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

CASE NO: 45317/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE 28 AUGUST 2025

SIGNATURE

In the matter between:

VESTRO CAPITAL (PTY) LTD

First Applicant

(Registration number: 2016/333899/07)

MARIUS STRYDOM

Second Applicant

(Identity number: 8[...])

And

SB GUARANTEE COMPANY (RF)

PROPRIETY LIMITED

Plaintiff/Applicant

(Registration number: 2006/021576/07)

In re:

SB GUARANTEE COMPANY (RF) (PTY)

Plaintiff

LIMITED

(Registration number: 2006/021576/07)

And

VESTGRO CAPITAL (PTY) LTD

First Defendant

(Registration number: 2016/333899/07)

MARIUS STRYDOM

Second Defendant

(Identity number: 8[...])

**JUDGMENT: APPLICATION FOR SUMMARY JUDGMENT AND
RULE 46(1)(A) APPLICATION**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 28 August 2025 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10h00 on 28 August 2025.

MNISI AJ

INTRODUCTION

- [1] This is an application for leave to appeal the summary judgment which I handed down on 25 June 2024 in favour of Plaintiff. The claim against the Defendants arose out of the breach of the home loan agreement concluded between the Plaintiff and the Defendants which was secured by a mortgage bond over the Defendants' property in or about August 2020.
- [2] For the sake of convenience, I would refer to the Defendants collectively as, 'the Applicants', and Plaintiff as, 'the Respondent.' The reasons for granting summary judgment in favour of the Respondent are fully elucidated in the judgment, and need not be regurgitated in this judgment.

[3] The Applicants have also seek condonation for the late filing of their application for leave to appeal. The Respondent did not file papers in opposition of the aforementioned application.

[4] During the hearing of these applications, counsel for the Respondent rightly underscored that the decision to grant or deny an application for condonation is solely within the purview of the Court.

THE APPLICATION FOR CONDONATION

Background facts relevant to the Condonation Application

[5] The relevant facts are recorded in the papers, therefore I deem it unnecessary to burden this judgment with a repetition of the factual background.

[6] It is sufficient to record that:

6.1. this court's judgment, dated 25 June 2024, was uploaded to the caselines on the same date of issuance.

6.2. the Applicants' application for leave to appeal was served and filed on 25 February 2025;

6.3. the 15-day period referred to in Rule 49 of the Uniform Rules of this Court, calculated from 25 June 2024, elapsed on or about 10 July 2024; and

6.4. the condonation application was served and filed on 12 July 2025, some three months after the Applicants served and filed application for leave to appeal.

APPLICABLE LEGAL PRINCIPLES

Good cause, length of delay, explanation for delay, prospects of success and prejudice

- [7] In *Num v Council for Mineral Technology* [1998] ZALAC 22 [1999] 3 BLLR 209 (LAC), the Labour Appeal Court (LAC) confirmed the approach in *Malane v Sanlam Insurance Co Limited* 1962 (4) SA 531 (A) at 532C – F as the approach to adopt when considering condonation applications. That is, the factors to be considered are the degree of lateness, the explanation for the delay, the prospects of success and the prejudice to both parties.
- [8] It sets out a further principle that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial.¹ It is trite that the Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory and acceptable explanation for the delay, condonation may be refused without considering prospects of success, and to grant condonation where delay is not explained may not serve the interests of justice.
- [9] In *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (1) BCLR 65 (CC) at para 22, the Constitutional Court held that the ultimate determination of what is in the interests of justice must reflect due regard to all of the relevant factors, with the particular circumstances of each case determining which of them are relevant.
- [10] In this case, I cannot accept the Applicants' contention insofar as their reasons for the delay are concerned namely, that the attorney of record and deponent to the founding affidavit in support of the aforesaid application only became aware of the judgment through email correspondence dated 21 February 2025. The identity of the sender of the email to the deponent remains unclear, as it is not attached to the founding affidavit. The deponent further alleges that upon consulting with the Applicants, he launched the application for leave to appeal on 24 February 2025. In a shocking turn of

¹ Ibid fn 1 at para 10.

events, he also avers that in the circumstances, the application for leave to appeal is not late, it was only brought before this Court out of caution.

[11] This despite the fact that judgment was uploaded on caselines on 25 June 2024 at 13:11. No explanation was provided as to why the Applicants' inability to access the judgment on caselines. There is nothing before this Court to demonstrate this fact when one considers what has been set out above. It would also appear from the application delivered by the Applicants that the Applicants are of the view that condonation is simply there for the taking and that it was not required to set out adequate grounds, if any, in demonstrating good cause for condonation to be granted.

[12] In *Foster v Stewart Scott Inc*,² Froneman J (as he then was), stated the following:

"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. Relevant considerations may include the degree of non-compliance with the rules, the explanation therefore, the prospects of success on appeal, the importance of a case, the respondent's interest in the finality of the judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice, but the list is not exhaustive. These factors are not individually decisive but are interrelated and must be weighed one against the other. A slight delay and good explanation for the delay may help to compensate for prospects of success which are not strong. Conversely, very good prospects of success on appeal may compensate for an otherwise perhaps inadequate explanation and long delay."

[13] Throughout their submissions, Applicants failed to provide a satisfactory explanation for their tardiness in submitting the application for leave to appeal, despite the fact that the judgment was uploaded on caselines on 25

² (1997) 18 ILJ 367 (LAC) at para 369.

June 2024. Moreover, they failed to explain why they could not bring this application immediately when they became aware of the judgment on 21 February 2025 as alleged in the founding affidavit. It is important to note that whenever an applicant realises that he/she has not complied with a rule, he/she should apply to the court for condonation without delay.³

[14] In my view, it is evident that there are significant gaps in the Applicants' version of events that remain unexplained. The Applicants did not fully disclose all relevant information to the court and their explanation for the delay is incomplete and inadequate to justify granting their application for condonation for the late filing of the application for leave to appeal.

[15] Even if I am mistaken, the fundamental question remains whether there are any prospects of success.

Prospects of success on Appeal

[16] Applications for leave to appeal are now governed by the provisions of Section 17(1) of the Supreme Courts Act 10 of 2013 which provides as follows:

"17 Leave to appeal

(1) *Leave to appeal may only be given where the judge or judges concerned are of the opinion that-*

(a) (i) *the appeal would have a reasonable prospect of success;*
or

³ Commissioner for Inland Revenue v Burger 1956 (4) 446 at 449H.

(ii) *there is some other compelling reason why the appeal should be heard, including conflicting judgments. On the matter under considerations;*

(b) *The decision sought on appeal does not fall within the ambit of Section 16(2)(a); and*

(c) *Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”*

[17] It is trite that the test in such applications has changed substantially from the test ordained in terms of the repealed Supreme Court Act 59 of 1959. The current standard is captured succinctly in the case of *Mont Chevaux Trust (IT2012/28) v Tina Goosen and Others LCC14R/2014*, (3 November 2014) at para 6, in which the Court stated that “the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act and that in terms of the former test the question was whether or not there was a reasonable prospect that another court might come to a different conclusion.⁴ The use of the word “would” in the new statute is indicative of a measure of certainty that another will differ from the court whose judgment is sought to be against.”

[18] This position has since been confirmed in other Divisions of the High Court and it is therefore evident that the current section is now more burdensome than its predecessor. Smith J in the Valley of the *Kings Thaba Motswere (Pty) Ltd [2016] ZAECHC 137* (10 November 2016) acknowledged the new standard created by Section 17 but added that the contextual construction of the phrase “reasonable prospect of success” still requires of the Judge, whose judgment is sought to be appealed against, to consider, objectively and dispassionately, whether there are reasonable prospects that another court may well find merit in argument advanced by the losing party.”

- [19] In *Majola v Nitro Securitisation 1 (Pty) Ltd 2012 (1) 226 (SCA)* at [25] the Supreme Court of Appeal held that where a court found a defendant had no *bona fide* defence, it should be slow thereafter to grant leave to appeal, lest it undermines the purpose of summary judgment procedure to prevent sham defences from delaying the enforcement of a plaintiff's rights.
- [20] Moreover, the peremptory provisions of Rule 49(1)(b) require a litigant in an application of this nature to clearly and succinctly set out the grounds of appeal in unambiguous terms.⁵ In my view, the Applicant's grounds of appeal are not set out clearly and succinctly in unambiguous terms to enable the court and the Respondent to understand the case the Applicant is pursuing. Failure to comply with the peremptory provisions of Rule 49(1) is fatal. On this ground also the application stands to be dismissed.
- [21] Furthermore, it is clear on the merits and arguments advanced by the Applicants' Counsel that the purported grounds of appeal, constitute a rehash of the issues which were argued and dealt with comprehensively at the hearing and in judgment. The test in terms of Section 17(1) of the Act is stringent and therefore leave to appeal cannot be granted willy nilly.
- [22] In *Dexgroup v Trustco Group International and Others 2013 (6) SA 520 SCA* at para 24, the court held that the need to obtain leave to appeal is a valuable tool in ensuring that scarce judicial resources are not spent on appeals that lack merit.

CONCLUSION

- [23] At the hearing of the application for leave to appeal, I requested the parties' respective counsel to address me upon whether or not there existed any other compelling reason for the matter to be referred to a court of appeal. None was forthcoming. I hold the view that the facts of this matter are

⁵ See: *Songono v Minister of Law and Order 1996 (4) SA 384*.

particular to this case and do not implicate issues of public interest or law as envisaged in section 17(1)(a)(ii) of the Act.

[24] In light of the above I find that the application does not disclose any meritorious grounds of appeal as contemplated in Section 17. The Applicants have consequently not demonstrated that the appeal has reasonable prospects of success. This application therefore stands to be dismissed with costs.

[25] Having regard to all of the above, I make an order as set out below.

Order

1. The Applicants' application for condonation for the late filing of the application for leave to appeal is refused.
2. The application for leave to appeal is dismissed.
3. The Applicants are to pay the Respondent's costs including costs of Counsel.

J Mnisi
Acting Judge of the High Court

Date of hearing: 30 July 2025

Date of Judgment: 28 August 2025

For the Applicant/Plaintiff: Adv JA du Plessis

Instructed by: Vezi & de Beer Incorporated

For the Respondents/Defendants: Adv April

Instructed by: McCarthy, Cruywagen Attorneys