



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

Case number: 124201/2024

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

2 September 2026

SIGNATURE

In the matter between:

PATRICIA MMAKWATI RADITHALO

Applicant

and

THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent

ABSA TRUST LIMITED

Second Respondent

ERNEST THABANG RADITHALO

Third Respondent

MASABATA JANE THLAPISO obo LEFIKA TLHAPISO

Fourth Respondent

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives

by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 17:00 on 2 September 2026.

JUDGMENT

CP Wesley, AJ

- [1] This is the judgment in an opposed motion that was argued before me on 4 August 2026, after which I reserved judgment.
- [2] The applicant is Ms Patricia Mmakwati Radithalo, to whom I will refer as “Radithalo”. The first to fourth respondents are, respectively, the Master of the High Court, Pretoria, Absa Trust Ltd, Mr Ernest Thabang Radithalo, and Ms Masabata Jane Thlapiso on behalf of Lefika Tlhapiso. I will refer to the first respondent as the “Master”, to fourth respondent as “Thlapiso”, and to Lefika Tlhapiso as “Lefika”. When the application was lodged Lefika was a minor. His mother, Thlapiso, accordingly acted on his behalf when lodging the application. By the that the application was argued Lefika has attained the age of majority. Nothing turns on this.
- [3] Radithalo applies for an order in terms of section 2(3) of the Wills Act 7 of 1953 (“**Wills Act**”) declaring that a copy of the last will and testament of the late Mr David Mathlo Raditlhalo (“**deceased**”), being annexure “A2” to the founding affidavit, is the deceased’s last will and testament and that it be accepted for purposes of the Administration of Estates Act 66 of 1965. Section 2(3) provides in the applicable part as follows:
- “If a court is satisfied that a document ... drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will ..., the court shall order the Master to accept that document ... for the purposes of the Administration of Estates Act, 1965 ... as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in [section 2(1) of the Wills Act].”

- [4] Section 2(1) of the Wills Act sets out the formal requirements for a valid will. It is not necessary for purposes of this judgment to repeat these.
- [5] Only Thlapiso opposes the application. Her opposition is founded on a narrow basis, which can be summarised as follows: while she accepts that annexure “A2” is a copy of the deceased’s last will, the will falls to be rejected as such because the deceased failed to amend it to include Lefika as an heir.
- [6] Thlapiso’s answering affidavit was delivered some four months late, and she accordingly applies for condonation for the late filing thereof. This issue must be determined first, which I proceed to do.
- [7] In *Grootboom v National Prosecuting Authority* 2014 1 BCLR 65 (CC); 2014 2 SA 68 (CC) the Constitutional Court stated the principles that apply to an application for condonation such as this in the following terms:
- “[20] The respondents were late in filing their answering affidavits as well as their written submissions. This delay put a serious hurdle in the way of their quest to be heard in this Court: they had to apply for condonation. It is axiomatic that condoning a party’s non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has a discretion whether to grant condonation.
- [21] ...
- [22] I have read the judgment by my colleague Zondo J. I agree with him that, based on *Brummer* and *Van Wyk*, the standard for considering an application for condonation is the interests of justice. However, the concept ‘interests of justice is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that

both *Brummer* and *Van Wyk* emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.

[23] 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."

[7] As succinctly stated in *Neutron Energy Africa (Pty) Ltd v Hengyi Electrical Co Ltd* (58561/2021) [2023] ZAGPJHC 1307:

"[26] The test is no more nor less that of justice and equity, that is a question of fairness to both sides as to whether or not further sets of affidavits should be permitted. This requires a proper explanation as to why such an affidavit was required to be filed, and the court must be satisfied that there is no prejudice in this regard."

[8] The explanation that is given by Thlapiso in paragraph 6 of the answering affidavit for why it was delivered late is vague, unconvincing, and supports none of the factors that arise for consideration as per *Grootboom* above in an application for condonation. On this basis alone Thlapiso's application for condonation for the late filing of the answering affidavit must be refused.

[9] The factor of Thlapiso's prospects of success in opposing the application calls for particular consideration. It is evident that Thlapiso does not contest the validity of annexure "A2" because it is not a copy of the deceased's last will, nor because of any non-compliance with any of the formalities set out in section 2(1) of the Wills Act, nor on any other basis that would disqualify it from being found to be a copy of the deceased's last will. In the result, the

court is driven to find that Thlapiso has no prospects of success in opposing the application.

[10] It follows that Thlapiso's application for condonation for the late filing of her answering affidavit must be refused.

[11] Notwithstanding the foresaid, the court must also find that on the basis of the considerations taken into account concerning of Thlapiso's prospects of success, she has not put up a cognisable defence to the application.

[12] Taking all the facts into account, the court is of the view that annexure "A2" purports to be a copy of the deceased's last will and it evidently complies with the formalities set out in section 2(1) of the Wills Act. The court is satisfied that the document was intended to be the deceased's will, within the ambit of section 2(3) of the Wills Act.

[131] As a general principle the successful party is entitled to costs.¹ There is no reason why the general principle should be departed from in this matter. In accordance with Uniform Rule 67A(3)(a), and taking the factors under 67A(3)(b) into account, the costs shall be on Scale B.

[12] In the result, the following order is made:

1. The fourth respondent's application for condonation for the late delivery of her answering affidavit is dismissed with costs on a party and party basis, and on Scale B.
2. It is declared, in terms of section 2(3) of the Wills Act 7 of 1953, that the document that is annexed to the founding affidavit and marked annexure "A2" is the last will of the late David Mathlo Radithalo (ID number 5[...]).
3. The first respondent is ordered to accept the said last will, annexure "A2" to the founding affidavit, for the purposes of the Administration

¹ *Fripp v Gibbon & Co* 1913 AD 354 at 357.

of Estates Act 66 of 1965.

4. The fourth respondent is to pay the applicant's costs in the application on a party and party basis, and on Scale B.

CP WESLEY, AJ.

Acting Judge of the High Court

Date heard: 4 August 2026.

Judgment date: 2 September 2026.

Appearance:

Applicant:

Counsel: WC Carstens

Instructed by: SNB Attorneys

Fourth Respondent:

Counsel: LR Matshidza

Instructed by: Maraga Attorneys