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

Appeal Case number: A88/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

DATE: 25/02/2026

SIGNATURE

In the matter between:

M[...] G[...] K[...]

Appellant

and

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

First Respondent

KALIPA KAGISO MANGALISO MAFUNGO

Second Respondent

JUDGMENT

The judgment and order are published and distributed electronically.

Summary: Application to re-instate lapsed appeal after failure to comply timeously with Rule 49(2). Held that there is no reasonable explanation for late filing of notice of appeal. There is a weak prospect of success on appeal and the interests of justice mitigate against re-instatement. Application dismissed and declared that appeal has lapsed.

CORAM: PA VAN NIEKERK, J (BAM et SWANEPOEL JJs concurring)

INTRODUCTION:

- [1] Applicant seeks an order that a lapsed appeal be reinstated and adjudicated. Leave to appeal was granted by the court a quo against an order dismissing a review application with costs. The review application sought to declare a decision of the First Respondent to dismiss a complaint which the Applicant lodged with the First Respondent against Second Respondent, as unlawful.
- [2] First Respondent is the Legal Practice Council (“LPC”) a statutory body established in terms of the provisions of the Legal Practice Act No. 28 of 2014 (“LPC act”) which is *inter alia* tasked with the regulation of the legal profession and to ensure the accountability of the legal profession to the public.

[3] Second Respondent is a legal practitioner who is enrolled by the LPC as an attorney. At all relevant times the Second Respondent acted as the attorney of record for the Applicant's wife in divorce proceedings between the Applicant and his previous wife, which divorce proceedings culminated in an unopposed order for divorce being granted and an order made that the primary care of minor children born of the marriage between Applicant and his previous wife be awarded to her.

[4] Dissatisfied with the order of the court *a quo* which dismissed the review application, Applicant sought and was granted leave to appeal to the full court of this division. At that stage the attorney who previously represented the Applicant in the divorce proceedings had already withdrawn as attorney of record for the Applicant, and at all relevant times the Applicant thereafter acted in person. From the outset, in my view it is important to note that the fact that the Applicant acted in person did not prejudice the Applicant in the court *a quo* or the prosecution of the appeal which followed, *inter alia* for the following reasons:

[4.1] In the founding affidavit in support of the review application the Applicant describes himself as follows:

"I am a major male of African descent, a Doctor of Philosophy who is professionally qualified as a Pharmacist and holds a position of Executive Head of Corporate Affairs and Corporate Development at ...".

[4.2] The Applicant, acting in person, launched a substantial number of applications, in this court, employed various remedies provided for in the uniform rules of court, and represented himself during the hearing in the court *a quo* as well as during the application *in casu*. During the hearing of this application Applicant presented as a highly intelligent individual.

[4.3] In the process of prosecuting the appeal, the Applicant provided heads of argument which comprehensively refer to relevant legislative provisions such as the Children's Act, the Constitution of the Republic of South Africa, the Promotion of Administrative Justice Act, the Legal Practice Act, and provided this court with relevant authorities researched by the Applicant. Applicant raised arguments in relation to the relevant legislation and authorities which exhibited a clear understanding of the contents thereof.

[4.4] In the process of lodging his complaint with the First Respondent against the Second Respondent, the Applicant *inter alia* provided the First Respondent with voluminous written submissions, containing substantial reference to the LPC Act and authorities, and an analysis of the rules pertaining to the Code of Conduct of Legal Practitioners which also exhibited a clear understanding of the relevant principles as well as the legislation, rules and authorities which informs those principles.

[5] The aforesaid is specifically mentioned because the Applicant, who represented himself, seeks the reinstatement of an appeal which has lapsed as result of the Applicant's non-compliance with rule 49(2) of the uniform rules of court. In my view there is no doubt that the Applicant was fully capable to comprehend the provisions of the appeal process, including the importance of adherence to time directives.

HISTORY OF THE MATTER:

[6] During September 2019 the Applicant's previous wife vacated their permanent home, instructed Second Respondent to represent her in divorce proceedings, and caused a

divorce action to be instituted against the Applicant. Second Respondent addressed correspondence to the Applicant to which a draft parenting plan as envisaged in terms of the provisions of the Children's Act was attached, inviting the Applicant to mediation on the terms of the parenting plan. Prior to that correspondence the Applicant attended at the offices of the Family Advocate and requested an investigation into the best interests of the minor children born of the marriage between himself and his previous wife.

- [7] The fact that Second Respondent addressed this correspondence to the Applicant was the catalyst for a barrage of accusations which Applicant then made against Second Respondent. The record is replete with correspondence and other documents which record the Applicants allegations and accusations which he made at that stage against Second Respondent. For, sake of this judgment the crux of those complaints is concisely summarised as follows:

- [7.1] Second Respondent is not a qualified mediator, could not and should not have invited the Applicant to mediation, and therefore transgressed various ethical rules. Further, this invitation was an attempt to circumvent the investigation by the office of the Family Advocate and constituted frustration of the provisions of the Children's Act. (It must be noted that on a perusal of the relevant correspondence, there is no indication that the Second Respondent conveyed that he would personally act as mediator, and a perusal of the relevant correspondence confirms that he merely invited the Applicant to participate in a process of mediation to resolve any issues which Applicant may have had with a proposed parenting plan.

[7.2] Second Respondent failed to advise his client (Applicant's previous wife) not to act "*illegal*". In amplification of this allegation, Applicant *inter alia* averred that the Second Respondent had a duty to advise his wife to return to the common home which she vacated prior to the institution of the divorce action, to advise her to act in the best interest of their children, and not to do a multitude of things which the Applicant did not approve of. In other words, Applicant alleged that Second Respondent did not provide his client with advice which the Applicant was of the view should have been provided to her. According to Applicant, second respondent's conduct amounted to unethical conduct because Second Respondent had a legal duty to do advise his client.

[7.3] Second Respondent defamed the Applicant by making allegations in the particulars of claim in the divorce action that the Applicant abused his wife during the course of the marriage. Applicant stated that this constituted defamation and he requested the Second Respondent to provide him with full factual reasons upon which that allegation was made, which Second Respondent in turned declined to provide. This fact, so avers the Applicant, constitutes unethical conduct and defamation. In this regard Applicant provided an extensive rationale in a complaint lodged with First Respondent against Second Respondent wherein he analysed the legal requirements for pleadings, culminating *inter-alia* in an allegation that Second Respondent is unfit to practice

[8] Strangely, Applicant failed to oppose the divorce action but instructed legal representatives to seek an order suspending the divorce action, which application was dismissed. The divorce action then eventually proceeded on an uncontested basis and without the Applicant filing a plea and/or counterclaim, or leading evidence to rebut the averments

made in the particulars of claim which so offended the Applicant that it *inter alia* formed an important part of the complaint lodged against the Second Respondent with the LPC.

[9] Applicant then proceeded to lodge a formal complaint with First Respondent against Second Respondent. This written complaint consisted of 18 pages of written submissions which refers to various ethical rules of the First Respondent and/or reasons why the Applicant averred the Second Respondent fell foul of those rules. It also contained a plethora of documents consisting *inter-alia* of electronic communication between Applicant and his previous wife, communication between Applicant and the Second Respondent, the parenting plan referred to above, and the divorce summons. The complaint embarks on a verbose explanation of the applicable ethical rules which Second Respondent allegedly contravened based on Applicant's analysis and interpretation of the Children's Act, the Constitution and the LPC act. On closer scrutiny however, the complaint is based on the reasons as summarised in paragraph [7] *supra*.

[10] The complaint was forwarded by the LPC to Second Respondent who provided a written response. In that response the Second Respondent provided substantial particulars on the Applicant's conduct during the divorce proceedings which, according to the Second Respondent, bordered on irrationality (my own terminology). Applicant was then provided with the Second Respondent's written response, resulting in the Applicant then lodging a reply with the LPC which consisted of approximately 170 pages. The following concise comments can be made on this reply:

[10.1] It regurgitates the original complaint, except that it is more verbose than the original complaint.

[10.2] Some new allegations are made. These allegations include allegations of dishonesty without providing a clear factual basis.

[11] In summary, considering the verbose written complaint and reply referred to above, the essence of the Applicant's complaint against the Respondent as lodged with the LPC can be summarised as follows:

[11.1] The Second Respondent contravened section 3.3.2 of the Code of Conduct of Legal Practitioners by failing to act in the interest of justice, in that the Second Respondent sought to circumvent the process provided for in section 33(5)(a) of the Children's Act, 38 of 2005 by sending a draft parenting plan to the Applicant and attempting to mediate the parenting plan.

[11.2] Second Respondent contravened section 3.3.3 of the Code of Conduct in that the Second Respondent failed to observe the law because the Second Respondent allegedly disregarded the provisions of section 33(5)(b) of the Children's Act because he attempted to mediate a parenting plan while he was not "*suitably qualified*" to do so.

[11.3] Second Respondent contravened section 3.13 of the Code of Conduct of Legal Practitioners in that he failed to remain reasonably abreast of legal developments, applicable rules and regulations, legal theory and the common law, and legal practice in the field in which he practices in that he allegedly made certain errors of law such as *inter alia* alluding that only the Applicant and his wife could agree to a parenting plan and stating that the Applicant's wife was not legally obliged to return to the matrimonial home.

- [11.4] Second Respondent contravened section 9.2 of the Code of Conduct of Legal Practitioners by advising conduct that would contravene a law in that the Second Respondent allegedly failed to advise the Applicant's wife that her conduct of unilaterally making decisions about matters which have a bearing on the well-being of the children and their best interest without giving due consideration to the wishes and views of the Applicant would contravene section 31(2)(a) - (b) of the Children's Act.
- [11.5] Second Respondent contravened section 9.3 of the Code of Conduct of Legal Practitioners in that the Second Respondent failed to advise his client of the illegality involved in her actions.
- [11.6] Second Respondent contravened section 16.1 of the Code of Conduct by failing to timeously respond to communications because he only responded to a letter after 6 business days.
- [11.7] Second Respondent contravened section 18.15.2 of the Code of Conduct of Legal Practitioners by making statements aimed at misleading or intimidating the Applicant in that the Second Respondent *inter alia* stated in a letter to the Applicant that it is ludicrous to say that a married woman is not obliged to live with her husband.
- [12] An investigating committee constituted in terms of the provisions of section 37(1) of the Legal Practice Act was tasked to consider the complaint, and the committee was made up of one person being Mr PJ Bielderman. On 31 August 2020 that committee decided to

dismiss the complaint and handed down reasons for that decision on 7 October 2020. Essentially, the committee held as follows:

- “3. *It is clear that the entire complaint is motivated by the complainant’s (incorrect) view of the law, which he believes should have been followed by the Respondent, in that Respondent had advised/forced his client (the complainant’s wife) to adhere to the Complainant’s demands in the divorce process.*
4. *We have read the voluminous complaint and annexures, together with the Respondent’s response. In our view, the allegations made against the Respondent, as articulated by the complainant and supported by argument, illustrates to us that the Respondent is not guilty of misconduct, the Respondent has given a reasonable explanation and there are no legal prospects of success in the Respondent being found guilty of misconduct in the matter. Accordingly, we recommend that the complaint be dismissed.”*

[13] Dissatisfied with the dismissal of the complaint, Applicant then launched the review application in the court *a quo* and also sought full reasons from the LPC. In response the LPC handed down full reasons of the investigative committee on 23 March 2021 which only serve to elaborate on the initial reasons that were provided, again culminating in the conclusion that the investigating committee was of the view that the Second Respondent’s conduct did not contravene any ethical rules.

[14] In the review application launched in the court *a quo* Applicant referred with substantial particularity to the provisions of the Promotion of Administrative Justice Act (“PAJA”) and the respective sub-sections under section 6 of PAJA in support of his grounds for review. The application was opposed by both Respondents and on 7 September 2022 the application was dismissed with costs and reasons for that order were handed down on 22

August 2023. In the reasons handed down by the court *a quo*, the court *a quo* refers to correspondence sent by the Applicant to Second Respondent threatening the Second Respondent with a complaint lodged with the LPC, then proceeds to comment on the Applicant's conduct in paragraph [19] of the judgment as follows:

"It is clear that if the second respondent failed to adhere to the applicant's instructions; the threat of disciplinary action by the first respondent would loom large over the head of the second respondent and even materialise. The applicant persists with unsolicited approaches made towards the second Respondent for the express purpose of having the second Respondent take the applicant's instructions. The applicant's advances towards the second respondent totally disregard and seek to undermine the client's rights to independent legal counsel. The applicant prioritizes his own interests and seek to procure the assistance of the second respondent in prioritising his interests at the expense of the second respondent's client. The applicant's conduct is reprehensible, inconsistent and incompatible with the client's rights to access the court through an independent legal practitioner. The applicant is not entitled to issue instructions to the second respondent nor is he entitled to demand that the second respondent carry out same."

[15] In summary, the review application instituted by Applicant was dismissed on the basis that the nub of the Applicant's complaint against the Second Respondent consisted of the Applicant's dissatisfaction with the fact that the Second Respondent failed to comply with the instructions of the Applicant. On a proper analysis of the plethora of allegations made by the Applicant in his original complaint and his further verbose reply to the Second Respondent's written response, the remarks of the court *a quo* as quoted *supra* are in my respectful view appropriate.

[16] Dissatisfied with the order of the court *a quo*, Applicant applied for leave to appeal, and on 31 January 2024 leave to appeal was granted. The Applicant's notice of appeal in terms of

the provisions of rule 49(2) of the uniform rules of court (*“the rules”*) was due by 28 February 2024. It is common cause that the applicant failed to deliver the notice of appeal on due date and also failed to deliver the record timeously, and as a result the appeal has lapsed.

- [17] On 14 April 2024 Applicant launched an application for condonation for the late filing of his notice of appeal but remained in default of filing the notice of appeal. On 30 July 2024 the Applicant filed a document which purports to be a notice of appeal (which will be dealt with hereunder). On the allocated date for the hearing of the appeal (which had lapsed) Applicant sought an order that this court reinstate the appeal and that the appeal thereafter be adjudicated. The members of this court directed that all issues should be argued as the merits of the appeal may be a determining factor on whether or not the appeal should be reinstated.

REINSTATEMENT OF APPEAL:

- [18] When an appeal is not prosecuted timeously as provided for in the uniform rules of court, the court has no jurisdiction to consider the matter on appeal. A lapsed appeal is deemed to have ended, and the court’s jurisdiction clearly ceases unless an application for reinstatement or condonation is granted.¹

- [19] The principles governing an application for condonation in the context of reinstatement of an appeal were *inter alia* summarised by Ponnann JA as follows:

¹ *Machete v Pooe (appeal) 2025 JDR 1891 (GP) coram Van der Schyff J, para [14].*

“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 he realises that he has not complied with the rules of this court, apply for condonation without delay. A full, detailed and accurate account of the causes of the delay and their effects must be furnished to enable the court to understand clearly the reasons and to assess the responsibility. Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation therefore, the importance of the case, a respondent’s interest in the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice”.²

[20] In *Member of the Executive Council for Health, Eastern Cape Province v Y N obo E N*³ Goosen JA, writing for the full bench, held:

“The touchstone for such an application is the interests of justice, which depends on the facts and circumstances of each case. The factors relevant to this enquiry include the nature of the relief sought, the extent and cause of the delay, the reasonableness of the explanation of the delay, the effect of the delay on the administration of justice and other litigants, and the prospects of success. The applicant must give a full explanation for the delay, which must be reasonable and cover the entire period of the delay.”

[21] Considering the lack of proper reasons advanced by the Applicant for his failure to comply with his obligation to file a notice of appeal timeously, the weak prospects of success on appeal, and in the interests of justice, I am of the view that the appeal should not be reinstated for the reasons expanded hereunder.

² *Mulaudzi v Old Mutual Life Assurance Co. (South Africa) Ltd and others* 2017 (6) SA 90 (SCA) para 26.

³ *The Member of the Executive Council for Health, Eastern Cape Province v Y N obo E N* (056/2021) [2023] ZASCA 32 (30 March 2023), para 8.

FAILURE TO PROVIDE ADEQUATE REASONS FOR NON-COMPLIANCE WITH RULE 49(2):

[22] In the condonation application Applicant purports to set out reasons why the notice of appeal was not filed timeously on 28 February 2024 and only filed on 30 July 2024, which can be summarised as follows:

[22.1] On 1 February 2024 Applicant visited the appeal section of this court to “*better understand the requirements in terms of rule 49(3)*” and was “*made to understand*” that he needed to file a practice note, heads of argument, a notice of appeal and a request for date allocation. This averment illustrate that the Applicant was made aware of the provisions of Rule 49(2) and the necessity for a notice of appeal on 1 February 2024.

[22.2] On 16 February 2024 Applicant visited the Supreme Court of Appeal to fully grasp the process that is involved in bringing an application.

[22.3] On 28 February 2024, whilst at the Supreme Court of Appeal in Bloemfontein, Applicant wrote to the First- and Second Respondents and requested an extension of time whereupon the First Respondent informed the Applicant in writing that he had to file a notice of appeal in terms of rule 49(2). This fact illustrate that Applicant was aware of the relevant time period in terms of Rule 49(2) and realised that non-compliance requires condonation.

[23] Applicant then proceeds to set out in the affidavit particulars of a plethora of litigation which involved the Applicant, his previous wife and Second Respondent, during March 2024 and the early part of April 2024. The purpose of these allegations are namely to convey that Applicant was engaged and unable to attend to the notice of appeal. However,

the Applicant does nothing more than describe certain activities that kept him occupied for 5 days during February 2024 (1, 16, 23 and 28 February 2024) and some part of March/April. Substantial periods of time are not dealt with. Most importantly, the period between 14 April 2024 when Applicant filed an application for condonation, and 30 July 2024 when the notice of appeal was filed, is not dealt with at all. It is therefore clear that, on the Applicant's version, he became aware of the fact that a notice of appeal should have been filed on 28 February 2024 but remained in default until 30 July 2024 without providing any reasonable and full explanation for the delay, or any reason why the notice of appeal was not filed immediately when he became aware of the fact that the notice was overdue.

[24] I have referred in this judgment *supra* to the Applicant's level of education, his ability to identify, interpret and provide submissions on various statutes, rules and authorities and for that reason the Applicant cannot rely on any misinterpretation of the provisions of rule 49(2) and/or the time periods applicable thereto as the provisions of rule 49 are concise, uncomplicated and clear. This rule is further much less complicated than the provisions of PAJA which Applicant extensively quoted, analysed and applied in the complaint to the LPC, in the court a quo, as well as in heads of argument filed by him.

[25] In my view, considering the authorities quoted *supra*, Applicant failed to provide a reasonable explanation for his failure to file a notice of appeal timeously.

LACK OF PROSPECTS ON SUCCESS:

[26] In my view a perusal of paragraphs [6] to [15] *supra* suffice to confirm the view that there are no prospects of success on appeal. The Applicant's persistence to interpret the

relevant ethical rules and the law in such a way as to accommodate his distorted view of the manner in which he expected the Second Respondent to advise his client and/or act on behalf of his client is irrational, to say the least.

[27] The investigating committee's summary of the merits of the complaint lodged by the Applicant as quoted in paragraph [12] *supra* is in my view appropriate in the circumstances. Any reasonable legal practitioner who is forced by misfortune to read the complaint lodged by the Applicant with First Respondent, and his reply to the Second Respondent's written response will, in my view, arrive at the same conclusion.

[28] In my view, the Applicant's prospects of success on appeal are so weak that this factor, in isolation, is dispositive of the enquiry.

THE INTERESTS OF JUSTICE

[29] *In casu* there are no issues raised which involves public interest, nor is there any legal principle involved which may be of any assistance to the general development of the law. Applicant's only interest in the matter, it would seem, is to proverbially punish the Second Respondent for acting against him and not following his dictates, whereas the two Respondents, who have been subjected to a plethora of litigation and proverbially drowned in documents provided by Applicant, and had to channel their resources to deal with Applicant's irrational complaints and litigation, have a legitimate interest to finalise the issue.

[30] In my view, the interests of justice favour that this litigation terminate once and for all.

CONCLUSION AND COSTS:

[31] Considering the aforesaid I am of the view that the appeal should not be reinstated and, for sake of clarity, that an order be made declaring the appeal to have lapsed.

[32] There are further no reasons why the Respondents should not be entitled to costs, as sought in their respective heads of argument.

In the premises, the following order is made:

1. The application for reinstatement of the appeal is refused.
2. It is declared that the appeal has lapsed.
3. Applicant is ordered to pay the costs of the First- and Second Respondents, to be taxed on Scale C.

**P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA**

I agree:

**BAM J
JUDGE OF THE GAUTENG DIVISION
PRETORIA**

I agree:

**C SWANEPOEL J
JUDGE OF THE GAUTENG DIVISION
PRETORIA**

APPEARANCES

FOR THE APPLICANT:

IN PERSON

FOR THE FIRST RESPONDENT:

R STOCKER OF RW ATTORNEYS

**FOR THE SECOND RESPONDENT:
appearance)**

KKM MAFUNGO, (Attorney with right of