



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC30/2021

Before: Honourable Ncube J

Hearing on: 16 October 2025
Delivered on: 25 February 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
25/02/2026 DATE	 SIGNATURE

In the matter between:

CHIEF LAND CLAIMS COMMISSIONER

First Applicant

**REGIONAL LAND CLAIMS COMMISSIONER
KWAZULU-NATAL**

Second Applicant

**MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM**

Third Applicant

and

NXAMALALA TRIBE

First Respondent

VARIOUS LANDOWNERS

Second Respondent

IN RE:

ORDER

1. The Application for Condonation for the late filing of the Application for Leave to Appeal by the Government Respondents is dismissed
2. The Application for Leave to Intervene filed by the Landowners is dismissed.
3. There is no order as to costs

JUDGMENT: LEAVE TO APPEAL

NCUBE J**Introduction**

[1] This is an application for leave to appeal against the judgment of this court handed down on 21 February 2025 and amended 13 March 2025. The application is lodged by the First to the Third Applicants who were the respondents in the review application and who are hereinafter referred to as ("the Government Respondents"). Apart from the application for leave to appeal there is also an application to intervene in the application for leave to appeal. The application to intervene is brought by various landowners whose properties are affected in this case. I shall refer to them, as ("the intervening parties"). The intervening parties did not participate in the review application. Initially the claimants opposed the application for leave to appeal by the Government Respondents, but such opposition was later withdrawn. Application for leave to intervene filed by intervening parties was also opposed by the claimants who indicated that if leave to intervene was granted leave to appeal by the intervening parties was equally not opposed. The Government Respondents filed their application for leave to appeal outside the period prescribed by Rules of this court. It was then

necessary for the Regional Land Claims Commissioner ("the RLCC") to first file the application for condonation.

[2] Rule 69 of the Land Claim Court Rules regulates the procedure to be followed in application for leave to appeal and it provides:

" 69 (1) A party that wishes to appeal against an order of the Court must apply to the Court for leave to appeal _____

(a) orally at the time when the order is made by the Court in which event that party must at the same time deal with the matters referred to in subrule (2); or

(b) by notice of application for leave to appeal delivered within 15 days –

(i) after the order was made; or

(ii) after full reasons for the order were given, if the reasons were given on a later date"

[3] The judgment in this case was handed down on 21 February 2025 and was corrected on 13 March 2025. The Government Respondents filed their application for leave to appeal on June 2025, which is more than three months after the date on which the judgment was handed down. The Government Respondents have therefore filed an application for condonation together with this application. I must mention that apart from these two applications, there is also an application brought by landowners to intervene in the Government Respondents' application for leave to appeal. The landowners did not participate in the review application, yet they seek leave to intervene in the leave to appeal application. I now turn to deal with the condonation application in respect of the Government Respondents.

Application For Condonation By Government Respondents

[4] It became necessary for the Government Respondents to apply for condonation for the late filing of the application for leave to appeal. The law with regard to condonation is settled. The Applicant must explain the reason for the delay. In the determination of the application for condonation the court looks at the following factors:

(a) the degree of lateness

(b) the reason for the delay

(c) the prospects of success

(d) any other factor including prejudice which the other party may suffer.

[5] In *Melane v Santam Insurance Co. Ltd*¹, it was held:

“It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make up a case entitling it to the court’s indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court’s directions. Of great significance, the explanation must be reasonable enough to excuse the default”

[6] In *Grootboom v National Prosecuting Authority*², the Constitutional Court held:

“Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation thereof, 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”

[7] The Constitutional Court has also introduced the concept of the interest of justice as one of the factors to be taken into account in the determination of the condonation application. Thus in *Van Wyk v Unitas Hospital Another (Open Democratic Advice centre as Amicus Curiae)*³ the Court held:

“This Court has held that the standard for considering an application for condonation is the interest 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

¹ 1962 (4) SA 531 (A) at 532 C-E

² 2014(2) SA 68 (CC) Para 23

³ 2008(2) SA 472 (CC) at Para 20

importance of the issue to be raised in the intended appeal and the prospects of success"

Explanation for the Delay

[8] I must immediately say that the explanation given by the Government Respondents is not satisfactory at all and there is no court which can accept it. The reason is summarised in paragraph 22 of the Founding Affidavit filed in support of the application for condonation. That paragraph states:

"From the foregoing it is clear that the delay in filing the application for leave to appeal was due to the fact that the parties were attempting to resolve the matter without further litigation and this would obviate the need for the filing of the application for leave to appeal. Now that the representatives of the First Respondent have not come up with a resolution, it has become necessary to file the application for leave to appeal"

[9] This is unacceptable. They had already decided to appeal so that the judgment, which they believed was wrong, could be corrected on appeal. However, in case they could reach some sort of a settlement with the other party, they were prepared to stay with the wrong judgment and for that reason, they disregarded the Rule which required them to file the application for leave to appeal within a prescribe time period. The fact that the parties' continued with negotiations can never be the reason for non-compliance with the Rules. In *Commissioner For The South African Revenue Service v Sasol Chevron Holdings Limited*⁴ albeit in a different context, the Court held:

".....On this score, it is instructive to keep at the forefront of one's mind that the fact that the parties continued to exchange further correspondence beyond 6 December 2017 cannot detract from the truism that SARS' impugned decision was taken on 6 December 2017. What is more important is that this is the very same decision that Sasol Chevron sought to have reviewed and set aside....."

⁴ (1044/2020) [2022] ZASCA 56 (22 April 2022)

[10] The judgment was handed down and sent to the State Attorney on 05 March 2025 at 10:28. The State Attorney was in possession of the judgment for six days. On 10 March 2025, after six days since they received the judgment, they received a letter from the Claimants' Attorneys requesting a meeting with the Regional Land Claims Commissioner ("RLCC") "to discuss the attitude" of the RLCC towards the Referral, not to discuss the judgment. On 12 March 2025, a corrected judgment which did not change the order, was sent to the State Attorney and other parties. Still there were no steps taken to file an application for leave to appeal.

[11] On 14 March 2025, ten days after they received the judgment, Mr Ndlovu from the office of the RLCC had a meeting with the Claimants' Attorneys. At that meeting, Mr Ndlovu indicated that the RLCC had a problem with the manner in which the judgment dealt with the doctrine of *functus officio*, but no steps were taken to appeal the order. The Claimants Attorneys indicated they were going to consult their clients and see how to move forward. Before the second meeting between Mr Ndlovu and Claimants' Attorneys, the State Attorney got instruction to brief Counsel. The date on which the instruction was received is not mentioned. Counsel was to be briefed to give an opinion, despite the fact that the RLCC had formed an opinion that the judgment was not in order and knowing that they had only 15 days within which to file an application for leave to appeal.

[12] Ultimately, Counsel was briefed for his opinion. Again, no date is mentioned when Counsel was briefed. Counsel wanted to have consultation with the representatives of the RLCC. No time frame was given. On 24 April 2025, after 52 calendar days and 36 court days, there was a second meeting between the Claimants' Attorneys and RLCC 's representatives. Counsel had not had consultation with RLCC's representatives. At the meeting of 24 April 2025, parties decided to suspend their intended legal actions which by implication, must include the application for leave to appeal, which was, in any event, outside the time period prescribed in terms of the Rules. After the suspension of intended legal actions, Claimants' Attorneys promised to revert to the RLCC on the question of whether Claimants were willing to accept financial compensation. It seems to me that at this stage, the RLCC who perceived

the judgment to be wrong and had not taken it on appeal, was still willing to pay financial compensation, although according to him, the claim was invalid for non-compliance with section 2 of the Restitution Act. It does not make sense.

[13] Although intended legal actions had been suspended and the RLCC was now willing to pay financial compensation to the Claimants, on 02 May 2025, the representatives of the RLCC had consultation with Counsel. Counsel provided his opinion on 16 May 2025. Even then, no application for leave to appeal was filed. The RLCC was still waiting for the resolution to accept financial compensation from the Claimants. Parties met again on 24 May 2025. Another request for time to obtain a resolution was made. This is the conduct of a party who wants to seek leave to appeal and who knows that leave to appeal must be filed within 15 days from the date of the impugned judgment. The Notice of application for leave to appeal was finally signed by the State Attorney on 10 June 2025 but only filed with the Registrar of this court on 14 August 2025. There is no explanation given for the further delay from 11 June 2025 to 14 August 2025.

[14] It is trite that in condonation application the explanation tendered for the delay must cover the whole period. In *casu*, there was an inordinate delay which cannot be explained. Even the insufficient explanation given is very unreasonable. Even Counsel could not explain the delay in court, he referred me to the Founding Affidavit which was insufficient in its reasons for the delay. In these circumstances, there is no need for me to look at the prospects of success and interest of justice. The application for condonation stands to be dismissed. In the circumstances, there is no application by Government Respondents for leave to appeal before me. I shall proceed and consider the Landowners' application for leave to intervene.

Application For Leave to Intervene

[15] The landowners ("intervening Parties") seek leave to intervene in Government Respondents' application for leave to appeal the order of 21 February 2025, granted in the review proceedings. The application raises certain problems. The first problem is that the intervening parties did not participate in the review application although their

immovable properties were likely to be affected by the outcome of the Review proceedings. Initially, the intervening parties were legally represented by different firm of attorneys. Mr McCarthy appeared on behalf of the Intervening Parties. On 14 March 2023, Mr McCarthy attended a Pre-trial Conference. At that pre-trial conference Mr McCarthy recorded that his clients will not participate in the review application. Indeed the review proceedings continued to finality without the participation of the landowners. The same landowners or intervening parties now contend that Mr McCarthy had no mandate to represent them and make submission on their behalf at the pre-trial conference. The intervening parties contend that they were not informed of the review proceedings.

[16] The second problem raised by this application is that since I have decided to refuse the Government Respondents' application for condonation, there is therefore no application for leave to appeal before me. That now begs the question whether a party may intervene in proceedings which are not before court. Even if there was application for leave to appeal before me, it is doubtful if the landowners could prove that they have a direct and substantial legal interest in the outcome of the litigation.

[17] In *Lebea v Menye And Another* 2023 (3) BCLR 257 (CC) Para 30 the Constitutional Court held:

"Direct and substantial interest is a direct and substantial interest in the order that a court is asked to make in a matter. It is not enough if a person has an interest in a finding or in certain reasons for an order. The interest must be in the order or the outcome of the litigation....."

It seems to me that the landowners had a direct and substantial legal interest which could be prejudicially affected by the order or outcome of the Review Application but not in the present proceedings. They have no direct and substantial interest in the order which this court is asked to make in these proceedings. Application for leave to intervene stands to be dismissed. There is no need to deal with the application for leave to appeal by the Landowners.

Findings

[18] There is no Application for leave to appeal before the court. Even if there was, the landowners would have had no direct and substantial legal interest in the order which the court would have been asked to make. They would have had interest in the appeal itself if leave to appeal was granted to the Government Respondents. They could ask the Appeal Court for leave to intervene in the appeal.

Costs

[19] The Claimants did not oppose the applications by the Government Respondents and Landowners and there are no exceptional circumstances justifying a costs order.

Order

[20] In the result, I make the following order:

1. The Application for Condonation for the late filing of the Application for Leave to Appeal by the Government Respondents is dismissed
2. The Application for Leave to Intervene filed by the Landowners is dismissed.
3. There is no order as to costs



NCUBE J
JUDGE OF THE LAND COURT
OF SOUTH AFRICA

APPEARANCES:

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