



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 1673/2022

- (1) REPORTABLE:NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

[REDACTED]

01/10/2025

In the matter between:

WONDERBOY BONGANI MHLONGO

APPLICANT

and

MINISTER OF POLICE

FIRST RESPONDENT

NATIONAL POLICE COMMISSIONER

SECOND RESPONDENT

PROVINCIAL POLICE COMMISSIONER

THIRD RESPONDENT

STATE ATTORNEY

FOURTH RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 01 October 2025 at 10:00.

JUDGMENT

Mashile J

[1] This is an application for leave to appeal at the centre of which has become an application for condonation. The latter application took the centre stage because the Applicant, Mhlongo, failed to bring the leave to appeal within the period envisaged in Uniform Rule of Court 49(1), which provides that:

“(a) When leave to appeal is required, it may on a statement of the grounds therefor be requested at the time of the judgment or order.

(b) When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within 15 days after the date of the order appealed against:

Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of 15 days.”

[2] The judgment of this Court having been handed down on 17 December 2024, it follows that Mhlongo should have noted his appeal on 12 January 2025. However, Mhlongo contends that he could not have launched the application for leave to appeal punctually for reasons that I shall consider later in this judgment. Mhlongo ultimately launched his application for leave to appeal on 14 August 2025. The application for condonation must take precedence over the leave to appeal because if this Court is not adequately persuaded of the reasons for the delay in launching the condonation

application and presence of prospects of success of the appeal, it could be dispositive of both applications.

Terse Factual Background

[3] The sequence of events is that the Court delivered the judgment on 17 December 2024. On 24 January 2025 and following receipt of the judgment, Mhlongo requested a transcript of the proceedings. On 30 July 2025, the Gauteng Transcribers supplied the record to Mhlongo. Mhlongo then proceeded to consult his legal representatives for their opinion on the likely success of his impending appeal. His legal representatives probably gave him a promising picture of the appeal, if the applications for leave to appeal and condonation are anything to determine Mhlongo's decision to bring these applications albeit belatedly.

Issues

[4] Insofar as the condonation application is concerned, the sole decision for this Court to make is whether Mhlongo has made a case for the late launching of the leave to appeal. Needless to state that it will be the end of the road for Mhlongo should the Court conclude that the reasons given for the late launching of the application are not satisfactory or insufficient.

Legal Framework

[5] Here the starting point has to be Uniform Rule of Court 27(1), which provides that: "In the absence of agreement between the parties, in terms of Rule 27(1), the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet."

[6] An application in terms of Rule 27(1) may be granted provided an Applicant demonstrates good cause. In an instance where there has been a long delay, a full and reasonable explanation covering the entire period of delay must be furnished. The reason given for the full account has always been that condonation is not there for the mere taking. Thus, an allegation that the other party to the proceedings will not suffer prejudice will often not be adequate to overcome the hurdle. It should suffice to state that an exercise in weighing the existence of good cause involves a consideration of whether the interest of justice requires that condonation be granted, which in turn demands an evaluation of a number of factors such as the explanation for the delay, the length of the delay, the absence of prejudice to the other party and the prospects of success on appeal.

[7] In *Grootboom v National Prosecuting Authority and Another*¹, the Court held that: “Although the existence of prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation. The interest 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 interest of justice.”

[8] also relevant in showing whether good cause has been established is a Court’s exercise of discretion. The statement in *Vlok NO v Sun International South Africa Ltd*² that the broad discretion enjoyed by a Court when considering whether a litigant has shown good cause does not extend to incorporate ignorance of an Act of Parliament nor is it a free-floating power to condone non-compliance with statutory time periods is significant. The power ought to be exercised circumspectly and judiciously.

¹ *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) at par 50 – 51

² *Vlok NO v Sun International South Africa Ltd* 2014 (1) SA 487 (GSJ)

Evaluation

[9] The first question is whether it will be in the interest of justice to allow the leave to appeal despite it having been brought late. Mhlongo begins his assertions by defining the word 'day' as stated in the Uniform Rules of Court. I am at a complete loss why he finds it necessary to do so especially in circumstances where the exclusion of weekends and holidays are a matter of course. To the extent that he may be seeking to include recess period in the definition of a day, perhaps it is proper to state that the exclusion of the period between 15 December to 16 January applies to action matters and not motion court. So, contrary to Mhlongo's belief, a consideration of the period of delay will necessarily cover the entire period from 17 December 2024 to the date on which he launched the application for leave to appeal, 14 August 2025. Understood in this manner, Mhlongo has delayed by almost eight months to launch the leave to appeal.

[10] Mhlongo's affidavit hopelessly fails to give a single reason why he did not note the appeal while waiting for the record, as is customary in practice. In a rather feeble and subtle manner, Mhlongo suggests that following his receipt of the judgment, he proceeded to apply for the record of the proceedings without noting the appeal and obtaining any legal advice from his legal representatives. He also adds that he was unfamiliar with these processes as a lay person. This is understandable and probably constitutes the reason why he sought legal advice in the first place when he sued the Minister of Police and the other Respondents. However, when it became critical to decide whether to appeal or not, he experienced this moment of blackout.

[11] It is manifest why Mhlongo states that in applying for the record, he acted without legal advice and only sought one upon receipt of it from Gauteng Transcribers. By doing so, he seeks to place blame on his lack of legal representation hoping that it will hide the inordinate delay of the period of seven to eight months. All that he says is that given his lack of knowledge of the law, the delay was not unconscionable nor was it prejudicial to the Minister. This is contrived and requires exposure for what it truly is. Mhlongo comes short on giving a full account why he failed to launch the leave to appeal during the seven-

eight-month period. The reason that he was without legal representatives is rejected as a fabrication because he knew that he could not take the whole process of appeal to conclusion alone. With regard to prejudice, I need to state that the interest of justice requires that there be finality in litigation.

[12] In deciding whether it will be in the interest of justice were this Court to grant condonation, I am expected to assess the prospects of success of the appeal. It is at this point that I turn to determine the prospects of success of the application for leave to appeal. Mhlongo is seeking leave to appeal in terms of both section 17(1)(a)(i) and (ii) of the Superior Court Act, 10 of 2013 (*“the Act”*). The application for leave to appeal is silent on whether Mhlongo wishes the appeal to be heard by the Full Court of this Division or the Supreme Court of Appeal. In view of that silence and because in any event, there are no compelling reasons or even conflicting decisions on the matter, I will assume that the intention is that it be heard by the Full Court of this Division.

[13] In terms of the Act, Mhlongo must demonstrate:

13.1 That the appeal would have a reasonable prospect of success for purposes of section 17(1)(a)(i). See, *Chithi and Others; In re: Luhlwinini Mchunu Community v Hancock and Others*³; or

13.2 That there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration, for purposes of section 17(1)(a)(ii).

[14] In *Ramakatsa and Others v African National Congress and Another*⁴, the Court observed that regarding section 17(1)(a)(i): “The test of reasonable prospects of success postulates 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 other words, the appellants

³ *Chithi and Others; In re: Luhlwinini Mchunu Community v Hancock and Others* [2021] ZASCA 123 (23 September 2021)

⁴ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021)

in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

[15] Regarding section 17(1)(a)(ii): Even if the Court is unpersuaded that there are prospects of success, it must still enquire into whether there are compelling reasons which exist why the appeal should be heard such as the interests of justice. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. See, the *Ramakatsa* case *supra* at Para 10.

[16] As one of the grounds of the leave to appeal application Mhlongo states that the Court misdirected itself by holding that he confessed to the police that he had fought with his neighbours during which both of them sustained injuries. Surprisingly, Mhlongo would have this Court believe that his clothes were bloodied from the injuries inflicted by his two neighbours but would not say that he retaliated, which resulted in the complainant sustaining injuries too. His emphasis is rather that he too had injuries and that the police officer was biased by attending to the complainant first. So, he never denied that he injured the complainant.

[17] Mhlongo argued that he was the first to arrive at the police station. That claim is, however, contradicted by the language that he employed when he made his statement. The words that he chose were that he went to the police station ‘to lay a counter charge’ or ‘to open a counter case against his neighbours’. The word, counter, suggests that by the time he got to the police station, he knew that someone had already laid a charge or opened a case against him. The contention that he was the first to arrive at the police station stands to be rejected as false.

[18] Mhlongo’s assertion that the complainant walked pass the Matekwani Hospital situated approximately 600 Metres away from the police station is an indication that she

did not require medical assistance. This argument can be thrown right back at him because, he too passed the same Hospital before entering the police station suggesting that he could not have been seriously hurt. The evidence concerning whether:

18.1 the complainant made a statement to the police officer;

18.2 there was no proof that she was escorted to Hospital by the police and

18.3 that no J88 was presented to this Court;

was not challenged in Court. As such, it cannot be raised now. Besides, there is no application to levy new evidence before this Court. In the circumstances, I do not believe that another Court would reach a different conclusion from that of the Court *a quo*.

[19] Insofar as the findings of this Court are concerned on Section 40, the judgment is clear and I stand by what is outlined therein. There is a full account of the reasons why this Court held that objectively the police officer's suspicion was not unconscionable. In view of the inordinate delay in the launching of the application for condonation, the failure to give a full honest account of what transpired during that period and the absence of prospects that another Court would reach a different conclusion from that of the Court *a quo* were the leave to appeal to be granted, the application for condonation must fail. The following order is made:

1. The application is dismissed with costs.



B A MASHILE
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

APPEARANCES

Counsel for the Applicant:	Adv DJ Sibuyi
Instructed by:	Adv Sibuyi
C/O	Thobela Sindy Attorneys Inc

Counsel for the Respondent:	Ms FN Dube
Instructed by:	Dube N Attorneys Inc

Date of Judgment:	01 October 2025
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