

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: A29/2023

In the matter between:

MOTSHIDISI SELINA SETHLARE

APPELLANT

and

MOEKETSI PETRUS LEFU

RESPONDENT

Neutral citation: *Sethlare v Lefu* (A29/2023) [2026] ZAFSHC 7 (14 January 2026)

Coram: REINDERS *et* DANISO JJ

Heard: 4 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 14 January 2026

Summary: Application for condonation for late filing of the notice of appeal, record of appeal and reinstatement of appeal – gross non-compliance with court rules and failure to provide reasonable explanation for non-compliance – condonation for the late filing of the notice of appeal dismissed – no basis to consider the remainder of the orders sought.

ORDER

- 1 The late filing of the respondent's answering affidavit is condoned.
 - 2 The application for condonation of the late filing of the notice of appeal is dismissed with costs.
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JUDGMENT

Daniso J (Reinders J concurring)

[1] This is an opposed appeal against the whole judgment of the Regional Magistrate, Bloemfontein delivered on 27 May 2022 in which the appellant's application for rescission of the default judgment granted in favour of the respondent on 15 October 2021 was dismissed with costs.

[2] The notice of appeal in the court *a quo* was delivered on 24 November 2022, approximately six months after the date of the judgment appealed against. The appeal has also lapsed due to the appellant's failure to timeously apply for the assignment of the date for the hearing of the appeal within 60 days after delivery of the notice of appeal and to lodge the record. It is in that regard that the appellant also seeks condonation for late filing of the notice of appeal, the reinstatement of the appeal and condonation for the late lodgment of the record. Leave to adduce further evidence in the course of the appeal is also sought.

[3] The chronology of the events pertinent to this matter is generally common cause. The default judgment emanated from the action instituted by the respondent, as plaintiff, on 22 July 2021 against the appellant, as defendant, for damages in the amount of R369 025.60, together with interest and costs. The claim arose from latent structural defects in the immovable property the appellant sold to the respondent in terms of a sale agreement concluded by the parties on 21 November 2019. The action was undefended and, as a result, default judgment was granted in favour of the respondent. The appellant's rescission application was lodged during January 2022. It was premised on the grounds that summons did not come to her attention as it was served at her previous address which was at that stage occupied by the respondent. The court *a quo* was satisfied that the appellant sufficiently explained the reason for her default. The application was dismissed

on the grounds that, except to aver in her founding affidavit that she has a *bona fide* defence to the respondent's claim, the appellant failed to disclose the actual defence as provided for in the Magistrates' Courts rule 49(3).

[4] In addition to the determination of the appellant's condonation applications and the appeal, there is a preliminary issue which needs to be addressed namely, the respondent seeks condonation for the late filing of his answering affidavit to the application for condonation.

[5] The reasons for the late filing of the answering affidavit are set out in his attorney's affidavit who explains that the respondent was served with the application for condonation on 6 December 2023. The answering affidavit was due by 18 January 2024; however, it was only filed on 1 February 2024, approximately ten days late. The delay is attributed to the unavailability of counsel and closure of the offices of the respondent's attorneys' offices due to the festive season and the miscalculation of the applicable time periods for the filing of the answering affidavit.

[6] At the commencement of the proceedings, the parties indicated that they were desirous in having the matter dealt with on its merits considering that the appeal has also lapsed. Having considered the age of the matter, the fact that the delay of ten days is not extreme and that no prejudice is indicated or detected in condoning the respondent's answering affidavit, we hold that it would be in the interests of justice and of the parties, as well that this matter is advanced, by condoning the respondent's late answering affidavit.

[7] In terms of the Magistrates' Courts rule 51(3), the notice of appeal had to be delivered in the court *a quo* within 20 days after the date of the of the judgment appealed against. The notice of appeal was filed approximately six months later on 24 November 2022, coupled with an application for condonation. The respondent opposed the application for condonation on the grounds that it constituted an irregular step as condonation ought to have been filed in the high court where the appeal lies. Pursuant to the appellant's failure to cure the defective step, the respondent moved to obtain an order to strike out the application for condonation in terms of the Magistrates Courts rule 60A. The order upholding the respondent's objection in this regard was granted on 27 November 2023.

[8] The application for the condonation of the late filing of the notice of appeal was thereafter filed in this Court on 6 December 2023, followed by an application for condonation of the late lodgment of the record approximately 11 months later, on 8 November 2024. The applications were opposed by the respondent and subsequently enrolled for hearing by the respondent due to the appellant's failure to take any further steps to enroll the applications and the appeal for hearing. The applications, together with the appeal, served before Naidoo J and Opperman J on 25 November 2024. They ordered that the appeal and the application for condonation be struck from roll on the basis that the appeal had lapsed. The application for the reinstatement of the appeal was thereafter filed on 5 December 2024.

[9] The explanation for the appellant's failure to comply with the court rules is attributed to lack of financial means to fund the appeal. It is the appellant's case that she was informed about the judgment by her erstwhile Legal Wise appointed attorney Mr Lennox from Messrs Lovius Block Attorneys on 28 May 2022. At this time, up to 23 June 2022, she was unable to attend to the appeal due to work related commitments. During July 2022, she set about obtaining copies of the contents of the court file in order to appoint an alternative legal representative as she was not satisfied with the manner in which Mr Lennox dealt with her matter. On the first day that she went to court, she was informed that the file was missing. On the next day, she was told that the file had been located but there was no paper to print the copies. When returned to court with the printing paper, the court clerk was unavailable to assist her. Eventually when she was provided with the copies of the file contents, she went to Messrs Lovius Block's offices only to find that Mr Lennox had resigned and the owner of the firm was in Cape Town. She was informed that she will be contacted once her file had been located. It was after a few days that she was provided with the file. She then went to Legal Wise to request assistance with a legal representative. She was informed that she would no longer be assisted as her case was finalised.

[10] On 30 July 2022, she consulted with her current attorneys of record, Messrs Seobe. A deposit of an amount of R35 500 was required in order to instruct counsel to assist with the appeal. Due to financial obligations which include school fees for her two minor children, transport and other household expenses, her salary of R29 000 was not enough to cover the required deposit. She paid the deposit on 14 November 2022 after obtaining loans from her younger sister, the bank and a cash loan institution. The notice of appeal was thereafter filed on 24 November 2022.

[11] A month after the notice of appeal and the application for condonation was filed in the court *a quo*, the respondent filed a notice to oppose the application for condonation on the grounds that it ought to have been filed in the high court where the appeal lies and this is despite the fact that it was the appellant's intention to deal with it in the high court not in the court *a quo*. A period of 11 months elapsed from the date of the respondent's opposition and subsequent Magistrates' Courts rule 60A application to the date of the handing down of the judgment on 27 November 2023, resulting in a further delay as the appellant had to wait for the respondent's application to be finalised.

[12] The appeal had to be prosecuted by 20 February 2023. The delay in prosecuting the appeal and the lodgment of the record is also attributed to the respondent's rule 60A application and lack of funds. The first part of the record, volume 1, was filed on 16 November 2023. She was unable to file the remaining part volume 2, because she retired from her employment on 30 June 2024 and, as a result, she had to wait for payment of her pension fund which she received in September 2024. The remaining part of the record was filed on 30 October 2024.

[13] It is the appellant's case that she has good prospects of success in the appeal as the default judgment was granted despite the fact that she was not served with the summons, the result is that she was denied access to justice. The appellant further submits that, in granting the default judgment, the court *a quo* did not properly apply its mind to the facts and the documents that were placed before it otherwise it would have noticed that the respondent was not entitled to the judgment as in terms of clause 15 of the sale agreement, the property was sold *voetstoots*. There was also no proof that payments were made in terms of the quotations and invoices relied upon for the quantum. She concedes that the *voetstoots* and the other defences were not averred in her founding affidavit filed in support of the rescission application. She explains that, as a lay person, she relied on her previous attorney to advise her accordingly but the attorney failed to even advise her of her right to file a replying affidavit and it is for that reason that she also seeks an order to lead this evidence on appeal.

[14] Relying on *Lodhi 2 Properties Investments CC and another v Bondev Developments*

(Pty) Ltd¹ and *Fraind v Nothman*,² it is argued on behalf of the appellant that a judgment granted in the absence of a party without notice of the proceedings having been given such judgment is granted erroneously thus liable to be set aside in terms of rule 42 (1)(a).

[15] The appellant contends that she stands to suffer serious prejudice if condonation is not granted as she will have to pay the respondent for damages and costs of demolishing the property and build it afresh or making major renovations which are unrelated to the alleged defects while the respondent viewed the property on several occasions before purchasing it without pointing out the defects whereas, the respondent does not lay any basis why he would be prejudiced should condonation be granted to the appellant. Based on all these reasons, the appellant contends that there was no willful dilatory in filing the notice of appeal. It would be in the interest of justice that this court exercises its discretion in favour of granting condonation.

[16] The respondent's grounds of opposition are briefly as follows. The application for condonation has been brought very late and there is paucity regarding the reasons and the specific dates in respect of the delay in appointing a new legal representative. The appellant has also relied on inadmissible hearsay evidence in relation to the delay attributed to lack of funds in that, she has averred that she only became able to pay the required deposit for legal costs after she was loaned funds however no confirmatory affidavit from the loan providers has been filed.

[17] The respondent further states that the appellant is solely responsible for the 11 months delay emanating from the proceedings launched by the respondent in opposing the application for condonation of the notice of appeal lodged in the court *a quo* as it was fatally defective. Despite conceding on the papers that it had to be filed in the court where the appeal lies, the appellant went on to resist the respondent's application to set it aside with the result that the matter was argued in the court *a quo* and consequently struck out with a cost order on 27 November 2023.

[18] The appellant has repeatedly ignored and disregarded the rules and procedures of this Court. This application is the appellant's fourth bite of the proverbial cherry. Already

¹ *Lodhi 2 Properties Investments CC and another v Bondev Developments (Pty) Ltd* [2007] ZASCA 85; [2007] SCA 85 (RSA) ;2007 (6) SA 87 (SCA) para 24.

² *Fraind v Nothman* 1991 (3) SA 837 (W).

by 8 November 2021, she was aware of the default judgment granted against her. She only lodged the rescission application late on 17 January 2022. The ineptitude was condoned by the court *a quo*. Following the striking out of the abortive application for condonation on 27 November 2023, the appellant filed another application for condonation in this Court on 6 December 2023 but failed to enroll it for hearing.

[19] It is the respondent's case that the explanation for failing to prosecute the appeal and to lodge the record is also a woefully inadequate attempt to breathe life into an appeal that is abortive *ab initio*. Except for the notice of appeal filed with in the court *a quo* there is no notice of appeal filed in this Court, accordingly there is no appeal to be reinstated.

[20] The respondent disputes that the appellant has good prospects in the appeal. He is adamant that summons was served at the appellant's chosen *domicilium* address, a fact that she admits. It was the appellant's responsibility to give formal notice of her amended *domicilium* address. In her founding affidavit, she also failed to plead defence she intended to raise in the event of rescission being granted for that reason, there would be no point in granting condonation. The application for condonation and to lead further evidence is simply an attempt to remedy those deficiencies. The application constitutes an abuse of process and no good cause has been shown for condonation.

[21] The respondent states that he is prejudiced by the appellant's failure to comply with the court rules. It has been 31 months since the respondent obtained the judgment forming the subject matter of this purported appeal, the appellant's rescission application was unsuccessful, still the respondent has not been unable to execute on a judgment granted in his favour. The delay has negatively impacted on his finances to litigate, the administration of justice and the principle of finality. Based on all these reasons, condonation must be dismissed with costs.

[22] The delay in the filing of notice of appeal is indeed extreme. Despite the substantial ineptitude, full details covering all the dates and reasons for the delay have not been furnished to enable this Court to understand how it came about and to assess the responsibility.³

³ *Uitenhage Transitional Local Council v South African Revenue Service* [2003] ZASCA 76; [2003] 4 All SA 37 (SCA); 2004 (1) SA 292 (SCA); 66 SATC 265 para 6.

[23] Except to fleetingly aver that it was in July 2022 that she embarked on a quest to obtain copies of court file and to seek alternative legal representation from Legal Wise, there are no specifics in terms of the several dates she alleges she went to court, to the office of her former legal representative and to Legal Wise. There is also no explanation of the delay from 14 November 2022 when she paid the deposit to 24 November 2022 when the notice of appeal was ultimately filed accompanied by an application for condonation.

[24] The application for condonation was defective. The Magistrates' Courts rule 60(5)(a) is clear on this aspect: condonation for non-compliance with the period prescribed in Magistrates Courts rule 51(3) is within the exclusive jurisdiction of the court where the appeal lies. It was pointed out, in *Commissioner, South African Revenue Service v Van der Merwe*,⁴ that:

'What calls for an explanation is not only the delay in the timeous prosecution of the appeal, but also the delay in seeking condonation. An appellant should, whenever she realizes that she has not complied with a rule of this court, apply for condonation without delay.'

The appellant's attribution of the 11 months delay to the respondent for exercising his right to oppose the defective condonation application is unreasonable.

[25] The situation is exacerbated by the appellant's pattern of engaging in a series of violation of the court rules which include the filing of a defective condonation application in the court *a quo* in contravention of Magistrates' Courts rule 60(5)(a), the failure to timeously apply for the assignment of the date for the hearing of the appeal within 60 days after delivery of the notice of appeal and to lodge the record as required by Uniform Rule 49(6)(a) and 7(a), respectively.

[26] It has been held that strong prospects of success on appeal may trump and unsatisfactory explanation.⁵ In this matter, the appellant's allusion to good prospects of success on the appeal is devoid of any merit. The issue relating to the defective service of the summons has already been determined in her favour in the court *a quo*.

[27] On the available facts, it is indisputable that the appellant's founding affidavit in support of the rescission application did not disclose her intended defence to the

⁴ *Commissioner, South African Revenue Service v Van der Merwe* [2015] ZASCA 86; 2016 (1) SA 599 (SCA); [2015] 3 All SA 387 (SCA); 77 SATC 405 para 12.

⁵ *Mosselbaai Boeredienste (Pty) Ltd v OKB Motors CC* [2023] ZASCA 91.

respondent's claim. The Magistrates' Courts rule 49 (3) deals with rescission and variation of default judgments, in this regard it provides thus:

'Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.'

[28] The appellant has provided contradictory versions regarding the non-disclosure of her defence in the rescission application. While she blames her former attorney for not advising her to do so and request leave to adduce the evidence on appeal, on the other side, she insists that, in terms of Uniform Rule 42 (1)(a), the non-disclosure of her defence should not have been taken into account in the determination of the rescission application because the default judgment was granted erroneously. That aside, the appellant's upturn reliance on Uniform Rule 42(1)(a) and the related authorities is misplaced as the provisions of Uniform Rule 42 deals with the variation and rescission of orders granted in the high court. The criterion for a rescission application in the Magistrates' Courts is the explanation of both the default and the grounds of the defendant's defence to the claim. The court *a quo* was therefore correct in dismissing the appellant's rescission application.

[29] The appellant's sluggishness and gross violation of the court rules militate against the appellant's contention that the matter is important to her and that she is desirous of advancing it to finality.

[30] It is axiomatic that gross non-compliance with court rules and the failure to provide reasonable explanation has an adverse effect upon the administration of justice and the interests of the respondent.

[31] The Constitutional Court, in *Grootboom v National Prosecuting Authority and Another (Grootboom)*,⁶ long-established that all these factors are of relevant consideration in condonation applications cumulatively with the interests of justice which cannot be merely raised rhetorically but require the court to exercise its discretion judicially upon a consideration of all the facts of the case and fairness to both sides. This condonation

⁶ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) para 50; *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Ltd and Others* [2017] ZASCA 88; [2017] 3 All SA 520 (SCA); 2017 (6) SA 90 (SCA) para 26.

application dismally falls short of the requirements contemplated in *Grootboom*; it stands to be dismissed.

[32] In the light of the above reasons, no proper case has been made out for condonation of the late filing of the notice of appeal. The appellant is thus not entitled to the remainder of the orders she seeks.

Costs

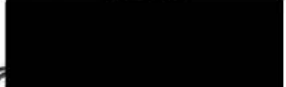
[33] With regard to costs, there is no reason why the costs should not follow the result.

[34] In the result, the following is made:

- 1 The late filing of the respondent's answering affidavit is condoned.
- 2 The application for condonation of the late filing of the notice of appeal is dismissed with costs.

The Honourable Justice
 2026-04-14
 N.S. Daniso NS DANISO
 JUDGE OF THE HIGH COURT

I concur and it is so ordered.


 C REINDERS
 JUDGE OF THE HIGH COURT

Appearances

For the appellant:	B S Mene SC with N Phakama
Instructed by:	S M O Seobe Attorneys, Bloemfontein
For the respondents:	J Donnelly-Bornman
Instructed by:	Kramer Weihmann Inc, Bloemfontein.