



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
JUDGMENT**

**Not Reportable**

Case No: 42/2025

In the matter between:

**MEC FOR ECONOMIC DEVELOPMENT,  
ENVIRONMENT, AGRICULTURE AND RURAL  
DEVELOPMENT (GAUTENG)  
GAUTENG GAMBLING BOARD**

**FIRST APPELLANT  
SECOND APPELLANT**

and

**PHUMELELA GAMING AND LEISURE  
LIMITED (in business rescue)  
4RACING (PTY) LTD**

**FIRST RESPONDENT  
SECOND RESPONDENT**

**Neutral citation:** *MEC for Economic Development, Environment, Agriculture and Rural Development (Gauteng) and Another v Phumelela Gaming and Leisure Limited and Another (42/2025) [2026] ZASCA 97 (3 July 2026)*

**Coram:** HUGHES and SMITH JJA and DIPPENAAR, KOOVERJIE and MOOKI AJJA

**Heard:** 6 May 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 3 July 2026.

**Summary:** Appeal noted – whether appeal has lapsed – application for condonation and reinstatement of appeal – whether adequate or any explanation was advanced – application for condonation dismissed.

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## ORDER

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**On appeal from:** Gauteng Division of the High Court, Johannesburg (Wilson J sitting as the court of first instance):

- 1 The application for condonation and reinstatement of the appeal is dismissed with costs, including the costs of two counsel where so employed.
  - 2 The matter is struck off the roll with costs, including costs of two counsel where so employed.
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## JUDGMENT

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**Hughes JA (Smith JA and Dippenaar, Kooverjie and Mooki AJJA concurring)**

### Introduction

[1] This appeal is with the leave of this Court, having been granted by Zondi DP and Molitsoane AJA on 27 November 2024. It is limited to paragraphs 2 to 9 of the order of Wilson J of the Gauteng Division of the High Court, Johannesburg (the high court).<sup>1</sup> The appeal has lapsed, and the appellants seek condonation of the late filing

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<sup>1</sup> Paragraphs 2-9 reads as follows:

'2. The decision of the First Respondent to amend Regulation 276 of the Gauteng Gambling Regulations, 1997 ("Regulation 276") is reviewed and set aside.

3. It is declared that the amendment to Regulation 276 is invalid, unconstitutional and of no force or effect.

4. The Respondents are directed to pay the Applicant the total amount of the levy that is payable in terms of Regulation 276 in the form it took before the amendment was made, for the period from 1 April 2019 to 30 November 2021.

5. The Respondents are directed to pay the intervener the total amount of the levy that is payable in terms of Regulation 276 in the form it took before the amendment was made for the period from 1 December 2021 to 30 May 2024.

6. The Respondents are directed to pay interest on the sum envisaged in paragraph 4 and 5 above at the prescribed rate of interest.

7. The sum identified in paragraph 4 to 6 must be paid on or before 1 December 2024.

8. The counter-application is dismissed.

9. The Applicant's and the intervener's costs in Part B of this application, in the counter-application and in the application for leave to intervene, including the costs of two counsel, are to be paid by the First and Third Respondents jointly and severally, the one paying the other to be absolved.'

of the appeal record and the appellants heads of argument, and reinstatement of the appeal. I deal with these matters below.

[2] Phumelela Gaming and Leisure Limited (Phumelela), the first respondent, is an incorporated public company which is under business rescue. It was the only company in Gauteng that held the totalisator<sup>2</sup> and race meeting licence for more than two decades. This totaliser licence<sup>3</sup> is issued by the second appellant, the Gauteng Gambling Board (the Gambling Board). This meant that Phumelela, as a totalisator with its totaliser licence, monopolised horse racing in Gauteng and all wagers made within that industry. This monopoly, under which Phumelela was the sole authorised operator of horse racing totalisators and betting pools in Gauteng, lasted until 1 December 2021.

[3] The reign of Phumelela came to an end when the first appellant, the Member of the Executive Council for Economic Development, Environment, Agriculture and Rural Development, Gauteng (the MEC), amended the Gauteng Gambling Regulations<sup>4</sup> on 1 April 2019, by amending Regulation 276. The second respondent, 4Racing (Pty) Ltd (4Racing), was appointed as the totalisator in Phumelela's stead, with the relevant totaliser licence and race meeting licence being issued. In respect of the amendment, I address below the situation that prevailed before its promulgation and the position thereafter.

[4] Prior to the amendment to Regulation 276, after the Gauteng Provincial Government decided to privatise the horse racing industry, both the provincial government and the industry entered into a Memorandum of Understanding (MOU) on

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<sup>2</sup> Section 1(1) definitions of the Gauteng Gambling Act 4 of 1995 states that a 'totalisator' means 'a system of betting on a sporting event or any other lawful event or contingency in which the aggregate amount staked on such event or combination of events, after deduction from such aggregate amount of any amounts which may lawfully be deducted therefrom, whether under this Act or by agreement, is divided amongst those persons who have made winning bets on that event or combination of events in proportion to the amounts staked by such persons in respect of such winning bets, and includes any scheme, form or system of betting, whether mechanically operated or not, which is operated on similar principles.'

<sup>3</sup> Section 52 of the Gauteng Gambling Act regarding totalisator licence provides: 'No person shall conduct the business of a totalisator or betting pool without a totalisator licence.'

Section 53(2) of the Act provides: 'The holder of a totalisator licence shall conduct totalisators and betting pools in accordance with rules made by such holder and which have been approved by the board.'

<sup>4</sup> Gauteng Gambling Regulations, GN 570, PG 323, 14 February 1997.

30 June 1997. Critically, Phumelela was incorporated on 22 September 1997, and listed on the Johannesburg Stock Exchange in June 2002, primarily to acquire and hold all the assets and liabilities of the Gauteng Clubs, the Tote Agency Board, and the Highveld Racing Authority. In doing so, 50% of the levy on punters' winnings and bets, withheld by bookmakers, would be passed on to Phumelela. Following the MOU, the Regulations promulgated in 1997 were amended on 16 September 1998, to give effect to the agreement between the provincial government and the horse racing industry. This led to the insertion of Regulation 276, which facilitated the passing on of the 50% portion of the betting tax levied on the punters' winnings. This tax ensured that Phumelela was subsidised and able to achieve the MOU's objective. The consequent amendment of 1 April 2019 to Regulation 276 has the effect of totally eliminating Phumelela's 50% share of the proceeds of the tax and levies. It is this decision that Phumelela sought to review before Wilson J on 6 May 2024.

### **Background to the litigation**

[5] On 6 May 2024, Wilson J presided over Phumelela's review application in the high court. 4Racing filed a motion to intervene, asserting a direct and significant interest in the case. The high court approved the intervention, ruling that Phumelela's requested relief clearly impacts 4Racing's rights and legal interests under the Gambling Regulations.

[6] The MEC and the Gambling Board contended that the Promotion of Administrative Justice Act 3 of 2000 (PAJA) does not apply to decisions to amend regulations, asserting that the MEC's decision was still reasonable and lawful. They also filed a counter-application seeking to have the pre-amendment regulation declared unconstitutional, on the ground that it improperly permitted a share of the betting levy to be paid to the holder of the totalisator licence. The high court ruled that the amendment to Regulation 276 was unlawful administrative action that required it to be reviewed and set aside. However, the high court was not convinced by the constitutional challenge against the pre-amendment regulation and dismissed the counter-application.

[7] In its reasoning, the high court noted that the decision qualifies as an administrative action. Specifically, the high court observed that the amendment

deprived the totalisator licensee of a regulatory subsidy to which they were otherwise entitled. The MEC's decision to amend Regulation 276 was made under the authority of s 61(4) of the Gauteng Gambling Act 4 of 1995. Additionally, the high court noted that the amendment had a direct and external legal effect on the licensee by removing a levy-funded subsidy, thereby clearly harming the licensee's rights.

[8] The high court observed that the MEC chose to modify Regulation 276 via the usual notice-and-comment procedure. The amendments were published, allowing affected parties, including Phumelela, 30 days to respond. In its reply, Phumelela submitted an economist's report cautioning against the potentially severe effects of removing the subsidy from the betting levy that benefits the totalisator licensee, as proposed in the amendment. The high court believed that the MEC should have engaged more thoroughly with Phumelela's concerns. Supporting this view, the high court also found the amendment procedurally irrational, given the complexity of the issue, because Phumelela was not directly engaged and the MEC was expected to do more than simply accept information through a notice-and-comment process. Critically, the high court held that Regulation 273 of the Gambling Regulations, which was not amended by the MEC, specifically provides that the levy is payable for the benefit of the holder of a totalisator licence. Accordingly, the high court ordered payment to Phumelela and 4Racing of the total amount of the levy payable in terms of Regulation 276 in the form it took prior to the amendment for the periods from 1 April 2019 to 30 November 2021 and from 1 December 2021 to 30 May 2024, respectively, with interest.

## **Reinstatement and Condonation**

### ***The problems with the record***

[9] The appellants noted the appeal on 20 January 2025 and, simultaneously, sent a notification in terms of rule 8 of the Rules of the Supreme Court of Appeal (the SCA Rules).<sup>5</sup> By 3 February 2025, both respondents had responded to the appellants' request. The due date for filing the complete record was 22 April 2025. In the interim, the parties corresponded. On 1 April 2025, the appellants sought the respondents'

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<sup>5</sup> Rules regulating the conduct of the proceedings of the Supreme Court of Appeal of South Africa, GN R6754, GG 53572, 24 October 2025.

consent to omit a certain listed document. The respondents, on 2 April 2025 (4Racing) and on 4 April 2025 (Phumelela), agreed to the exclusion but, pertinently, persisted in seeking the inclusion of 'Item 5 of the rule 53 Record', which formed the complete rule 53 record. The rule 53 record contained a relevant submission made by the Casino Association of South Africa (CASA).

[10] On 17 April 2025, an electronic copy of the record was furnished to the respondents, and the appellants sought a two-week indulgence to physically file the record, with a response sought to their request by 22 April 2025. The respondents replied on 21 April 2025, consenting to the two-week extension, reiterating the errors reflected from the electronic record served and seeking service of the corrected record. Notably, the electronic record excluded the CASA submission. Only in the reinstatement application did the appellants proffer an explanation for the omission on their part.

[11] Ironically, after the respondents replied, the appellants sought a further one-month extension and requested a response by 13h00 on 22 April 2025. Both 4Racing and Phumelela responded negatively on 23 April 2025. On 24 April 2025, the appellants acknowledged receipt, and only on 2 June 2025 did they advise that they would seek permission to supplement the record and an extension of time to file the heads of argument, which they did on the very same day. In correspondence to the President of this Court, they asserted that they had filed their record with this Court on 22 April 2025. Incidentally, the appellants' heads of argument were due to be filed in this Court on 3 June 2025. Following the appellants' request to the President of this Court, the respondents objected to it on the same day and insisted that the heads of argument be filed timeously. They cited the appellants as having had in excess of five weeks to sort out the record, and no explanation had been forthcoming for their failure to do so. Further, 'no facts and no basis' had been advanced for the appellant's request.

[12] Importantly, on 6 June 2025, the Registrar of this Court responded to the parties. The Registrar pointed out the non-compliance by the appellants with rule 8(9)(e) of the SCA Rules, namely that the appellants failed to file those parts of the record agreed upon of the proceedings of the court a quo that should be contained in the record.

Further, the appellant had been notified by the respondents of the omitted documentation on 21 April 2025, but still proceeded to file an incomplete record on 22 April 2025. Consequently, the appellants' request to supplement the record was refused. As the records were not properly before this Court, the Registrar took the view that the appeal had lapsed. The Registrar directed the appellants to comply with rule 8, to serve the record upon the respondents, and to proceed with an application for reinstatement and condonation. On 9 June 2025, the appellants asserted substantial compliance but undertook to amend the record and seek reinstatement and condonation.

### ***Financial constraints***

[13] The appellants explained that financial constraints hindered the timely progress of their appeal. Their existing funds were exhausted, and they awaited the commencement of the new budget to address this issue, which occurred in late February 2025. They also mention that during April and May 2025, they maintained contact with the Gambling Board regarding the 'need for further funds'. In essence, this is how the appellants justify that their financial situation both caused and delayed the prosecution of their appeal.

[14] The appellants face a problem because, as presented, there are two litigating parties, and it is unclear from the documents which one had no funds – whether it was the MEC, the Gambling Board, or both. This is not fully explained. Interestingly, there is an admission that the financial obstacle was resolved when the new budget emerged at the end of February 2025. Therefore, the funding issue could not have been central while the record was being prepared and filed, especially since the appeal was prosecuted after February 2025. Additionally, before the new financial year, the parties, pursuant to rule 8, agreed on what should be included in the record. The electronic record was to be submitted along with hard copies by 22 April 2025. The appellants even threatened to raise the record issue in court, indicating that the record itself was not disputed.

### ***The legal principles***

[15] Having noted the appeal timeously in terms of rule 7 of the SCA Rules, namely within one month of leave having been granted, the appellants were then required to

adhere to rule 8 of the SCA Rules. That rule governs, among others, the compilation and filing of the record of the court a quo with the Registrar and the service thereof upon the respondents. Failure to comply with rule 8(1), the three-month period in which to lodge the record, and rule 8(2) extension of the period of filing the record, only by written consent of the parties or the Registrar after written request with notice to the parties, would result in the appeal lapsing in terms of rule 8(3). Rule 6(8) states: ‘if the party concerned fails to comply with a direction by the registrar or fails to cure the defects in the application [the appeal] within the period directed, the application [the appeal] shall lapse’. Rule 8(6) guides litigants in preparing the record: relevant in this case, among others, specifically with respect to documents agreed upon by the parties and those relied upon and referred to in the court a quo. Lastly, failure to note the appeal timeously and the late lodgement of the record or its amendment engage rule 12, which governs the seeking of condonation.

[16] The criteria for condonation and reinstatement are well established.<sup>6</sup> This includes a comprehensive and reasonable explanation for the entire duration of the delay. The likelihood of success in the appeal is also relevant. This Court affirmed that limited prospects of success can outweigh a complete and clear explanation for the delay, whereas strong prospects of success might, in certain situations, justify an insufficient explanation for the delay.<sup>7</sup>

[17] This Court in *SA Express Ltd v Bagport*,<sup>8</sup> reiterated the established principles outlined previously in this Court:

‘In *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others*, Ponnann JA outlined the factors relevant to the exercise of that discretion. They include “the degree of non-compliance, the explanation therefor, 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”.’

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<sup>6</sup> *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* (619/12) [2013] ZASCA 5; [2013] 2 All SA 251 (SCA) para 11-15.

<sup>7</sup> *National Director of Public Prosecutions v Victor NO and Others* [2025] ZASCA 31; 2025 (1) SACR 561 (SCA) paras 8 and 15.

<sup>8</sup> *SA Express Ltd v Bagport* [2020] ZASCA 13; 2020 (5) SA 404 (*Bagport*) para 13.

Importantly, paragraphs 14 and 18 of *Bagport*<sup>9</sup> highlight the general considerations in exercising the court's discretion when considering condonation:

'In *Darries v Sheriff, Magistrate's Court, Wynberg and Another*<sup>10</sup> these general considerations were fleshed out by Plewman JA when he stated:

"Condonation of the non-observance of the Rules of this Court is not a mere formality. In all cases, some acceptable explanation, not only of, for example, the delay in noting an appeal, but also, where this is the case, any delay in seeking condonation, must be given. An appellant should whenever he realises that he has not complied with a Rule of Court apply for condonation as soon as possible. Nor should it simply be assumed that, where non-compliance was due entirely to the neglect of the appellant's attorney, condonation will be granted. In applications of this sort the applicant's prospects of success are in general an important though not decisive consideration. When application is made for condonation it is advisable that the petition should set forth briefly and succinctly such essential information as may enable the Court to assess the appellant's prospects of success. But appellant's prospect of success is but one of the factors relevant to the exercise of the Court's discretion, unless the cumulative effect of the other relevant factors in the case is such as to render the application for condonation obviously unworthy of consideration. Where non-observance of the Rules has been flagrant and gross an application for condonation should not be granted, whatever the prospects of success might be."

'While, generally speaking, the various factors that have been listed in the cases, including the appellant's prospects of success, should be weighed against each other, there are instances where condonation ought not to be granted even if there are reasonable prospects of success. This was alluded to in the *Darries* matter. In *Tshivhase Royal Council [and Another] v Tshivhase [and Another; Tshivhase and Another v Tshivhase and Another]*<sup>11</sup> Nestadt JA said that this court "*has often said that in cases of flagrant breaches of the Rules, especially where there is no acceptable explanation therefor, the indulgence of condonation may be refused whatever the merits of the appeal are*" and that this applies "*even where the blame lies solely with the attorney*".' (Emphasis added.)

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<sup>9</sup> Ibid paras 14 and 18.

<sup>10</sup> *Darries v Sheriff, Magistrate's Court, Wynberg, and Another* 1998 (3) SA 34 (SCA) (*Darries*) at 40I-41E.

<sup>11</sup> *Tshivhase Royal Council and Another v Tshivhase and Another, Tshivhase and Another v Tshivhase and Another* 1992 (4) SA 852 (A); [1992] 2 All SA 511 (A) (*Tshivhase*).

***Has an adequate explanation for the delay been provided?***

[18] I proceed to address the explanation that has been advanced in seeking condonation and reinstatement of the appeal. The appellant submitted that it was 'purely financial constraints which hampered the speed at which it could do so'; simply put, a lack of funds impaired the prosecution of their appeal timeously after it noted the appeal. This was as a result of the Gambling Board's 'legal budget had been depleted and the budget for the new financial year had not kicked in'. They contend that if the appeal is not reinstated, this will 'trigger serious financial harm to the province' and 'the province would not only be liable to pay more than R600 million ...but would forego future taxes and levies'. This, in a nutshell, is the explanation advanced by the appellants for the delay in compiling the record.

[19] The glaring question is what of the finances of the first appellant, a 'designated Member of the Executive Council responsible for gambling in Gauteng'? He is a party to the proceedings and has been represented by the same legal representatives of the Gambling Board, acting in concert with the Gambling Board. The Gambling Board stated clearly that the application for condonation and reinstatement of the appeal is brought on behalf of both appellants. There is just a deafening silence about the position of the MEC's finances in prosecuting the appeal, or lack thereof. Since the Gambling Board hit a snag with finances, why did the MEC not rise to the occasion and assist, since it is evident that the ultimate harm, according to the appellant, would be to the province *per se*? Importantly, according to the Gambling Board's own account, its financial dilemma was resolved at the end of February 2025.

[20] Can it be said that the explanation advanced by the appellants is acceptable and sets out succinctly the essential information to enable a court to make an informed decision to grant condonation, as is required and alluded to by the case law?<sup>12</sup> The response is a resounding no. The problem in this case is that the information or reason advanced by the appellant is porous and lacking, to say the least. There is insufficient information for a court to examine how to exercise its discretion in granting condonation.

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<sup>12</sup> *Darries* fn 10 at 40I-41E.

[21] Turning to the failure to comply with rules when compiling and filing the record, this Court has indicated that, in the absence of an explanation, condonation can be outrightly denied for a breach of the rules, regardless of the merits involved.<sup>13</sup> In dealing with the appellants' non-compliance with the rules governing the timeous filing of the record, it emerges that there was, in fact, a flagrant breach of the rules on the appellants' part.

[22] On 20 January 2025, the appellants submitted their rule 8 notice, in which they clearly set out what would be included in the record and sought the respondents' consent to the appellants' index for inclusion therein. By that date, the appellants intended to begin preliminary work on the appeal record, acknowledged the deadline for filing the record, and anticipated filing it by 21 April 2025. In their rule 8 notification, they set a compliance deadline of 3 February 2025. The respondents complied on the specified date and largely agreed with the index. On 1 April 2025, after the respondents' consent on 3 February 2025 to the record being constituted, the appellants sought the exclusion of the rule 53 record. On 2 and 4 April 2025, the respondents, 4Racing and Phumelela, respectively, expressly requested that the rule 53 record not be excluded, as sought by the appellants.

[23] Following the above, an electronic record was transmitted to the respondent on 17 April 2025, and on 21 April 2025, the respondent reiterated that the appellants had failed to include the rule 53 record, as per the agreed index. Notably, the record had been part of the index as far back as 3 February 2025, when the appellant commenced the rule 8 process. The appellants took the view that what they had excluded from the record was a minor issue and would be addressed in court as 'housekeeping, if need be', and refused to comply with the respondents' request. As at 21 April 2025, the appellants sought a one-month extension to attend to the record, which the respondents refused by 23 April 2025. Having acknowledged receipt of the respondent's response on 24 April 2025, they did not advise until 2 June 2025 that they would seek permission to supplement the record.

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<sup>13</sup>*Tshivhase* fn 11; *Bagport* fn 8 paras 13-18.

[24] The snowball effect was that the heads of argument were also filed late, with the filing of the record being used to justify the delayed submission of the heads of argument, which were due on 3 June 2025. The appellants' conduct clearly constitutes a flagrant breach of rule 8(6) without sufficient explanation, as they persisted despite the parties' agreement regarding the composition of the record. A further breach of the rules ensued when the heads of argument were also filed out of time, without explanation. This, in itself, and the appellants' egregious conduct, warrant the refusal of any indulgence or condonation and weigh against the reinstatement of the appeal.

[25] The Registrar of this Court correctly applied rule 8(9)(e) of the SCA Rules as the appellant failed to file those parts of the record agreed upon timeously and hence declared that the appeal lapsed. Regarding the merits of this case, I refer to the dicta in *Valor IT v Premier, North West Province and Others*,<sup>14</sup> which states that very weak prospects of success may not compensate for a full, clear and satisfactory explanation for a delay; conversely, strong prospects of success might justify an inadequate explanation for the delay, up to a certain point.

[26] In *Mulaudzi v Old Mutual Life Insurance Company (South Africa) Limited (Mulaudzi)*,<sup>15</sup> Ponnar JA said the following:

'In my view, the circumstances of the present case are such that we may well have been entitled to refuse the application for condonation irrespective of the prospects of success. This court has often said that in cases of flagrant breaches of the rules, especially where there is no acceptable explanation therefor, the indulgence of condonation may be refused, whatever the merits of the appeal.<sup>16</sup> Here, the delay is so unreasonable and the explanation offered so unacceptable and wanting that we may well have been justified in adopting that course.'

[27] The conclusion is apposite to this case. Bearing in mind that condonation is not merely for the asking, among some of the considerations to be taken into account in

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<sup>14</sup> *Valor IT v Premier, North West Province and Others* [2020] ZASCA 62; [2020] 3 All SA 397 (SCA); 2021 (1) SA 42 (SCA) para 38; *Mosselbaai Boeredienste (Pty) Ltd v OKB Motors CC* (1216/21) [2023] ZASCA 91; 2023 JDR 2033 para 11.

<sup>15</sup> *Mulaudzi v Old Mutual Life Insurance CO (South Africa) Ltd and Others* [2017] ZASCA 88; [2017] 3 All SA 520 (SCA); 2017 (6) SA 90 (SCA) (*Mulaudzi*) para 35.

<sup>16</sup> *Blumenthal and Another v Thomson NO and Another* 1994 (2) SA 118 (A) at 1211; *Ferreira v Ntshingila* 1990 (4) SA 271 (A) at 281J-282A; *Rennie v Kamby Farms (Pty) Ltd* 1989 (2) SA 124 (A) at 131H-132A; *P E Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 794 (A) at 799; *Mbutuma v Xhosa Development Corporation Ltd* 1978 (1) SA 681 (A) at 687A.

exercising the court's discretion, is the degree of non-compliance and the explanation therefor. This Court in *Mulaudzi* said that '[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 responsibility'.<sup>17</sup> In this case, there is absolutely no satisfactory and acceptable explanation for the flagrant breaches of the rules. In these circumstances, it is unnecessary to assess the prospects of success, since the cumulative effect of the factors already mentioned is fatal to the success of the application for condonation.

[28] In the result, the following order is granted:

- 1 The application for condonation and reinstatement of the appeal is dismissed with costs, including the costs of two counsel where so employed.
- 2 The matter is struck off the roll with costs, including costs of two counsel where so employed.

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W HUGHES  
JUDGE OF APPEAL

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<sup>17</sup> *Mulaudzi* para 26; *Uitenhage Traditional Local Council v South African Revenue Service* [2003] 4 All SA 37 (SCA); 2004 (1) SA 292 (SCA); 66 SATC 265 para 6. Dictum applied in *Road Accident Fund v Lewis* [2025] ZASCA 174; 2026 (3) SA 490 (SCA); [2026] 1 All SA 70 (SCA) para 8.

**Appearances**

For the appellants: V Maleka SC with F Pelser  
Instructed by: Ka-Mbonane Cooper, Johannesburg  
Van Der Merwe & Sorour, Bloemfontein

For First respondent: A Cockrell SC with A Friedman  
Instructed by: Fluxmans Incorporated, Johannesburg  
Lovius Block Inc, Bloemfontein

For Second respondent: F A Snyckers SC with A J D'Oliveira  
Instructed by: Truter Jones Incorporated, Johannesburg  
Webbers Attorneys, Bloemfontein.