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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 033476/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: [N]

(3) REVISED: [N]

(4) Signature:

Date:

In the matter between:

EFFIA PAULINA NGOASHENG

Applicant

and

THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Second Respondent

THE EXECUTOR, LATE ESTATE PAULINA NGOASHENG

013400/2021

Third Respondent

JUDGMENT

Kumalo J

[1]. The Applicant in this matter applied for leave to appeal the judgment of this court, which was delivered on 05 June 2025.

- [2]. The Applicant in the present application has sought to appeal essentially the whole of the judgment handed down electronically on 05 June 2025.
- [3]. The application concerned the immovable property bequeathed to Ms. Portia Manthuseng Magagula because of the last will of Paulina Ngoasheng.
- [4]. The third respondent has been appointed as the executor in the Estate Late of Paulina Ngoasheng 013400/2021. The third respondent, the Executor of the Late Estate Paulina Ngoasheng, opposes the application.
- [5]. The Applicant, inter alia, challenged the validity of the afore-said disposition on the basis that Mr. Paul Ngoasheng (the Applicant's father) was the holder of the occupational rights over property ERF 5[...] in Mamelodi Township.
- [6]. After the death of Mr. P. Ngoasheng, the occupational rights to ERF 5[...] were allegedly transferred to Mamabolo John Ngoasheng, the eldest eligible occupational right holder, who died in 1991. Mr. M.J. Ngoasheng's first wife passed away, which resulted in the surrender of property ERF 5[...] and the acquisition of ERF 8[...].
- [7]. This is, in essence, the basis for the "exchange" of the properties above. This resulted in the transfer of the occupational rights from ERF 5[...] to ERF 8[...] to Mr. M.J. Ngoasheng.
- [8]. Mr. M.J. Ngoasheng was married in community of property to Paulina Ngoasheng (herein after "the deceased") at the time when he passed away.
- [9]. Paulina Ngoasheng then, in 1991, made the application and acquired Leasehold rights over ERF 8[...]. The Certificate of Registered Grant of Leasehold confirms this.

[10]. Upon the death of Paulina Ngoasheng, Ms. Ngoasheng bequeathed in her will ERF 8[...] to her daughter, Ms. Magagula. The Applicant alleges that the property ought to have devolved as per the law of succession, and on this basis that the will is invalid and, as a result, the Letters of Executorship should be withdrawn. In response, Third Respondent submitted that any alleged personal right(s), which the remaining siblings of Mr. M.J. Ngoasheng may have acquired in ERF 5[...] and/or ERF 8[...], do not override the real right, which Paulina Ngoasheng acquired when the property was registered as a Grant of Leasehold.

GROUND FOR APPEAL – ORDER OF 5 JUNE 2025:

[11]. The grounds for the appeal are based on the following findings of fact and rulings of law: the Applicant contends that the court failed to develop customary law in terms of Section 37 of the Constitution.

[12]. A system of inheritance that prioritizes the well-being of the family and community, often emphasizing the perpetuation of the family line and the responsibility of the heir to care for dependents, is a system rooted in tradition and varies among different cultural groups, but generally involves the eldest male relative inheriting the deceased's position and property, with the duty to maintain the family. In terms of customary succession, therefore, there was such an agreement.

[13]. It is alleged that the court erred by elevating customary law over common law and Dutch law, and by considering the laws that existed at that time.

[14]. It is further contended that the court misdirected itself in effectively limiting itself and ignoring the values of the Constitution.

- [15]. The court erred further in considering the movement from the ERF 5[...] to ERF 8[...] and had misdirected itself in awarding costs against the applicant. The court did not properly exercise its discretion in awarding costs, considering the nature of the litigants and the proceedings.

CONDONATION OF THE APPLICATION FOR LEAVE TO APPEAL

- [16]. The Respondent raised a point in limine concerning the fact that the Applicant's application for leave to appeal is late and no application for condonation was served and/filed for the Court's consideration.
- [17]. An application for leave to appeal in the High Court of South Africa is governed by Uniform Rule 49 and section 17 of the Superior Courts Act 10 of 2013. To succeed, the Applicant must demonstrate a reasonable prospect of success on appeal or that there is some other compelling reason why the appeal should be heard.
- [18]. Leave to appeal is governed by section 17(1) of the Superior Courts Act 10 of 2013. The section provides that: "(1) Leave to appeal may only be given where the judge or judges concerned believe that- (a) (i) the appeal would have a reasonable prospect of success; or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [19]. In the matter of M.S.H v J.S.H - Application for Leave to Appeal (8470/2021) [2023] ZAWCHC 345 (14 September 2023), the Court held in paragraph 4 thereof that –

"[4] Prior to the Act coming into force, the test in an application for leave to appeal was whether there were reasonable prospects that another court may come to a different conclusion. Much debate has ensued as to whether s 17(1)

imposes a more stringent and onerous test before leave to appeal can be granted. I am of the view that it is now authoritatively established that the position remains that if there is a reasonable prospect of success, leave to appeal should be granted. The different views and findings in this regard, in my view, essentially are now moot in light of the finding in *Ramakatsa and Others v African National Congress and Another*.”

[20]. In the *Ramakatsa* [2021] JOL 49993 (SCA) March 2021 matter in interpreting the section, the SCA held at paragraph 10 thereof 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 conclude different from 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.

[21]. Uniform Rule 49 governs Civil appeals from the High Court, more specifically, subsection 49(b) states the following;

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

[22]. The judgment was handed down electronically on 5 June 2025. The application for leave to appeal, dated 13 August 2025, was served on the Third Respondent on 14 August 2025, approximately 49 days after the judgment was handed down, the dies having expired on 27 June 2025.

[23]. The Applicant is 34 days late in launching the present application, with no explanation. The Applicant has neither addressed the condonation of the late filing of the leave to appeal at all, nor is there any request for condonation for the Court to consider.

[24]. It is trite that condonation is not there for the taking, and any such request is to be made on application, where no such application is served before the Court for its consideration.

[25]. Rule 27 of the Uniform Rules of Court deals with condonation of the noncompliance with the Rules and time periods in respect thereof and states the following:-

“(1) ...

(2) ...

(3) The court may, on good cause shown, condone any non-compliance with these Rules.”

[26]. In the matter of Smith, N.O. vs Brummer, N.O. and another, the Brink J, dealing with what constitutes good cause, said the following:

“In an Application for removal of bar, the Court has a wide discretion which it will exercise in accordance with the circumstances of each case. The tendency of the Court is to grant such an application where: (a) the applicant has given a reasonable explanation of his delay; (b) the application is bona fide and not made with the object of delaying the opposite party’s claim; (c) there has not been a reckless or intentional disregard of the Rules of Court; (d) the applicant’s

action is clearly not ill-founded, and (e) any prejudice caused to the opposite party could be compensated for by an appropriate order as to costs; The absence of one or more of these circumstances might result in the application being refused”.¹

[27]. In the matter of Ford v Groenewald 1977 (4) SA 225 (TPD), Nestadt J in summary said the following about what constitutes good cause:

“Where application is made in terms of Rule of Court 27 for the removal of bar, the Applicant who approaches the Court for such indulgence must give a reasonable explanation under Oath for his ignoring the Rule of Court and his affidavit must show a bona fide defence: the defence need not be set out in detail. It is sufficient if it is set out shortly.”

[28]. Although the above dicta dealt with applications for removal of a bar, I am of the view that they are equally applicable to applications for condonation for failure to comply with time limits. In the present instance, the applicant has set out no facts regarding the delay; thus, there is simply no application/explanation before the Court for the Court to consider.

[29]. In light of the fact that there is no application for condonation for the late filing of the application for leave to appeal for this court to consider, the Respondent’s point in limine is upheld.

[30]. The following order is made:

1. The Applicant’s application for leave to appeal is dismissed; and
2. The Applicant is ordered to pay the costs of this application on a party and party scale “B”.

¹ Smith NO v Brummer NO 1954 (3) SA 352 (O) at 357H - 358C High Court motion Procedure: A Practical Guide: Joffe, Neukircher, Fourie, Haupt at 1 – 39. 3.12.

MP Kumalo
Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv MC Lestoalo III

Instructed by: LA Mmela Attorneys

For the third respondent: Adv CB Ellis

Instructed by: Gildenhuys Malatji Inc