



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

Not Reportable

Case no: 148459/2024

In the matter between:

THE INFORMATION REGULATOR OF SOUTH AFRICA

APPLICANT

and

**THE MINISTER OF BASIC EDUCATION
(NATIONAL DEPARTMENT OF BASIC EDUCATION)**

1ST RESPONDENT

**THE DIRECTOR-GENERAL,
(IN THE DEPARTMENT OF BASIC EDUCATION)**

2ND RESPONDENT

SA NATIONAL EDITORS FORUM

3RD RESPONDENT

ARENA HOLDINGS (PTY) LTD

4TH RESPONDENT

AFRIFORUM NPC

5TH RESPONDENT

Heard: 12 March 2026

Delivered: 3 June 2026

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

Mooki J (Molopa-Sethosa J and Morgan AJ concurring)

- [1] The Information Regulator seeks leave to appeal the decision by the Court condoning the appeal by the Department of Basic Education, and the Court's setting aside of the Regulator's notices against the Department.
- [2] The grounds of appeal are essentially as follows. The Regulator contends that the Court had no power to condone the late filing of the appeal by the Department and that the Court ought to have followed authorities referenced by the Regulator; that the Court over-reached its domain when the Court decided the matter based on the publication of matric results not constituting the processing of "personally identifiable information", and that the Department did not prove any of its grounds of appeal.
- [3] The Regulator submits that the Court failed to follow binding authority. The Regulator submitted that the Court ought to have followed *Mohlomi*¹ and that *Mohlomi* held that "a Court does not have inherent jurisdiction to condone non-compliance with statutory provisions." This submission is not faithful to what was said in *Mohlomi*. *Mohlomi* did not use the language referenced in the submission. Indeed, *Mohlomi* was not deciding the question of whether the High Court had inherent power to condone non-compliance with a period stipulated in a statute. The Court was dealing with the constitutionality of section 113(1) of the Defence Act (44 of 1957).
- [4] The submission by the Regulator is removed from what the court in *Mohlomi* said, namely the following:

¹ *Mohlomi v Minister of Defence* 1997 (1) SA 124 (26 September 1996)

The wording of that looks odd. It appears to have presupposed a power inherent in the courts to condone defaults of the kind covered which needed to be preserved. But courts have no such inherent power, and none derived from any source unless and until it is conferred on them. That the sub-section grants them the power in the circumstances mentioned must necessarily be implicit in its terms, however, since they make no sense otherwise.²

- [5] *Mohlomi* was not dealing with the High Court’s “inherent jurisdiction to condone non-compliance with statutory provisions,” contrary to submissions on behalf of the Regulator. *Mohlomi* also was not answering the question whether a court can condone non-compliance with a time-period only where there is express power that permits granting condonation.
- [6] The Regulator also referenced *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd*³ as binding on this Court. It was submitted that the import of this decision is that the appeal by the Department lapsed because the appeal was not served on the Regulator within 30 days of the period specified in section 97(1) of POPIA. *Finishing Touch* did not address the power of a court to grant condonation where an applicant failed to comply with a period stipulated in a statute. *Finishing Touch* was concerned with the interpretation of a court order.⁴
- [7] The Regulator submitted that the decision in *Toyota South Africa Motors (Pty) Ltd v Commissioner for the South African Revenue Service*⁵ is not good authority for the proposition that the High Court has power to condone non-compliance with section 97 of POPIA. There was no elaboration as to why this should be the case.
- [8] *Toyota* concerned an appeal to the High Court from the Tax Court. The appeal was made outside the stipulated 21 business days. The matter eventually came before the

² Para 17

³ (363/11) [2012] ZASCA 49 (30 March 2012)

⁴ See paragraphs 1, 13, and 20

⁵ 2002 (4) SA 281 (SCA)

Supreme Court of Appeal, which framed the issue for determination as follows: “We are dealing here with non-compliance with a statutory provision laying down the time within which an appeal from the decision of the Special Court must be noted.”⁶ The Supreme Court then said “It is of no practical assistance to seek to classify the provision as peremptory or directory. The enquiry is simply: what did the legislature intend? [...]”,⁷ and concluded that “In the circumstances, therefore, the legislature must have intended the appellate courts to have the final say as to whether intending appellants could proceed with their appeals or not.”⁸ The Supreme Court of Appeal has endorsed the decision in *Toyota*.⁹

[9] The Regulator submitted that courts do not give themselves powers, and that the powers of a court are sourced in the Constitution and national legislation. This statement is correct, but not in so far as the Regulator contends that a court may not adjudicate a dispute absent express power to do so. The legal position was stated long ago in *Toyota*, namely that the intention of the Parliament behind the provision in question is to be examined. I do not consider that the decision in *AmaBhungane*¹⁰ is at odds with the law as stated in *Toyota*. The court in *AmaBhungane* was dealing with the exercise of power by a functionary. It did not make a statement on the law about a court carrying out a judicial function in adjudicating a dispute.

[10] The Regulator further submitted that the decision in *Phillips*¹¹ was not good law and that the Court gave inadequate reasons for not following *Compare Wellness Medical*

⁶ Para 9

⁷ Para 9, internal citation omitted

⁸ Para 9, 11

⁹ *Ncala v Park Avenue Body Corporate and Others* (813/2023) [2026] ZASCA 16 (12 February 2026), para 50

¹⁰ *Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v Amabhungane Centre for Investigative Journalism NPC and Others* 2021 (3) SA 246 (CC). See paragraph 76: “Yes, a substantive provision conferring the power would have been a “nice-to-have”, but I do not agree that its absence must legally result in a lack of power.”

¹¹ *Phillips and Another v Director of Public Prosecutions and Others* 2003 (3) SA 345 (CC)

Scheme.¹² No particular submission was made as to why *Phillips* is not good law. The Court's view on *Compare Wellness Medical Scheme* is set out in the main judgement. The submissions on behalf of the Regulator on the import of *Compare Wellness Medical Scheme* remain unpersuasive.

- [11] The Court did not, in the main judgement, make express reference to the source of its authority in granting condonation. It is manifest, however, that the Court considered that the power to grant condonation is implied.¹³ That is because there will otherwise be no event in the universe that would ever allow the making of an appeal outside the 30-day period stipulated in section 97 of POPIA. This would be inimical to the law by restricting the authority of a court to render justice where it is merited; based only on a view that a statutory provision does not reference an express power pursuant to which a court would condone non-compliance with a stipulated time period.
- [12] I am not persuaded that the expression “personally identifiable information” offends against the POPIA, or that it constitutes legislation by a court. The infringement notice by the Regulator pertains to the way the Department published matric results. The Regulator contended that the manner of publication breached POPIA, because the conduct by the Department amounted to the publication of personal information of students, in breach of POPIA. The Department denied that the mode of publication entailed publication of personal information in breach of POPIA. The expression “personally identifiable information” goes no further than a description of essential facts in the dispute between the parties.
- [13] The test for leave to appeal is settled. Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides that leave may only be given where the court is of the opinion that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why the appeal should be heard. The use of the word “would” has raised the threshold above that which applied under the repealed Supreme Court Act 59 of 1959: an applicant must satisfy the Court that there is a sound, rational basis

¹² (267/2020) [2020] ZASCA 91 (17 August 2020)

¹³ See para 23 of the main judgement

for the conclusion that another court would, not merely might, reach a different result.¹⁴ For the reasons set out above, I am not persuaded that the appeal enjoys a reasonable prospect of success.

[14] I am also not persuaded that the application raises compelling reasons that warrant granting leave to appeal. It is unnecessary to repeat what is recorded above in this regard.

[15] I make the following order:

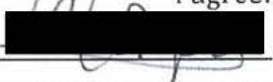
(1) The application is dismissed.

(2) The applicant is ordered to pay costs, such costs to include the costs of Senior Counsel on Scale C; the costs of Counsel otherwise being on Scale B.



O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree:

L MOLOPA-SETHOSA

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree:

¹⁴ See *The Mont Chevaux Trust v Tina Goosen and Others* 2014 JDR 2325 (LCC) para 6; *S v Notshokovu* [2016] ZASCA 112 para 2; and *Member of the Executive Council for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 paras 16-17.


M MORGAN

JUDGE (Acting) OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the Applicant:	K Tsatsawane SC (with T Moretlwe)
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Counsel for the 1 st and 2 nd respondents:	M Oosthuizen SC (with S van Helsdingen)
Instructed by:	The State Attorney, Pretoria
Counsel for the fourth and fifth respondents:	Q Pelser SC
Instructed by:	Hurter Spies Inc.
Date heard:	12 March 2026
Date of judgment:	3 June 2026