IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No.: 2022/002174

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

19 September 2025

In the matter between:

BONFACE TINTIN NDAWALA	Applicant
and	
NEDBANK LIMITED	First Respondent
City of Johannesburg	Second Respondent
ERF 1[…] SUNNINGHILL EXTENSION 91 HOMEOWNERS ASSOCIATION	Third Respondent

Date Heard: 12 September 2025

JUDGMENT

Bhengu AJ

Introduction

[1] This is an opposed application for leave to appeal the money judgment order and an order declaring the Applicant's (*"Mr Ndawala")* immovable property especially executable in terms of Rule 46A granted on 04 June 2024. The

operation of the order was suspended for 6 months in order to allow Mr Ndawala to bring his arrears up to date.

[2] The Application for leave to appeal was filed on 08 January 2025, 6 months later. Uniform Rule 49(1) provides that an application for leave to appeal shall be made within 15 days after the date of the order appealed against. In this matter, the application for leave to appeal should have been filed on 25 June 2024. An application for condonation was heard together with the application for leave to appeal.

Condonation application

[3] Both counsels referred this Court to the trite principles for condonation as referred to in the Constitutional decision *in Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)*[1] where the Court held that:

"The standard for considering an application for condonation is the interests of justice. Whether it is in the interest of justice to grant condonation depends on 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."

[4] Mr Ndawala stated the following as his explanation for the delay:

"The delay was not intentional. It is a delay born out of ignorance and financial difficulty. I did not fully appreciate my rights after the court order was issued, as I am not a lawyer. And I have had no funds which I could use to pay my attorneys. It was by a sheer act of divine grace that in the last couple of days. I

[1] Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae) 2008 (2) SA 472 (CC) at para 20

managed to find some cash, which I sent to my attorneys. After receiving the funds, my attorneys were able to draft, finalize and serve my application for leave to appeal".

[5] In opposing both applications, the First Respondent contended that the Applicant failed to meet the trite requirements for condonation. The Applicant failed to fully explain the period of the delay and provide good reasons thereof. The First Respondent averred that the defence of ignorance and being a layman cannot be accepted in the context of Mr Ndawala's level of education, being an Accountant and a CEO of a telephony company. The First Respondent contended that Mr Ndawala has been using the same excuse of being a layman and lack of funds throughout the litigation against him. It pointed out that this is not the first condonation application brought by the applicant for gross non-compliance with the Rules of Court, citing that Mr Ndawala's Answering Affidavit was filed a year out of time.

[6] Regarding the lack of legal representation, the First Respondent contended that the timeline of Mr Ndawala's attorneys' withdrawal as his attorneys of record two hours before the hearing of 24 June 2024, after having failed to negotiate a postponement of the hearing, suggests that the withdrawal was a delaying tactic. The First Respondent contended further that despite Mr Ndawala's supposed lack of funds, he failed to approach the offices of Legal Aid or other Bro Bono service to obtain legal assistance for free; he instead re-appointed the same attorneys who had abandoned him two hours before the hearing of the main proceedings at a fee.

Discussion

[7] It is trite that the applicant in a condonation application must show sufficient cause why condonation should be granted. The basic principles, as enunciated

by Holmes JA, in *Melane v Santam Insurance Co. Ltd*[2] includes, among others, the degree of lateness, the explanation for the delay, the prospects of success, and the importance of the case.

[8] It is common cause that Mr Ndawala's leave to appeal application was brought over 6 months late. He attributed the delay to his being a layperson, ignorant of his rights, and a lack of funds to pay for an attorney. The record of the proceedings on 04 June 2024 showed the following statement made by Mr Ndawala in his quest for postponement of the matter:

"The fact is, I am in financial difficulty…I will have to go and see someone at Legal Aid to represent me…if you could allow me time to do that, because I cannot argue myself."

[9] This statement showed that Mr Ndawala was aware as of 04 June 2024 that he needed to seek assistance from Legal Aid due to his financial problems. The Applicant's papers however, did not state what efforts were undertaken by Mr Ndawala to try and obtain the assistance referred to in his statement from 04 June 2024 when the order was granted until 08 January 2025 when he filed his application for leave to appeal. As a person with financial difficulties, Mr Ndawala failed to bring the Court into his confidence as to how and when the purported "*sheer act of divine grace*" that solved his legal fees problems took place. The Court held in Van Wyk *supra* that the applicant for condonation must give a full explanation for the entire period of delay. The counsel for the Applicant conceded that the explanation for the delay provided by Mr Ndawala fell short of the required standard. The explanation, therefore, falls to be rejected.

Prospects of success in the appeal

[2] Melane v Santam Insurance Company Limited 1962 (4) SA 531 (AD) at 532 C - F

[10] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have reasonable prospects of success or there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[11] In *Ramakatsa and Others v African National Congress and Another*[3], the SCA held that:

"If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. 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 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"

[12] With regards to the prospects of success in the appeal, Mr Ndawala averred that the appeal would succeed "*as a different court/judge is likely to arrive at a different conclusion when presented with the facts and circumstances that were before the judge a quo*." In support of this averment, he referred the Court to the grounds for leave to appeal. He reasoned that dealing with prospects in his founding affidavit would inundate it "*unnecessary*". Clearly, this is a misplaced belief, as an affidavit is a sworn statement and cannot be substituted for the grounds of appeal in the application for leave to appeal.

[13] The Applicant's counsel submitted that even though the Applicant failed to provide a reasonable explanation for his delay in bringing the application, the

[3] Ramakatsa and Others v African National Congress and Another (724/2019) [2021] ZASCA 31at para 10.

Court must exercise its discretion in favour of the Applicant and grant leave to appeal because the immovable property that the First Respondent seeks to sell in execution is Mr Ndawala's primary residence. He further submitted that Mr Ndawala was not legally represented when the order was granted, and that the prejudice that would be suffered by Mr Ndawala if his property is sold in execution far outweighs that of the First Respondent.

[14] The First Respondent's counsel submitted that even if the Court were to overlook Mr Ndawala's non-compliance with the Rules of Court, however, his application for leave to appeal does not satisfy the requirements as set out in Section 17(1)(a) of the Superior Courts Act 10 of 2013 in that the main application lacked prospects of success. He asked the Court to consider that the indebtedness on the mortgage loan agreement is not disputed, the arrears on the bond had increased to over R1,6013,65.11 as at March 2025. The last factor is that Mr Ndawala admitted that he has financial problems and is unable to discharge his indebtedness under the mortgage loan.

[15] The First Respondent contended that it is prejudiced in that the debt has not been serviced since 2021, and that the arrears are escalating. He submitted there Mr Ndawala has not suffered any prejudice as he has been staying in the property for free for 4 years without servicing his bond. The First Respondent is forced to defend the application for leave to appeal when the Applicant is in a position of impecunity, rendering the likelihood of recovering the costs for defending the matter slim.

[16] Considering that the Applicant admits his indebtedness under the mortgage loan and that he is unable to pay, it appears from paragraph 5 of the application for leave to appeal that the sole ground for appeal is that the Court misdirected itself in proceeding with the application when he was not legally represented. I have already stated in my judgment in the main application that before the withdrawal of his attorneys of record, he had always been legally represented in the matter. His version was before the Court and was considered in the judgment. I also considered that there had been historical delays in the matter occasioned at the instance of Mr Ndawala.

[17] I agree with the First Respondent's submission that there is no indication on the Applicant's papers how the presence of a legal representative would have changed the outcome, as in motion proceedings, his legal representative would have been bound by the answering affidavit filed on his behalf. The fact remains that he is indebted to the First Respondent with arrears amounting to over R1,6013,65.11 and still escalating. It is common cause that he has no means to service the debt, as confirmed in his papers. I am therefore of the view that there are no reasonable prospects of a different court/judge arriving at a different conclusion.

[18] Further, I am of the view that there is no other compelling reason why the appeal should be heard as required in terms of Section 17(1)(a) of the Superior Courts Act 10 of 2013. The appeal raises no novel question of law as Rule 46A has been ventilated in numerous decisions from various courts. The matter, therefore, falls to be dismissed.

[19] As a result, the following order is made:

1. The application for condonation is dismissed.

2. The application for leave to appeal is dismissed.

3. The Applicant is ordered to pay the First Respondent's costs on an attorney and client scale as per the mortgage loan agreement.

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JL BHENGU
ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicant:	Adv SL Mbuzu
Instructed by:	Kalima Attorneys
For the First Respondent:	Adv L Peter
Instructed by:	Lowndes Dlamini Attorneys

Date: 19 September 2025