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

CASE NO: 84137/2019

1) REPORTABLE: NO

2) OF INTEREST TO OTHER JUDGES: NO

3) REVISED.

SIGNATURE

DATE 02 March 2026

In the matter between:

MILLICENT VUYISWA SHONGWE

Applicant

(Identity Number: 7[...])

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

1st Respondent

(Registration No: 1962/000738/06)

**SHERRIFF OF THE HONOURABLE COURT –
BOKSBURG**

2nd Respondent

REGISTRAR OF DEEDS

3rd Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MM MOJAPELO AJ

INTRODUCTION

1. Before me is an application for leave to appeal against the judgment and order I delivered on 3 February 2025, in which I dismissed the applicant's application for rescission of the default judgment granted by Basson J on 23 June 2023. The applicant also seeks condonation for the late filing of the application for leave to appeal, which was delivered on or about 4 September 2025, some seven months out of time.

2. The application was initially set down for hearing on 19 February 2026. On that date, the applicant failed to appear but timeously provided a medical certificate, necessitating a postponement to 02 March 2026. My directives issued on 19 February 2026 explicitly stated that should either party fail to comply with the directives or the set-down, the matter would be determined on the papers. On 02 March 2026, the applicant again failed to appear, sending an email citing her "mental state" without an accompanying medical certificate. Counsel for the first respondent appeared and confirmed service of the directives and notice of set-down. In light of the applicant's repeated absence and the clear terms of my prior directive, I have determined that it is in the interests of justice and the finality of litigation to decide this application on the basis of the written submissions and the papers filed of record.

THE LEGAL FRAMEWORK

3. Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave to appeal may only be granted where the judge is of the opinion that:

3.1. The appeal would have a reasonable prospect of success; or

3.2. There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

4. The threshold for granting leave to appeal has been raised under the

current dispensation. As the Supreme Court of Appeal held in *MEC Health, Eastern Cape v Mkhitha* 2016 (6) SA 1 (SCA) at para 17:

"An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

5. The word "would" in section 17(1)(a)(i) indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against, not merely that it might do so.

THE CONDONATION APPLICATION

6. As the Supreme Court of Appeal held in *Panayiotou v Shoprite Checkers (Pty) Ltd and Others* 2016 (3) SA 110 (GJ), an application for leave to appeal has not been made for the purposes of section 18(1) of the Superior Courts Act where it has been delivered outside the prescribed time periods, unless and until condonation has been granted. I must therefore first consider whether condonation should be granted.

7. Rule 49(1)(b) of the Uniform Rules provides that where leave to appeal is required and has not been requested at the time of judgment, application for such leave shall be made within fifteen days after the date of the order. Judgment was delivered on 3 February 2025. The application for leave to appeal ought to have been delivered by 24 February 2025. It was served on 4 September 2025 - a delay of seven months.

8. In *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at para 6, the Supreme Court of Appeal stated:

"One would have hoped that the many admonitions concerning what is required of an applicant in a condonation application

would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this Court: condonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out."

9. The applicant's affidavit in support of condonation is wholly inadequate. The explanation offered is that after judgment was granted, she looked for an attorney to help her but could not secure one in time due to exorbitant fees, and that she tried "free legal options which did not work". No dates are provided. No institutions are identified. No steps are particularised. There is no account whatsoever for the period from 3 February 2025 to 4 September 2025.

10. The applicant knew by 3 February 2025 that she was dissatisfied with the outcome. She provides no explanation for why she did not immediately seek assistance, or why, having failed to secure legal representation, she did not act in person within the prescribed time. This is particularly material given that she had previously represented herself when entering an appearance to defend in the main action and when launching the rescission application itself.

11. The delay of seven months is egregious and unexplained. The applicant has failed to discharge the onus of showing good cause for condonation. On this basis alone, the application must fail.

PROSPECTS OF SUCCESS ON APPEAL

12. Even if I were to overlook the inadequacy of the condonation application, the prospects of success on appeal are so poor that condonation cannot be granted on that basis either.

13. The applicant advances nine grounds of appeal. I address each in turn.

Ground 1: Failure to give the applicant an opportunity to present her case

14. The applicant contends that she was never given an opportunity to present her case. This ground is without merit. The rescission application was properly before the court.

15. The applicant had filed founding papers. The first respondent had filed opposing papers. The applicant elected not to file a replying affidavit. She did not file heads of argument. She was served with a notice of set down. When the matter was called on 3 February 2025, she was not present. I stood the matter down to afford her an opportunity to attend. She did not do so. I was satisfied that she had been properly informed of the date and that the matter was properly before me.

16. The applicant was *dominus litis*. She chose not to prosecute her application. She cannot now complain that she was not afforded an opportunity to be heard. There is no reasonable prospect that another court would find that I erred in proceeding to hear the matter in her absence.

Ground 2: Failure to consider the seriousness of the matter

17. The applicant contends that I failed to consider the seriousness of the matter, particularly the fact that the order would render her homeless. This ground is also without merit. At paragraph 21 of my judgment, I expressly considered the applicant's reliance on section 26 of the Constitution and Rule 46A. I noted that Rule 46A is the procedural instrument through which the court balances access to adequate housing with a credit provider's enforcement rights. I noted that the default court had been apprised of the Rule 46A factors and had fixed a substantial reserve price. I found that the applicant had not shown that a less intrusive measure existed that would satisfy the judgment debt, given the magnitude of the arrears, nor had she proposed a viable repayment plan.

18. I was alive to the constitutional dimension of the matter. I considered it.

I found that the equities did not favour rescission. There is no reasonable prospect that another court would find that I failed to consider the seriousness of the matter or the applicant's constitutional rights.

Ground 3: Failure to grant a postponement

19. The applicant contends that I erred in not granting her a postponement, as she stated that she was lost and on her way to court. This ground is without merit. No formal application for a postponement was brought. The matter was ripe for hearing. Affidavits had been exchanged. The applicant had been given ample notice of the hearing date. I stood the matter down to afford her an opportunity to attend. She did not do so. There is no reasonable prospect that another court would find that I erred in refusing a postponement in these circumstances.

Ground 4: Failure to consider the applicant's rights to adequate housing

20. This ground has been addressed under Ground 2 above.

Ground 5: Failure to consider non-compliance with section 129 of the NCA

21. The applicant contends that I failed to consider that the first respondent never complied with section 129 of the National Credit Act and that the section 129 notice was never served on her. At paragraph 20 of my judgment, I expressly considered this complaint. I noted that it was made baldly. I noted that the litigation history reflected prior debt review and a National Consumer Tribunal order dated 12 March 2015, and that the first respondent had proceeded under section 88(3)(b). I found that no concrete demonstration was made that statutory pre-enforcement notices were absent or defective, or that any such defect would avail the applicant in light of the procedural history and personal service.

22. I considered this ground. I found it to be without merit. There is no reasonable prospect that another court would find that I erred in this regard.

Ground 6: The court erred in believing everything said by the first respondent

23. This ground is vague and unparticularised. It does not identify any specific finding that I made that was erroneous or any specific evidence that I wrongly accepted or rejected. I had before me all the affidavits exchanged between the parties. I evaluated the evidence and made findings on the papers. There is no reasonable prospect that another court would find that I erred in my evaluation of the evidence.

Ground 7: Failure to consider that the applicant never refused to pay

24. The applicant contends that I failed to consider that she never refused to pay the first respondent. At paragraphs 17 to 19 of my judgment, I expressly considered the applicant's case that she had concluded a subsequent arrangement with the first respondent to pay "any reasonable amount until her financial situation becomes viable". I found that this allegation was bald and unsupported by documentary proof or particularity. I found that no terms, dates, or written confirmations were provided, nor was there evidence of payments consistent with a restructured arrangement superseding the bar and the default process. I found that the applicant did not deny liability or arrears, and that the alleged arrangement was insufficient to constitute a triable defence.

25. I considered this ground. I found it to be without merit. There is no reasonable prospect that another court would find that I erred in this regard.

Ground 8: Failure to consider that the applicant has movable property to satisfy the debt

26. The applicant contends that I erred in declaring her property specially executable whereas she has movable property to satisfy the judgment debt. At paragraph 21 of my judgment, I expressly considered this issue. I found that the applicant had not shown that a less intrusive measure existed that would satisfy the judgment debt, given the magnitude of the arrears, nor had she proposed a viable repayment plan. The applicant's assertion that she has movable property is

bald and unsubstantiated. She has provided no particulars, no valuations, no evidence whatsoever of the existence or value of such movable property. There is no reasonable prospect that another court would find that I erred in this regard.

Ground 9: Error with regard to the reserve price

27. The applicant contends that I erred with regard to the reserve price. This ground is vague and unparticularised. It does not identify any specific error. At paragraph 21 of my judgment, I noted that the default court had fixed a substantial reserve price. The applicant does not explain what error I made or what the reserve price ought to have been. There is no reasonable prospect that another court would find that I erred in this regard.

COMPELLING REASON

28. The applicant has not identified any compelling reason why the appeal should be heard. There is no important question of law. There are no conflicting judgments. There is no discrete issue of public importance. This is a straightforward application for rescission in which the applicant failed to establish good cause. The legal principles are well-established. The outcome turned on the evaluation of the facts and the exercise of discretion. There is no compelling reason why the appeal should be heard.

CONCLUSION

29. The applicant has failed to provide a full, detailed and accurate explanation for the seven-month delay in noting the application for leave to appeal. Condonation cannot be granted.

30. Even if condonation were to be granted, the applicant has no reasonable prospect of success on appeal. All nine grounds advanced were considered in my judgment of 3 February 2025. All were found to be without merit. The applicant has not identified any misdirection of fact or law. She has not shown that another court would come to a different conclusion. She seeks, in effect, a second bite at the cherry. That is not the purpose of an appeal.

31. The application for condonation is dismissed. The application for leave to appeal is dismissed.

32. Regarding the wasted costs of 19 February 2026, the first respondent sought an order for the applicant to pay these costs. I decline to make such an order. The postponement on that date was occasioned by the submission of a formal medical certificate by the applicant. The first respondent has provided no evidence to gainsay the validity of that certificate or the medical necessity of the postponement at that time. Consequently, it is appropriate that each party bears its own costs in respect of the proceedings on 19 February 2026.

33. The mortgage bond provides for costs on an attorney and client scale in enforcement proceedings. This application for leave to appeal is part of those proceedings. The application lacked merit. It was brought after an inadequate explanation for the delay. It sought to revisit issues already ventilated and determined without engaging meaningfully with the reasons given in the judgment. In these circumstances, an attorney and client costs order is warranted.

ORDER

As a result, I make the following order:

1. The application for condonation for the late filing of the application for leave to appeal is dismissed.
2. The application for leave to appeal is dismissed.
3. The applicant (Ms. Millicent Vuyiswa Shongwe) is ordered to pay the first respondent's costs of the applications for condonation and leave to appeal on the scale as between attorney and client.
4. Each party shall bear its own costs in respect of the wasted costs

occasioned by the postponement on 19 February 2026.

MM Mojapelo
ACTING JUDGE HIGH COURT
GAUTENG DIVISION, PRETORIA
02 March 2026

Counsel for the : **No Appearance**
Applicant Attorney for : **In person (No Appearance)**
the Applicant
Counsel for the First Respondent : **Adv. M Rakgoale**
Attorneys for the First Respondent : **Vezi & de Beer Inc**