



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2026-027289

In the matter between

THE DEMOCRATIC ALLIANCE

APPLICANT

and

**MANGAUNG METROPOLITAN MUNICIPALITY
THE MUNICIPAL MANAGER: MANGAUNG
METROPOLITAN MUNICIPALITY**

FIRST RESPONDENT

SECOND RESPONDENT

Neutral citation: *Democratic Alliance v Mangaung Metropolitan Municipality and Another* (2026-027289) [2026] ZAFSHC 419 (9 September 2026)

Coram: MATSHELO AJ

Heard: 31 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand-down is deemed to be 9 September 2026.

Summary: Application for condonation – leave to appeal – dismissed.

ORDER

- 1 The application for condonation is dismissed.
 - 2 The applicant is ordered to pay the costs of first and second respondents in the condonation application. The costs of counsel are on scale B.
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JUDGMENT

Matshelo AJ

[1] The applicant seeks condonation application for the late filing of its application for leave to appeal. The court handed down its ex-tempore judgment on 5 June 2026. The applicant filed her leave to appeal on the Judiciary's court online electronic filing platform on 26 June 2026, and filed a hard copy on 7 July 2026.

[2] The applicant submitted to pay the costs of the application unless the application is opposed. The first and second respondents did not oppose the application for condonation.

[3] I heard both the application for condonation and leave to appeal, though counsel for applicant was not aware that the application for condonation had been filed. However, he addressed the court on it, and counsel for respondents chose not to oppose the granting thereof.

[4] The applicant states that on 26 June 2026 he caused the application for leave to appeal to be submitted online. He understood that the application was timeously submitted. However, on 3 July 2026 he received an email notification to the effect that the document had been rejected. The reason for the rejection, with an added message by the registrar, was, 'You should file hard copies.'

[5] The applicant states that on 3 July 2026 he learned that a person who deals with appeals at the High Court, the appeals and review registry clerk, was out of office when

his candidate attorney, Ms Michaela Swart, attempted to file a hard copy.

[6] On 6 July 2026, upon the appeals and review registry clerk's return to office, Ms Swart was informed that the application for leave to appeal must be accompanied by a court order and judgment. The Applicant states that on 7 July 2026, he took appropriate steps to ensure that the hard copy filing bundle, with the court order and judgment, was prepared and filed.

[7] The applicant states that the delay was slight and was not occasioned by any disregard of the rules of the court or any wilful default on his part. He further states that he had already taken steps to file the application within the stipulated time by submitting the application online on 26 June 2026.

[8] The applicant states that respondents will not suffer any prejudice if condonation is granted because the delay is minimal and concerns filing and not any substantive failure to prosecute the application. He further states that the respondents were aware of his leave to appeal since 26 June 2026.

Discussion

[9] The applicant shifts the blame to his candidate attorney for failure to file the application on time. He states that he received a message via email informing him that he is expected to file a hard copy. The question is, did he know about this requirement as the principal? If yes, why did he not inform his candidate attorney? The candidate attorney is under his tutelage. An attorney is expected to be acquainted with the Uniform Rules of this Court and the directives of the division.

[10] He cannot blame non-compliance of the prescripts on the candidate attorney. It is understandable if the candidate attorney is not acquainted with the procedures regarding the filing of the application for leave to appeal, she is a candidate attorney after all. The buck stops with her principal. She relies on him for guidance. The blame is on the doorstep of the principal instead of trying to shift the blame to the candidate attorney. He is expected to guide the candidate attorney as to exactly what is expected of her when filing the leave to appeal application.

[11] The applicant contends that the respondents are not prejudiced by the delay in filing her condonation application. This is not a determining factor. The court in *Ferris and Another v Firststrand Bank Limited and Another (Ferris)*¹ held that the absence of prejudice is not the factor used to determine the grant of condonation. There is no automatic grant.

[12] In the *Ferris* case, the applicants attributed the delay to their correspondent attorney.² The applicant also attributed the delay to the candidate attorney. The explanation by applicant's attorney is not satisfactory and does not warrant the granting of the condonation.

[13] In *Grootboom v National Prosecuting Authority*³, the Constitutional Court said the following:

'It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default'.⁴

Parties who litigate must not take the court for granted. I feel in this instance the court was taken for granted. What aggravated the situation is when even counsel for applicant was not even aware that there is a condonation application. He was made aware by the court, it is then that he placed an argument for condonation to the court.

[14] Application for condonation is not a mere formality. It is an application that must be taken and even argued with the seriousness that it deserves. The main application (in this case leave to appeal) falls on it. If it refused the leave to appeal application falls off.

[15] The court in *Melane v Santam Insurance*⁵ held that the following are core factors that the court considers in granting a condonation application, viz: the degree of lateness, explanation for delay or the reasons for the late referral, prospects of success in the

¹ *Ferris and Another v Firststrand Bank Limited and Another* (CCT 52/13) [2013] ZACC 46; 2014 (3) SA 39 (CC); 2014 (3) BCLR 321 (CC) para 11.

² *Ibid* para 11.

³ *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC).

⁴ *Ibid* para 23.

⁵ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

underlying appeal, importance of the case,⁶ the prejudice that either party may suffer, and the administration of justice. Though the delay is minimal, the explanation for the delay is not satisfactory. There are no prospects of success in the underlying appeal and the delay itself is prejudicial to the respondent. (My emphasis.) I am not convinced nor persuaded that it is in the interest of justice that the application for condonation be granted.

Costs

[16] The fact that the condonation application was unopposed does not relieve the applicant from the responsibility to bear the burden of costs.⁷ Moreover, when the application is not granted. It is trite that the costs follow the cause. The court exercises its discretion in the awarding of costs. Therefore, the applicant is responsible for the costs of this application even though it is not granted.

[17] I will adopt the approach of the court in *Mkhwebane v Office of the Public Protector and Others*⁸ where the court deemed it not necessary to address the application for leave to appeal given its refusal to grant the application for condonation.⁹ I would have dismissed the application for leave to appeal. I do not see how another court will arrive at a different decision. Since I heard both applications, I can simply say that the applicant did not provide compelling reasons, and there are no prospects of success.

[18] Therefore, I make the following order:

- 1 The application for condonation is dismissed.
- 2 The applicant is ordered to pay the costs of first and second respondents in the condonation application. The costs of counsel are on scale B.


P MATSHELO
ACTING JUDGE OF THE HIGH COURT

⁶ Ibid at 532C.

⁷ *Santam Versekeringsmaatskappy Bpk v Byleveldt* 1973 (2) SA 146 (A).

⁸ *Mkhwebane v Office of the Public Protector and Others* (2024-023495) [2026] ZAGPPHC 362 (15 April 2026).

⁹ Ibid para 32.

Appearances

For the Applicant:

Adv N Snellenburg SC

Instructed by:

MJ van Rensburg

For the Respondents:

Adv PT Masihleho

Instructed by:

T Masoetsa & G Goolam