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REPUBLIC OF SOUTH AFRICA



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

Case Number: B2197/2023

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
SIGNATURE

In the matter between:

ABSA BANK LIMITED

APPLICANT

and

R[...] J[...] B[...] N.O

RESPONDENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be _____

JUDGMENT

MZUZU, AJ

[1] This is an application for condonation and summary judgment coupled with an application for executability in terms of rule 46A by the applicant against the respondent. The respondent is opposing the application.

[2] On or about 3 March 1995 and at Johannesburg, the applicant, represented by a duly authorised representative, and the late R[...] B[...] and D[...] B[...] entered into a first loan agreement in terms of which monies were lent and advanced by the applicant to the late R[...] B[...] on the latter's special instance and request in terms of a written Mortgage Loan Agreement ("the Credit Agreement") entered into by and between the parties. The original Credit Agreement entered into between the applicant and the late R[...] B[...] was misplaced. After diligent search the applicant was unable to procure the documents as at the time of issuing of the summons.

[3] The amount of the loan was R185 000.00 (one hundred and eighty-five thousand rand), which was advanced to the late R[...] B[...] after registration of the mortgage bond (hereinafter referred to as "the loan amount").

[4] Any costs which the applicant incurs in enforcing the terms of the Credit Agreement would be borne by the late R[...] B[...] on the scale as between attorney and client. The terms and conditions of the underlying loan and terms and conditions of the subsequent bond are attached to the applicant's particulars of claim.

[5] On or about 21 July 1995 and at Johannesburg, the late R[...] B[...] caused a first mortgage bond to be registered under bond number B[...] in favour of the applicant as security for monies lent and advanced by the applicant to the late R[...] B[...].

[6] In terms of the said mortgage bond, the Late R[...] B[...] hypothecated as a first Mortgage certain property:

“ERF 6[...] W[...] TOWNSHIP REGISTRATION DIVISION I.Q; PROVINCE OF PRETORIA-WITWATERSRAND-VEREENIGING, MEASURING 1115 (ONE THOUSAND ONE HUNDRED AND FIFTEEN) SQUARE METRES HELD BY DEED OF TRANSFER NUMBER T34586/1995, SUBJECT TO ALL CONDITIONS CONTAINED THEREIN AND ESPECIALLY TO THE RESERVATION OF RIGHTS TO MINERALS.”

[7] Thereafter, and on the same terms and conditions as the first loan agreement, the respondent:

- a) On or about 6 April 2006 and at Johannesburg, the applicant, represented by a duly authorised representative, and the late R[...] B[...] and D[...] B[...] entered into a second loan agreement;
- b) The amount of the loan was R521 263.00 (five hundred and twenty-one thousand two hundred and sixty-three rand), which was advanced to the late R[...] B[...] after registration of the mortgage bond;
- c) On or about 24 April 2006 and at Johannesburg, the late R[...] B[...] caused a second mortgage bond to be registered under bond number B[...] in favour of the applicant as security for monies lent and advanced by the applicant to the Late R[...] B[...]; and
- d) After a divorce settlement, D[...] B[...] was substituted as debtor by an endorsement by virtue of section 45(2) of Act 47 of 1937, in terms whereof she released from obligation in respect of the mortgage bond.

[8] Payments have not been received in accordance with the credit agreement. The amount claimed by the applicant is R390 872.99, and given the amount claimed, it is unlikely that the estate of the late R[...] B[...] would be in a position to satisfy the claim,

either by way of payment or by attachment of movable property as envisaged in Rule 46(1)(a)(i) of the Uniform Rules.

[9] Despite demand and/or various endeavours to enter into an arrangement with the respondent, the respondent could not advance alternative means and/or arrangements to satisfy the arrears and/or indebtedness. The applicant has duly complied with its obligations in terms of the agreement, the National Credit Act 34 of 2005 and the law of general application.

[10] The applicant is prevented from proceeding to sale in execution by reason of the Sheriff of the High Court being precluded in terms of section 30 of the Administration of Estate Act 66 of 1965 (the Act) from selling the property in execution without the direction of this court, the property still being an asset in a deceased estate and having the value of more than R5 000.00.

As at 12 March 2025, the position of the respondent's indebtedness is as follows:

- a) Outstanding balance R332 803.59;
- b) Arrears amount R 231 895.53;
- c) Instalments amount R15 479.92
- d) Last payment R200 000.00 on 20 February 2025.

[11] The applicant seeks condonation for the late filing of the summary judgment. The respondent was afforded significant indulgence in time to make good on his promises to pay but has ultimately failed to perform.

[12] In context of the clear and undeniable failure by the respondent to keep to its undertaking of making payment, the applicant has however proceeded with this application and contends that a reasonable explanation and good cause exist for granting condonation in context of the delay caused by the above and granting indulgence to the respondent in making good on the promise as referred to above.

[13] The applicant submits that where it renounced the nomination of appointment as executor and in circumstances where the son of the deceased was nominated as co-executor, it is clear that the applicant did not neglect any duties with regard to the administration of the deceased estate, but that the son of the deceased (as nominated co-executor) neglected the proper administration of the estate.

[14] Annexure "RA5" constitutes only one policy with number 6[...] with inception date 1 September 2016 for the insured sum of R300 000.00. No details or evidence pertaining to a purported second policy is provided by the respondent. Be that as it may, the applicant's decision to proceed herewith stems from the respondent's failure to honour its undertakings to pay the full outstanding amount, as indicated below, to the applicant.

[15] The applicant submits that the respondent in fact tendered the R390 872.99 in full and final payment but only made payment of R200 000.00 on 20 February 2025 and undertook to effect payment of the balance of R190 872.99 once they received confirmation that funds were received by the bank.

[16] Confirmation was provided to the Executor in this regard, but following non-receipt of the balance on the date as promised and referred to above, the Executor was placed on terms until 6 March 2025 and, to date, payment has still not been effected. The applicant annexed a correspondent trail which according to it clearly evidences the above to its summary judgment affidavit.

[17] Emanating from all of the above, and also from the fact that a full tender of payment in regard to the total amount claimed has been made, the conclusion is that there is simply no *bona fide* defence on the merits of the matter and only "defence" or excuse was the promise to pay. The promise was, however, not honoured.

[18] It is respectfully submitted that the averments contained in the respondent's plea do not give rise to a *bona fide* defence or triable issues, good in law, to the merits of the applicant's claim, and the matter is defended purely to delay the finalisation of the applicant's claim.

[19] The respondent submitted that the plaintiff has instituted action against the erstwhile executor, Seenisha Nadesan, in her capacity as Executor in the deceased estate of R[...] B[...], who has passed away on 16 January 2021.

[20] The address of the Executor was not as claimed but rather [...] A[...] Road, Mariannhill, Kwa-Zulu Natal. No proper service of the summons with particulars of claim exists for reasons that the return of service clearly stating that all due processes were served by affixing.

[21] The Executor with no knowledge of the legal action instituted, did not defend or react to the matter as she purely had no knowledge of the legal action instituted. Application for default judgment was again served by leaving a copy at the gate of the property in question, 2[...] R[...] Street, Witpoortjie, Roodepoort.

[22] The heir and beneficiary, Mr. R[...] B[...], son of the deceased, who moved into the property as the property was bequeathed to him in terms of the last will and testament of the deceased. Notice of intention to defend was entered into by agreement between the heir, Mr. R[...] B[...], and the erstwhile executor to prevent the default judgment from being granted.

[23] The erstwhile executor informed the Master of the High Court on 17 December 2021, that she renounced her appointment and involvement in the deceased estate.

[24] Absa Trust Limited was the nominated executor of the estate late R[...] B[...], a division of the Absa Group (formerly Barclays Africa Group), which is also evident from the last will and testament nominating Absa Trust as the executor.

[25] Absa Trust, on discovery of the original will in its possession, lodged the will with the Master of the High Court. R[...] B[...] Junior was appointed as the nominated executor in the state late R[...] B[...] on 2 August 2023. A notice of bar was served on the attorneys representing the executor in this matter on 3 July 2023 with B[...] not even appointed as executor.

[26] B[...], as executor, immediately engaged with the plaintiff regarding the life insurance application on the liability towards the plaintiff with minimum to no assistance from the plaintiff.

[27] Regarding the life policies, the defendant, after filing a rule 15 (further particulars) request, was informed that the life policies have lapsed. The parties have indicated with filing of rule 41A notices, that they would agree to mediation of the matter, especially having regard to the life policies involved in the matter which had to extinguish the liability regarding the bond account.

[28] The defendant, without any option and the continued malice by the plaintiff refusing assistance, instructed its attorneys to file a tender in terms of Uniform Rule 34(5) with the following terms and conditions incorporated in the tender:

- a) Payment of the amount of R390 872.99 with interest at a rate of 8.75% per annum as from 22 December 2023;
- b) No tender to costs;
- c) The parties have consented to mediation with the matter at all relevant times being resolved by mediation.

[29] The plaintiff saw the tender as a final solution and failed to refer the matter to mediation, as agreed. The defendant having had money in the estate account made

payment to the plaintiff of the amount of R200 000.00 with the awaited mediation to commence. The plaintiff refused to attend to mediation and or to provide the defendant with any information regarding the life policies.

[30] Two life policies existed. The policy which the plaintiff claimed to have lapsed was not included in the pleadings as the policy was for dread diseases and not applicable to be dealt with. The policy is not from an external service provider granting the defendant the opportunity to investigate the existence of the policy, but the policy issued by the plaintiff or its subsidiary with no information made available to the defendant.

[31] It is respectfully submitted that the Honourable Court should come to a negative conclusion towards the plaintiff especially having regard to the life policy and the terms thereof (policy with number 6[...]). The policy was annexed to the affidavit resisting summary judgment, which is clear of the benefits and the amount to be paid by the plaintiff or its subsidiary on date of passing of the deceased, which was not done.

[32] The defendant is therefore not liable for any amount to the plaintiff with a refund to be made to the defendant for the bona fide attempts in resolving the matter which had to be referred to mediation. The court is required to determine whether the applicant have met requirements for relief of condonation, the relief of the summary judgment and the order in terms of the Uniform Rules 46A.

[33] Condonation is required when a party fails to comply with court rules or time frames and or filing a plea late. It is an indulgence not a right. The applicant must show a good cause, the key factors considered, a court should exercise a wide discretion based on several factors including: degree of lateness, explanation of the delay, prospects of success when the main case has merits.

[34] Importance of success, importance of the case. The stakes involved, prejudice, the impact on other parties, the interest of justice and consequences of failure. If there

is a gross and flagrant failure to comply with rules or if no reasonable explanation condonation may be refused without even considering the prospects of success.

[35] Core legal principles: whether to grant or dismiss condonation, courts evaluate the good cause test which weighs the degree of lateness and the length of the delay. The explanation: the litigant must reasonably account for every period of the delay. If the delay is egregious and the explanation is inadequate or non-existent, the application will likely be dismissed without even deeply examining the merits.

[36] Prospects of success: the strength of the applicants underlying case, an application must provide cogent evidence rather than mere allegations. Prejudice and the interest of justice: the impact on both parties and the public interest in the finality of litigation.

[37] The foundational test for condonation was laid out in *Melane v Santam Insurance Co Ltd*.¹ Furthermore, in *Grootboom v National Prosecuting Authority*,² the Constitutional Court cemented the principle that condonation cannot be had for the mere asking, requiring a party to show sufficient cause.

[38] In *P.C v Minister of Safety and Constitutional Development and Another*,³ it was held that in an application for condonation, the applicant has failed to satisfy the requirements of section 3(4) of the Act. The applicant has not provided a satisfactory explanation for either the delay in instituting the action or the substantial delay in condonation. Condonation is not a mere formality; it requires a full and acceptable explanation for all periods of delay, a requirement the applicant has failed to satisfy.

[39] The respondent in this matter did not respond to the application for condonation of late bringing the application for summary judgment. Nonetheless, it is my view that the applicant failed to meet the requirements for applying for condonation. There is no

¹ 1962 (4) SA 531 (A).

² CCT 08/13 [2013] ZACC 37; 2014 (2) SA 68 (CC).

³ (2013/33619) [2024] ZA GPJHC 11 65 (19 Nov 2024).

detailed explanation from the applicant for failure to bring the application for summary judgment timeously.

[40] The application for condonation on the above reasons has failed; as a result, the application for summary judgment and order for rule 46A will not be entertained.

[41] As a result, the following order is made:

1. The application for condonation is dismissed
2. The costs for this application is reserved.

N MZUZU
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES

Heard on : 23 February 2026

Judgment delivered on : 19 June 2026

For the Applicant : Adv WJ Roos

Instructed by : Velile tinto and Associates

For the first Defendant : M J Kapp

Instructed by : Kapp Attorneys