly set down and should be struck off the roll. This is in line with the earlier practice, which was that a power of attorney was required to prosecute an appeal, and where no power of attorney had been filed, the proper order was considered to be that the matter be struck off the roll rather than be postponed, because it had been incorrectly enrolled. See *Dollar v New Eersteling Gold Mining Co Ltd* 1927 TPD 472; *Rodrigues v Bailen* 1931 CPD 190; *Afrikaanse Handelaars en Agente (Eiend) Bpk v Van Niekerk* 1944 TPD 62; *Saley v Julay* 1945 TPD 221; and *Karp and Gewer v McNevin* 1951 (4) SA 118 (T). See also *Solomons v Allie* 1965 (4) SA 755 (T) at 756C:

'In the case where the appellant's power of attorney was wanting the Court refused, and I think had no jurisdiction, to grant a postponement of something that was not on its roll.'

[7] Of course, the non-compliance with the rules may be condoned, and a lapsed appeal may be reinstated, both on good cause shown. But no application for condonation had been made; indeed, counsel for the appellants' submission was that no application for condonation was required because the registrar had set the appeal down, and, if he was wrong to have done so, the fault lay with the registrar and not with the appellants. On the facts before us, and even having regard to the late filing of the powers of attorney, the appeal had been irregularly set down, and it had been correctly struck from the roll."

15] Given the provisions of Rule 49(6)(a) and the fact that the appellant failed to comply, it is so that her appeal has lapsed; it is also so that there is an application for re-instatement of the appeal.

16] But the problem that the appellant faces in this matter is that the application for condonation is aimed solely at the late filing of the Notice of Appeal – it fails to cover any of the other breaches of either Rule 49 or Rule 7(2). This was not disputed in argument. It is also clear that the appellant has not sought condonation for any other non-compliance issues.

17] In *Van Wyk v Unitas*, the court held that the applicant for condonation must give a full explanation for the delay which must not only cover the entire period of the delay, but must also be reasonable.

18] In *Blumenthal and Another v Thomson NO and Another*<sup>13</sup> the court stated:  
“This Court has often said that in cases of flagrant breaches of the Rules, especially where there is no acceptable explanation therefor, the indulgence of condonation may be refused whatever the merits of the appeal are; this applies even where the blame lies solely with the attorney (*Tshivhase Royal Council and Another v Tshivhase and Another*; *Tshivhase and Another v Tshivhase and Another* 1992 (4) SA 852 (A) at 859E-F). As I have said, the facts *in casu* show that the Rules were flagrantly breached; nor is there any acceptable explanation for such breaches. In these circumstances it is unnecessary to make an assessment of the prospects of success since the cumulative effect of the factors already mentioned, including the first respondent's interest in the finality of the Court *a quo*'s judgment, is such as to render the application for condonation unworthy of consideration (see too *Rennie v Kamby Farms (Pty) Ltd* 1989 (2) SA 124 (A) at 131I-J and *Ferreira's case supra* at 281J-282A).”<sup>14</sup>

19] In my view, the overwhelming non-compliance with the rules governing the prosecution of appeals is so egregious that it is unnecessary for us to consider the application for re-instatement. Coupled with that is the fact that no condonation is sought for the missteps set out in paragraph 8 *supra*. Put differently: even were this

---

<sup>13</sup> 1994 (2) SA 118 (A) at 121I – 122A

<sup>14</sup> Also *Saloojee and Another NNO v Minister of Community Development* 1965 (2) SA 135 (A) at 141C-E

court to grant condonation for the late filing of the Notice of Appeal, it would still be unable to consider the appeal because of the other failures to prosecute it properly.

20] As a result, it is unnecessary to consider whether there are prospects of success on appeal as the appeal is not properly before us. Thus, in my view, the only order to be made is that the appeal should be struck from the roll. There is also no reason why costs should not follow the result.

### **ORDER**

The appeal is struck from the roll with costs.

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

I agree

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

I agree

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

This judgment was prepared and authored by the judges whose names are reflected, and is handed down electronically by circulation to the parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 23 August 2025.

Appearances

For the appellant : Adv BR Matlhape

Instructed by : Du Toit Attorneys

For the respondent : Adv K Fitzroy

Instructed by : **Laäs Döman Inc**

Matter heard on : 6 August 2025

Judgment date : \_\_\_\_\_