



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A52/2025

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

.....
SIGNATURE

10 DECEMBER 2025

.....
DATE

ANDREA BONGANI THWALA

Appellant

and

ALWYN RAUTENBACH

Respondent

JUDGMENT

LABUSCHAGNE J

- [1] The appellant is a medical doctor based in Canada who is involved in litigation with the respondent , his neighbour, in the Magistrates' Court regarding their

boundary wall . The details of the dispute are not relevant as the issues which serve before us are purely procedural.

- [2] On 15 September 2023 Magistrate Ngesi delivered a judgment pertaining to a claim by the respondent, Mr Rautenbach against the appellant in respect of expenses incurred in the building of a boundary wall and retaining wall separating their neighbouring properties. The Magistrate made an order against the appellant for payment of R148 655.56 together with interest. On 18 July 2024 the appellant filed a notice of appeal against the judgment of 15 September 2024. The notice of appeal was 297 days late.

- [3] Despite the aforesaid written judgment, the appellant asked the Magistrate for reasons on 27 March 2024.

- [4] On 31 July 2024 the attorneys for the respondent filed a notice of irregular proceedings in terms of Magistrates' Court Rule 60A as the noting of the appeal was outside the 20 day period of Rule 51(3). The respondent therefore contended that the noting of the appeal is an irregular step, being 297 days out of time.

- [5] In a judgment of 19 February 2025 Magistrate Chokoe refused the appellant condonation for the late filing and granted an order setting aside the notice of appeal of 24 July 2024 as an irregular step. This is the order appealed against.

- [6] On 18 March 2025 the attorneys for the appellant (incorrectly citing the respondent as the appellant), filed a notice appealing the whole of the judgment of Magistrate Chokoe. This notice was filed at the High Court, while

the rules of the Magistrates' Court (Rule 51(3), read with Rule 51(8) and Rule 51(10)) require the noting of an appeal against the judgment of a Magistrate to commence by the filing of a notice of appeal in the Magistrates' Court.

[7] The respondent brought a Rule 30 application in the Appeal before the High Court to set aside the notice of appeal as having been filed with the wrong court.

[8] At the initial hearing of this matter, it became apparent that the appellant had also provided a copy to the Magistrate of the Court *a quo*, who had responded to the notice of appeal. However, the documents reflecting the aforesaid had to be uploaded and the appeal was adjourned for hearing on 04 December 2025.

[9] The purpose of filing the notice of appeal in the Magistrates Court is to enable the presiding magistrate with the means of complying with rule 51(8) – ie to formulate reasons. As there was substantial compliance in the filing of the notice of appeal against the judgment of Magistrate Chokoe, the Rule 30 application could not succeed.

GROUND OF APPEAL

[10] The appellant contends that Magistrate Chokoe decided the application under the wrong rule. The respondent brought an application in terms of Rule 55 and 60A(2)(b) whereas the Magistrate referred to the application being in terms of Rule 60 (rather than Rule 60A).

[11] The appellant further contends that Magistrate Chokoe's refusal of condonation is based on errors of fact and law.

[12] Section 84 of the Magistrates' Court Act, 32 of 1944 reads:

"[84] Time, manner and conditions of appeal

Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period."

[13] The respondent contends that it challenged the late notice of appeal in the Magistrates' Court because there is no pending appeal, it having ostensibly lapsed. The respondent contends that it could therefore not bring the matter before the High Court but was constrained to challenge the late filing of the notice of appeal in the Magistrates' Court.

[14] The "court of appeal" referred to in section 84 of the Magistrates' Court Act is however simply a reference to the Provincial Division of the High Court to which the appeal lies from the particular Magistrates' Court. That being so, the respondent's application should have been brought in the High Court and could have served before a single Judge as Court of first instance for the purpose of hearing an application pertaining to an irregular step.

[15] In *De Sousa v Cappy's Stall* 1975 (4) SA 959 (T) an appeal from the Magistrates' Court had been timeously noted, but there was no compliance with the other provisions of the Rule. The appellant did not serve a copy of

the notice of appeal on the respondent, and he also failed to provide adequate security for the respondent's costs of appeal. The appeal was consequently not properly noted within the time prescribed in Rule 51(2). In those circumstances the appellant could not proceed unless the failures were condoned. An argument that the "court of appeal" was a duly constituted Appeal Court in the High Court, was rejected. At 960A the following was stated:

"Mr Heyns for the respondent submitted in limine that a single judge sitting in chambers has no jurisdiction in respect of an application of this nature. He contended in terms of section 84 of the Magistrates' Court Act that the relief sought can only be granted by 'the court of appeal' and in terms of section 13(2)(a) of the Supreme Court Act, 59 of 1959 appeals must be heard by a court consisting of not less than two judges. ... However, it seems to me to be clear that in the context of section 84, the expression 'the court of appeal' simply means the Provincial Division of the Supreme Court to which the appeal lies from the particular Magistrate Court (see section 1, 'court of appeal' and section 83 of Act 32 of 1944)."

- [16] None of the pleaded grounds of appeal matter. The respondent erred in bringing the application pertaining to the late filing of a notice of appeal in the Magistrates' Court. It should have been brought in the High Court as the "court of appeal" referred to in sec 84. On this ground alone the appeal succeeds.

- [17] However, the appellant is to blame for not pursuing the inchoate appeal against the judgment of Magistrate Ngesi. The appellant is aware that its

failure to apply for condonation for late filing is fatal to the appeal but contends that it can ask for condonation at any time. This proposition will be tested once a condonation application is brought. This court is however mindful that the inaction of the appellant, with an ostensible sense of impunity, lies at the core of the dilemma faced by the respondent.

[18] Magistrate Chokoe lacked the jurisdiction to hear the application that served before him. It is not necessary to delve into his reasons for rejecting the appellant's condonation application and for setting aside the notice of appeal. Those were matters which only the Court of Appeal (the Gauteng Provincial Division - even a single Judge) could determine.

[19] As a mark of disapproval for the appellant's failure to pursue the appeal against the judgment of Magistrate Ngesi, the appellant will not be rewarded with a cost order in his favour in these proceedings.

[20] In the premises the following order is made:

1. The appeal succeeds.
2. The order and judgment of Magistrate Chokoe in the court **a quo** dated 19 February 2025 is set aside for lack of jurisdiction
3. No order as to costs.



LABUSCHAGNE J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

I agree and it is so ordered.



JANSE VAN NIEUWENHUIZEN J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

Date heard: 4 December 2025

Date delivered: 10 December 2025

Counsel for the appellant: Adv Maluleke

Instructed by: Maranti Kgomo Inc Attorneys

Counsel for the respondent: Adv Louw

Instructed by: Cluver Markotter Inc