

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 19551/2020

DOH: 17 SEPTEMBER 2025

DOJ: 23 SEPTEMBER 2025

1.	REPORTABLE: NO /YES
2.	OF INTEREST TO OTHER JUDGES: NO /YES
3.	REVISED.
SIGNATURE	23 SEPTEMBER 2025 DATE

In the matter of:

VANESSA AKIMPAYE

First Applicant

JOHN PAUL NTAMUSHOBORA

Second Applicant

SHIMWE ELVIN NTAMUSHOBORA

Third Applicant

DIVINE GWIZA NTAMUSHOBORA

Fourth Applicant

And

**MINISTER OF HOME AFFAIRS
DIRECTOR GENERAL DEPARTMENT
OF HOME AFFAIRS**

First Respondent
Second Respondent

**THE CHAIRPERSON OF THE STANDING
COMMITTEE FOR REFUGEES**

Third Respondent

**THE CHAIRPERSON OF THE REFUGEE
APPEAL AUTHORITY, PRETORIA**

Fourth Respondent

**REFUGEE STATUS DETERMINATION
OFFICER, DESMOND TUTU REFUGEE
CENTRE, S LETSIETSA N.O**

Fifth Respondent

**REFUGEE STATUS DETERMINATION
OFFICER, DESMOND TUTU REFUGEE
CENTRE, MS KGOAHLA N.O**

Sixth Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on caselines. The date of hand down shall be deemed to be 23 September 2025.

ORDER

1. The application for leave to appeal is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.

JUDGMENT

Bam J

Introduction

1. This is an application for leave to appeal the decision and order (order) of this court of 11 April 2023, in which this court dismissed the respondents' application for rescission. The order sought to be rescinded was granted by this court on 8 June 2020, per Mokose J. The application for leave to appeal was filed on 16 July 2023 and is opposed by the applicants. The applicants had further given notice of their intention to oppose the application for condonation filed by the respondents on 27 February 2025. For ease of reference, I refer to the parties as they were in the application for rescission. To this end, applicants refers to Ms Akimpaye, Mr JP Ntamushobora and their two children. The respondents are referred to as such or as state respondents.

Legal principles on condonation

2. Condonation must be granted if it is in the interests of justice to do so. The Constitutional Court in *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others*, makes the point:

'This Court has held that an application for leave to appeal will be granted if it is in the interests of justice to do so and that the existence of prospects of success, though an important consideration in deciding whether to grant leave to appeal, is not the only factor in the determination of the interests of justice. It is appropriate that an application for condonation be considered on the same basis and that such an application should be

granted if that is in the interests of justice and refused if it is not. The interests of justice must be determined by reference to all relevant factors including the nature of the relief sought, the extent and cause of the delay, the nature and cause of any other defect in respect of which condonation is sought, the effect on the administration of justice, prejudice and the reasonableness of the applicant's explanation for the delay or defect.¹

3. Explaining the test for condonation with reference to the concept of good cause, which has since been adapted into the yardstick of interests of justice, the Supreme Court of Appeal noted in *Madinda v Minister of Safety and Security, Republic of South Africa*:

'[10]...'Good cause' looks at all those factors which bear on the fairness of granting the relief as between the parties and as affecting the proper administration of justice. In any given factual complex it may be that only some of many such possible factors become relevant. These may include prospects of success in the proposed action, the reasons for the delay, the sufficiency of the explanation offered, the bona fides of the applicant, and any contribution by other persons or parties to the delay and the applicant's responsibility therefor.

[12]...'Good cause for the delay' is not simply a mechanical matter of cause and effect. The court must decide whether the applicant has produced acceptable reasons for nullifying, in whole, or at least substantially, any culpability on his or her part which attaches to the delay in serving the notice timeously. Strong merits may mitigate fault; no merits may render mitigation pointless.²

4. Rule 49 (1) (b) reads in the relevant parts:

'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 fifteen days after the date of the order appealed against: ...Provided further

¹ (CCT45/99) [2000] ZACC 3; 2000 (5) BCLR 465 ; 2000 (2) SA 837 (CC) (30 March 2000), paragraph 3.

² (153/07) [2008] ZASCA 34; [2008] 3 All SA 143 (SCA); 2008 (4) SA 312 (SCA) (28 March 2008), paragraphs 10, and 12.

that the court may, upon good cause shown, extend the aforementioned periods of fifteen days.’

Legal principles relevant to leave to appeal

5. It is settled law that an applicant for leave to appeal must persuade the court that the appeal would have reasonable prospects of success or there is some other reason as to why the appeal must be heard, *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*³. A mere possibility of success, an arguable case or one that is not hopeless is not sufficient, *MEC for Health, Eastern Cape v Mkhitha and Another*⁴. If the court is not persuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal, *Ramakatsa and Others v African National Congress and Another*⁵. The test is simply whether there are reasonable prospects of success on appeal, *Mothuloe Incorporated Attorneys v Law Society of the Northern Province and Another*⁶.

Whether condonation must be granted

6. The question that must first be answered is whether condonation must be granted. The criteria is what the interests of justice demand, in the circumstances of this case. This on its own envisages a wide and flexible enquiry. It takes into account factors such as, the length of the delay; the explanation for, or cause of, the delay; the prospects of success for the party seeking condonation; the importance of the issues

³ (982/18) [2020] ZASCA 17; 2020 (5) SA 35 (SCA) (25 March 2020), paragraph 2.

⁴ (1221/2015) [2016] ZASCA 176 (25 November 2016), paragraph 17.

⁵ (Case No. 724/2019) [2021] ZASCA 31 (31 March 2021), paragraph 10.

⁶ (213/16) [2017] ZASCA 17 (22 March 2017), paragraph 18.

that the matter raises; the prejudice to the other party or parties; and the effect of the delay on the administration of justice, *Turnbull-Jackson v Hibiscus Coast Municipality and Others*⁷. I have already indicated that the application for leave was filed way more than the fifteen days as envisaged in the Rules. I commence with the explanation for the delay. The explanation proffered appears to be marred by several shortcomings in that it identifies or traces the official/s appointed to deal with the matter. Upon their departure, it appears that the matter comes to a stand still. Thus, it can be safely accepted that the explanation is weak. It does not even cover the full period of the delay. As to the impact on the proper administration of justice, this matter has been in and out of court on several occasions with the applicants pressing for the enforcement of the order of 8 June 2020.

7. The applicants make the point clear in their papers that the respondents are in contempt of court. The order of 8 June, they submit, is not subject to any rescission nor leave to appeal. As to the state's prospects of success, I am persuaded that the prospects for the state are good. I say so guardedly taking into account what I am about to set out immediately here below. The respondents suggest that it was common cause during the rescission that the order of 8 June 2020, being the order sought to be rescinded, was erroneously sought and granted. Broadening on this issue, the respondents state that Rule 42 (1) (a) should have been relied upon and not so much Rule 31 (2) (b), which is relevant to rescission of judgments in actions. On this score, the respondents say this court erred. The submission goes further and

⁷ [2014] ZACC 24, paragraph 23.

notes that had the court relied on Rule 42(1) (a), which does not require of the respondents to demonstrate good cause, the rescission would have been granted.

Rule 42 provides in the relevant parts:

'42 Variation and Rescission of Orders

(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;'

8. But there is difficulty with accepting this submission as it stands. That difficulty is made clear by the absence of any averment in the founding affidavit supporting the rescission application that the order of 8 June had been erroneously sought and or granted. It was not even mentioned during the state respondents' submissions before the court. During his address, Counsel for the state was the first to concede to this shortcoming on the state's case. Taking this court through the state's amended grounds for leave to appeal, counsel painstakingly underscored the errors committed by the applicants, firstly in placing the review application before the court, and secondly, in the order that was eventually sought and granted by the court, which is premised exclusively on Part B of the applicants' Notice of Motion. But the applicants stood firm submitting that there were no errors.

9. In my view, it serves little or no purpose to discuss in this judgment how the matter, which was initially set down for determination of Part A, (the urgent relief) saw the applicants end up with relief premised exclusively on Part B of the Notice of Motion, with the court substituting the administrator's decision with that of its own. This, in

circumstances where the record envisaged in Rule 53 had not even been furnished and before the applicants had supplemented their grounds for review. It is clear to me that condonation for the late filing of the application for leave must be granted.

10. Fortifying my view is the reasoning of the Court in *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another*:

[38] In Johannesburg City Council, the Court acknowledged that the usual course in administrative review proceedings is to remit the matter to the administrator for proper consideration. However, it recognised that courts will depart from the usual course in two circumstances:

“(i) Where the end result is in any event a foregone conclusion and it would merely be a waste of time to order the tribunal or functionary to reconsider the matter. This applies more particularly where much time has already unjustifiably been lost by an applicant to whom time is in the circumstances valuable, and the further delay which would be caused by reference back is significant in the context.

(ii) Where the tribunal or functionary has exhibited bias or incompetence to such a degree that it would be unfair to require the applicant to submit to the same jurisdiction again.”

[40] The Supreme Court of Appeal in Gauteng Gambling Board seems to have added another consideration, whether the court was in as good a position as the administrator to make the decision. For this, it noted that the administrator is “best equipped by the variety of its composition, by experience, and its access to sources of relevant information and expertise to make the right decision.”⁸

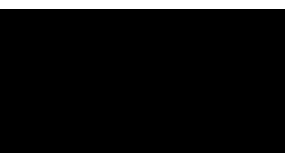
⁸ (CCT198/14) [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) (26 June 2015), paragraphs 38, 40.

Whether leave to appeal should be granted

11. As to whether leave to appeal the order pertaining to the rescission must be granted, I am persuaded, with reference to the very ground that I discussed in the context of condonation, that another court would come to a different finding. In all probability, that will lead to the full ventilation of the issues in this matter. The matter will thus be brought to finality having followed an orderly process.

Order

1. The application for leave to appeal is granted to the Full Court of this Division.
2. Costs will be costs in the appeal.

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N.N BAM J

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

Date of Hearing:

17 September 2025

Date of Judgment:

23 September 2025

Appearances:

Counsel for the Applicants:

**Adv A Granova, with her Adv L
Pretorius**

Instructed by:

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