



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: HCA30/2025

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

19/08/2026
Date

[REDACTED]
Signature

In the matter between:

MOTHAPO MOCHEKO EDWARD

APPELLANT

AND

MATHIBEDI FRANK KGAROSE

RESPONDENT

Delivered:

19 August 2026

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 19 August 2026 at 16:00.

Date heard:

15 May 2026

Coram:

Naude-Odendaal et Ngobeni JJ

JUDGMENT

NGOBENI J

[1] This is an appeal against the judgment and order granted by the learned Magistrate Mokgokong, of the Magistrates' Court Mankweng (court *a quo*) on 25 March 2024. The court *a quo* dismissed the application for rescission of the judgment that was granted against the appellant on 06 October 2022, under case number 552/2021. This appeal is against the decision of the court *a quo* for declining to rescind the order that it granted against the appellant on 06 October 2022.

[2] The order was for damages arising from the motor vehicle accident that took place on 23 October 2021. The brief facts of this matter are that there was allegedly an accident that took place on 23 October 2021

between the motor vehicles belonging to or driven by the plaintiff and the defendant. In the main action the appellant is the defendant, whereas the plaintiff is the respondent in this appeal. The respondent issued summons against the appellant for damages allegedly incurred as a result of the motor vehicle accident that was mentioned. There are two claims in the summons, comprising of parts A and B.

- [3] The appellant after receiving the summons entered a notice of intention to defend which was challenged by the respondent on the basis that it did not comply with rule 13(3)(a)(iii) of the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa (Magistrates' Courts rules). It was not specifically stated in the notice of the respondent as to what part the appellant did not comply with, but be that as it may, that notice of intention to defend was withdrawn, and another one was subsequently filed, dated 09 February 2022.
- [4] A notice of bar dated 16 March 2022, which doesn't bear the stamp of the clerk of the court was as it appears from paginated page 22 of the bundle titled 'INDEX-COURT A QUO BUNDLE' was e-mailed to the e-mail address bearing the names of the legal representative of the appellant. The date on which the said e-mail was sent as it appears in the contents show that it was sent on 17 March 2022 at 12h40.

[5] On 25 March 2022 the appellant filed a notice of exception, as it appears from the stamp of the clerk of the court. According to the respondent the period for the appellant to file its plea after being barred expired on 24 March 2022. That simply means that the notice of exception was filed one day late after the due date of the plea. The argument by the appellant is that had the court *a quo* known that an exception was filed one day after the expiry of the five days bar, the court *a quo* would not have granted the judgment in default on 06 October 2022. The judgment was therefore according to the appellant granted by error.

[6] This court has to firstly deal with the condonation application as the appeal was filed out of time, because prayer 1 of the notice of appeal is for condonation of the late filing of the appeal. Condonation is not a mere formality, as it requires a full and acceptable explanation for all periods of delay¹. In *Melane v Santam Insurance Co Ltd*², the court on page 532 paragraphs C-E, said the following in dealing with a condonation application:

"In deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to

¹ P.C. v Minister of Safety and Constitutional Development and Another (2013/33619) [2024] ZAGPJHC 1165 (19 November 2024), Brummer v Gorfil Brothers Investments (Pty) Ltd and Others 2000 (5) BCLR 465 (CC) (30 March 2000), Chetty v Law Society Transvaal 1985(2) SA 756 (A).

² 1962 (4) SA 531 (A).

both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interests in finality must not be overlooked"

[7] It was aptly put in *National Union of Mineworkers v Council for Mineral Technology*³ and *Collett v Commission for Conciliation, Mediation and Arbitration and Others*⁴ that if there is no reasonable explanation for the delay, the prospects of success are immaterial and without good prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.

[8] The explanation by the appellant of the delay in noting the appeal is that the candidate attorney filed it at the Magistrates' Court Mankweng instead of the High Court. There is an annexure attached to this application titled

³ [1999] 3 BLLR 209 (LAC).

⁴ [2014] 6 BLLR 523 (LAC).

'MOT4' which bears the stamp of the said Magistrates' Court. Annexure 'MOT6' to this application is the receipt issued by the clerk of the court, Mankweng, dated 26 June 2024 for the amount of R1 000-00 for case number 552/2021. It is evident from that annexure that an amount for security on appeal was paid to the clerk of the court in Mankweng.

[9] If this court for a moment accepts that a further delay after the lapse of the 19-day period of filing of the appeal was that the notice was filed at the wrong court, are there prospects that the appeal will succeed, as clearly required in the *National Union of Mineworkers* and *Collet* cases quoted above. The appellant in his view believes that because his exception was filed one day out of time, then the default judgment was granted by mistake and therefore should be set aside on that basis.

[10] The court *a quo* clearly clarified that aspect in its reply to request for reasons dated 25 April 2024 and that judgment was rightly granted after the expiry of the period of bar, and therefore there was no *iustus error*, and I fully agree with that reasoning of the court *a quo*, and the aspect of *iustus error* raised by the appellant was rightly rejected by the court *a quo*. However, this court on the issue of the delay cannot ignore the fact that the notice of appeal was filed at the wrong court at some stage.

[11] This matter arose from a collision of cars. To determine fault based on negligence under those circumstances might be a value judgment that

would depend on evidential material presented that must be assessed. After that assessment, judgment may go in favour of any of the parties. Therefore, the issue of prospects of success in favour of the appellant cannot be ruled out. In the result the condonation application must succeed.

[12] The next issue that this court has to deal with is as to whether the court *a quo* rightly dismissed the rescission of judgment application that was brought by the appellant or not. In the Magistrates' Court, the rescission application is governed by provisions of section 36 of the Magistrates' Courts Act 32 of 1944 (Act 32 of 1944) and Magistrates' Court rule 49. I have already rejected the argument by the appellant that the judgment was granted by error, and therefore the provisions of section 36 of Act 32 of 1944 do not find application.

[13] It is clear from the court record of the court *a quo* that the application for rescission of judgment was not brought within 20 days as stipulated in Magistrates' Court rule 49(1). The application of the appellant for rescission of judgment was premised on the fact that it was granted by error, the contention that the court *a quo* rightly dismissed. The issue pertaining to the merits of the case were never placed before the court. I do take note of the fact that the appellant did not plead to the particulars of claim because he raised an exception.

14] In rescission of judgment applications, it is generally accepted that at least an applicant will state what his or her defence would be on the merits so that the court can determine the prospects of success. That was succinctly stated in *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)*⁵ on paragraph 11 where the following was stated:

"...the courts generally expect an applicant to show good cause (a) by giving a reasonable explanation of his default, (b) by showing that his application is made bona fide, and (c) by showing that he has a bona fide defence to the plaintiff's claim which prima facie has some prospect of success"

[15] In the case at hand the fact that the argument of the appellant was restricted to the fact that the judgment was granted by error, confined the court *a quo* to deal just with that aspect only and that is clear from the reasons that were provided by the court *a quo*. Litigation must be brought before courts and concluded so that people involved can go on with their lives. Parties usually depend on legal advice given to them by their legal representatives.

[16] The parties to litigation are usually not responsible for the drafting papers, because often, they don't have knowledge of drafting court

⁵ 2003 (6) SA 1 (SCA).

papers. If the very professionals who are responsible to carry out their instructions do not carry that mandate precisely, the clients are the ones who suffer because of cases that do not end. An example of that in this case is that an appeal was initially lodged in the Magistrates' Court, despite the fact that the heading of the notice of appeal clearly shows that the case had to be heard in the High Court, which just shows ignorance. These are unnecessary delays that make cases to drag for long periods of time unnecessarily, with clients suffering financially and emotionally because of cases that do not end.

- [17] From the explanation proffered by the appellant the court must determine as to whether he was in wilful default or not by not attending court on the day that the default judgment was granted. The appellant states that there was a breakdown of communication between him and his legal representative. I cannot therefore say that he was in wilful default. This court looks beyond the technicalities that are involved on how the case was dealt with and will give clear directions so that the case can move towards finality. Finalisation of cases is a concern for the courts as clearly voiced out by the Constitutional Court by saying the following:

"Like all things in life, like the best of times and the worst of times, litigation must, at some point, come to an end. ... for the principles of legality and finality of judgments are the oxygen without which the rule of

*law languishes, suffocates and perishes*⁶". The quoted extract is appropriate in this case as direction must be given to avoid that this matter goes back and forth between the courts without clear direction.

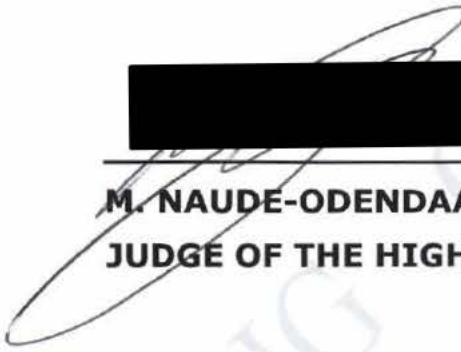
[18] The court *a quo* did not deal with the merits of this case. The case must at some stage be fully ventilated before the court so that finality can be reached.

[19] In the result the following order is made:

- (i) the appeal is upheld,
- (ii) the order of the court *a quo* dated 25 March 2024 is set aside, and replaced with the following order: "Application for rescission is hereby granted",
- (iii) the matter is referred back to the court *a quo* to continue in terms of Magistrates' Court rule 19 (Exceptions and applications to strike out), and the time periods as stated in the said rule must be adhered to after service of this order to the parties,
- (iv) each party to bear its own costs.

⁶ Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021).




J.T. NGOBENI**JUDGE OF THE HIGH COURT****I Agree**


M. NAUDE-ODENDAAL**JUDGE OF THE HIGH COURT****Appearances**

Counsel for the Appellant:

Adv. A.T. Raselebana

Instructed by:

Mmakola Matsimela Attorneys

Counsel for the Respondents:

No appearances

Date of hearing:

15 May 2026

Date of judgment:

19 August 2026