



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

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

DATE: 01/09/2026

SIGNATURE

Case No: A215/25

Court a quo Case no: 24564/22

In the matter between:

FRED NDLOVU

Applicant

and

HALEKOPANE KELETSO MATSIPA

First Respondent

PHELOSO JACKSON MPHAFUDI

Second Respondent

MZWANDILE THEKISO SELELE

Third Respondent

GRANT NEWTON

Fourth Respondent

JUDGMENT

Summary: Application for reinstatement of lapsed appeal and ancillary relief including application to introduce further evidence on appeal.

Held: No compliance with any of the provisions of Rule 49 in relation to the prosecution of the appeal for a prolonged period. No appeal record filed. Application dismissed.

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J (BAM J et MINNAAR AJ CONCURRING):

INTRODUCTION:

[1] Applicant served a notice of motion titled “*Correct and consolidated notice of motion*” on 29 July 2026 wherein the following relief is claimed:

- “1. Granting leave to the Appellant to supplement and correct the Combined Applications and the original Notice of Motion in accordance with the Appellant’s Replying and Supplementary Affidavit.
2. Condoning, under Uniform Rule 49(2), the late delivery of the Notice of Appeal filed on 24 January 2025.
3. Condoning the Appellant’s failure to apply for a hearing date within the period prescribed by the Uniform Rule 49(6)(a).
4. Condoning, to the extent necessary, non-compliance with the Uniform Rule 49(7)(a), including the failure during the earlier period to deliver an application under the proviso to Rule 49(7)(a)(ii) while the record was not ready.

5. *Reinstating appeal A215/25 under Uniform Rule 49(6)(b), read with Rule 37(3) to the extent necessary.*
6. *Directing that the electronic appeal record located principally at CaseLines 23 to 33 be accepted as the appeal record, subject to such focused indexing, paginations, line-numbering or other regularisation as the Court or Registrar may direct within a period fixed by the Court.*
7. *Condoning, under section 78 read with section 82(e) of the Promotion of Access to Information Act 2 of 2000, the late institution of the PAIA court application, alternatively remitting that issue for determination with such directions as the Court considers otherwise.*
8. *Receiving, under section 19(b) of the Superior Courts Act 10 of 2013, the confined objective further evidence identified in the Appellant's application and filed source record, to the extent it is not already part of the ordinary appeal record, including:*
 - 8.1 *the certified liquidation and distribution accounts of Micawber 148 (Pty) Ltd and the related liquidation orders;*
 - 8.2 *The PwC and FluidRock corporate-record custody correspondence;*
 - 8.3 *The DCV dividend calculation and certification;*
 - 8.4 *the 28 August 2015 Ithemba shareholder list and the associated compelled-disclosure source;*

8.5 *the bounded litigation and liquidation documents identified in the Appellant's filed practice and source-control materials.*

9. *Alternatively to prayer 8, remitting under section 19(c) of the Superior Courts Act 10 of 2013 any narrowly identified factual issue requiring further hearing, with the directions defining the documents, issues, evidence and timetable.*
10. *Directing that the Respondents' affidavit served on 29 July 2026 and the Appellant's Replying and Supplementary Affidavit be read as the answering and replying papers respectively for the threshold applications, without prejudice to the Court's determination of the lateness and costs consequences of the Respondents' filing.*
11. *Reserving the costs of the condonation, reinstatement, record-regularisation and further-evidence applications, alternatively directing that those costs be costs in the appeal.*
12. *Refusing the Respondents' prayer for costs on Scale C.*
13. *Further and/or alternative relief".*

[2] Primarily, Applicant seeks reinstatement of a lapsed appeal and condonation for non-compliance with various sub-rules of Rule 49 in relation to the prosecution of the appeal. Applicant also seeks a direction that the electronic appeal record located at CaseLines index items 23 to 33 be "accepted" as the appeal record, and an order that the late institution of an application in terms of the Promotion of

Access to Information Act 2 of 2000 ("PAIA") be condoned. Applicant further seeks an order that the court receive further evidence on appeal.

[3] The application for reinstatement of a lapsed appeal and the substantial ancillary relief sought in relation thereto follows after an order was granted by the Supreme Court of Appeal on 5 November 2024, granting leave to Applicant to appeal to the full court of this division against an order and judgment of Grobler AJ handed down on the 2nd of May 2024. After leave to appeal was granted, the Applicant failed to comply with any of the prescribed procedures in terms of rule 49 relating to the further prosecution of the appeal timeously, and/or correctly, and/or at all, which explains the various prayers for condonation in the aforementioned notice of motion.

[4] In terms of the order of Grobler AJ, an application instituted by the Applicant, claiming payment of alleged arrear dividends owing to him by virtue of his alleged shareholding in an entity known as Sechaba Group Holdings (Pty) Ltd ("Sechaba") (now deregistered), was dismissed. The four Respondents in this application, who were also the Respondents in the application *a quo*, were directors of Sechaba at the relevant time. The primary relief claimed by Applicant in the court *a quo* was for the payment of arrear dividends and interest thereon for the period between 2005 to 2015. Because Sechaba became deregistered, Applicant claimed payment from the Respondents in their personal capacities as erstwhile directors of Sechaba. The court *a quo* found that the Applicant failed to prove that he was a shareholder in Sechaba, and because there was a

foreseeable and material dispute of fact raised by the Respondents which could not be resolved in motion proceedings, the Application was dismissed.

[5] In the court *a quo*, Applicant also claimed an order to obtain documents of Sechaba previously requested in accordance with section 53(1) of PAIA, as well as an order to obtain Sechaba's financial statements for the 2021 financial year, and further company related documents for the period between 15 October 2021 and 21 December 2021. Applicant further sought an order for the imprisonment of the four Respondents for contempt of Court, resulting from the alleged non-compliance of a court order in terms of PAIA. The Applicant also sought an order that the Respondents be declared delinquent directors or placed under probation, and punitive costs. The Applicant's relief under PAIA was dismissed by the court *a quo* because the relief was sought outside the prescribed 180-day period,¹ in the absence of any condonation application. The Applicant's prayers in relation to the delivery of the financial statements referred to above, and holding the Respondents in contempt of court were similarly dismissed.

[6] Against the aforesaid background, the application for reinstatement and ancillary relief should be considered. At the hearing of the application, Applicant appeared in person and presented argument primarily focused on the reasons why the Applicant seeks an order to introduce new evidence into the appeal. However,

¹ Section 78(2)(b) of the Promotion of Access to Information Act no. 2 of 2000, Regulation 2(3) of the Promotion of Access to Information Rules and Administrative Review Rules, 2019.

there is presently no appeal before this court, and unless the appeal is reinstated by this court, that issue remains moot because this court will assume appellate jurisdiction only when the appeal is reinstated, and only then may this court consider whether this court, sitting as a court of appeal, should exercise its discretion to allow further evidence on appeal.

APPLICANT'S NON-COMPLIANCE:

[7] It is common cause that the appeal has lapsed, for various reasons. The non-compliance with the applicant's various obligations under Rule 49 to duly prosecute the appeal, which resulted in the appeal to have lapsed, are explained hereunder. It must be noted that, although applicant represented himself at the hearing before this court, he was represented by a firm of attorneys during the entire period when leave to appeal was applied for, was granted, and during the period when compliance was required with Rule 49 in relation to the prosecution of the appeal.

[8] Leave to appeal having been granted by the Supreme Court of Appeal on 5 November 2024, Applicant was enjoined to deliver a notice of appeal within 20 days, that is on or before 3 December 2024.² The Applicant delivered a notice of appeal out of time on 22 January 2025, by which time the appeal had lapsed. The Applicant was then entitled to apply for the extension of the period of 13 days in

² Rule 49(2).

terms of rule 49(1)(b)(ii), showing “*good cause*”, which the Applicant did not do until 29 July 2026, more than 18 months later.

[9] In the meanwhile, on 13 May 2025 the Applicant delivered an application for leave to adduce further evidence. That application prompted the attorneys of record for the Respondents to transmit a letter dated 21 May 2025 to the Applicant’s attorneys of record, recording that the appeal has lapsed and that the application to allow further evidence would be regarded as *pro non scripto* until the appeal was re-instated. Only on 2 July 2025, six weeks after transmission of the letter of 21 May 2025, the Applicant’s attorney of record transmitted a letter to the Respondents’ attorney of record recording that they received formal instructions to apply for the re-instatement of the appeal and condonation for the late filing of the notice of appeal. No explanation for this delay was tendered. Thereafter none of the intended steps conveyed to respondent’s attorneys were taken and almost two months later, on 25 August 2025, the Respondents’ attorney of record transmitted a further letter to the Applicant’s attorneys of record, recording that they were advised more than a month ago that the Applicant would apply for the reinstatement of the appeal and condonation for the late filing of the notice of appeal, but that the Respondents’ attorney of record still had not received those applications. Surprisingly, considering the gravity of the situation, that letter elicited no response from the Applicant’s attorneys.

[10] On 3 October 2025 the Respondents’ attorney of record transmitted a further email to the Applicant’s attorneys, recording that they were advised more than

three months earlier that the Applicant intended to apply for the reinstatement of the appeal. This letter also failed to elicit a response. However, notwithstanding the absence of any application for reinstatement and/or condonation, the Applicant served a bundle of documents on the Respondents' attorneys of record on 2 November 2025, consisting of *"Appellant's Supporting Affidavit (PAIA 180 V2.2 file pre-export); Combined Applications V9 Master (limited advancements 20-10-25); Main Heads – Procedural (V3.8.5A final Court-ready); Main Heads – Merits (V2.3 final Court-ready) and Table of Authorities"*. These documents were accompanied by a covering letter which contained the following statement:

*"The full electronic bundle including annexures A-1 → A6B, verification notes, and transcripts (7 March - 1 August 2024) is available to all parties on **CaseLines (Master Bundle 01, CaseLines 23 → 33). **"*.

- [11] This confusing bundle of documents did not contain any application for reinstatement of the appeal. The Respondents' attorney of record then addressed correspondence to the Applicant's attorney of record on 25 November 2025, which contained the following statement:

"1. We refer to our various emails and letters to you and the numerous documents recently filed by or on behalf of Mr Ndlovu [our reference to the appellant]."

2. *We have reviewed these documents carefully; however, their purpose are unclear. Please could you clarify the nature and intended effect of these files. In particular it is unclear as to the reason the transcript of the argument before the court a quo has been filed.*
3. *It appears to us that the requirements of rule 7(2), rule 49(7)(a), and rule 49(13) have yet to be satisfied.*
4. *We would be grateful to receive your response to the matters raised above by no later than Friday 29 November 2024 to enable our client to determine the appropriate next steps in the matter.*
5. *We again record the prejudice being occasioned to our client by the failure to properly prosecute this appeal ...*
6. *Our client's rights are reserved".*

[12] Included in the plethora of documents contained in that bundle was an application for a hearing date. The application for a hearing date for the appeal, which is made in terms of rule 49(6)(a), must be made within 60 days after delivery of a notice of appeal. That means that the Applicant's application for a hearing date should have been made by no later than the end of March 2025 (if it is accepted that the notice of appeal could have been filed on 22 January 2025 and not 3 December 2024). Therefore, even if it is accepted that the Applicant's late notice of appeal could be condoned at that stage (which it cannot, because there was no condonation

application filed yet) the appeal was then deemed to have lapsed by virtue of the provisions of rule 49(6)(a)(iii).

- [13] Not only did the Applicant fail to apply for an appeal date timeously, but failed to furnish security when obliged to do so. In terms of rule 49(7)(a)(i) the Applicant had to deliver a record of the appeal simultaneously with his application for a date for the hearing of the appeal. That record must comply with Rule 49(8). This he also failed to do. To date hereof there is no record that complies with rules 49(8) and/or 49(b). The CaseLines record of this matter can only be described as bewildering. There are more than 50 different items uploaded onto CaseLines, in no logical sequence, and which cannot by the wildest stretch of the imagination be described as an appeal record. Attempting to navigate these documents to make sense of what is relevant for purposes of this application is impossible. This confusing state of the documents uploaded onto CaseLines is caused *inter alia* by the fact that the Applicant uploaded various bundles of “evidence” consisting of documents which the Applicant purportedly seeks to introduce as new evidence in the lapsed appeal, and numerous individual affidavits and notices not filed in any logical sequence.

- [14] The notice of motion dated 29 July 2026 referred to above has no supporting affidavit. At the bottom of that notice the following appears:

“Take notice further that the Appellant will rely on the existing founding and confirmatory affidavits, the combined applications and annexures, the Appellant’s

replying and supplementary affidavit, the filed appeal record and such legal submissions as may be permitted”.

[15] It appears that the Applicant requires this Court to trawl through “*existing founding and confirmatory affidavits*”, and various other documents, none of which are clearly and/or individually identified, and the relevance of which do not readily appear to find support for the various different orders sought in the notice of motion.

[16] In summary, the application for reinstatement stands to be considered against the following facts:

[16.1] Applicant failed to comply with any of the procedural steps envisaged in rule 49(2), rule 49(6), rule 49(7), rule 49(8) and/or rule 49(9);

[16.2] Notwithstanding the fact that the Respondent’s attorney of record addressed repeated correspondence to the Applicant’s attorneys of record on the issue of non-compliance, the non-compliance was not cured timeously, and in some instances, at all;

[16.3] The application for reinstatement consists of an amended notice of motion as quoted above, which requires this court to troll through various unspecified (and seemingly unrelated) affidavits, in an attempt to make sense of the contents thereof, for purposes of that application.

[17] The first occasion that the Applicant attempted to provide reasons for his persistent failure to comply with the relevant rules is contained in an affidavit dated 29 July 2026. This affidavit serves to state that the attorney who assisted the Applicant in the preparation for the intended appeal left practice resulting in no other person in that practice timeously filling his position. This affidavit, however, does not explain in the required manner why the application for reinstatement was only brought during July 2026, why there is no proper record before this court, and why every required step which the Applicant had to undertake in terms of the provisions of rule 49 to properly and timeously prosecute the appeal, was not complied with. In *Uitenhage Transitional Local Council v South African Revenue Service*³ it was held as follows:

“[6] One would have hoped that the many admonitions concerning what is required of an applicant in a condonation application would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this Court: condonation is not to be had merely for the asking; 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 the responsibility. It must be obvious that if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.

³ *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at paras 6 to 7.

[7] *The appellant's affidavit consists of a number of generalized causes without any attempt to relate them to the timeframe of its default or to enlighten the Court as to the materiality and effectiveness of any steps taken by the appellant's legal representatives to achieve compliance with the Rules at the earliest reasonable opportunity."*

[18] The Applicant's affidavit dated 29 July 2026 referred to *supra* squarely falls into the category of affidavit described by the Supreme Court of Appeal in the judgment as quoted above. The absence of a proper appeal record in this matter caused substantial inconvenience to this court as well as to the Respondents. Numerous documents had to be searched for while attempting to rely on a confusing index to try and make sense of what the court is called upon to adjudicate.

THE COURT'S APPROACH TO AN APPLICATION FOR THE REINSTATEMENT OF AN APPEAL:

[19] In *United Plant Hire (Pty) Ltd v Hills*⁴ the principles upon which a court exercises a discretion to reinstate an appeal that has lapsed were stated as follows:

"It is well-settled that, in considering applications for condonation, the court has a discretion, to be exercised judicially upon a consideration of all the facts; and that in essence is a question of fairness to both sides. In this inquiry, relevant considerations

⁴ *United Plant Hire (Pty) Ltd v Hills* 1976 (1) SA 717 (A) at 720E-G.

may include the degree of non-compliance with the rules, the explanation therefore, the prospect of success on appeal, the importance of the case, the Respondent's interest in the finality of his judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive".

- [20] In *Van Wyk v Unitas Hospita*⁵ these principles were restated in the following terms:

"This court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this inquiry include but are not limited to 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 prospect of success".

- [21] In my view, considering the authorities referred to above, the Applicant has failed to satisfy this court that it is in the interests of justice that the appeal be reinstated. To arrive at this conclusion, the following considerations are relevant:

⁵ *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as amicus curiae)* 2008 (2) SA 472 (CC) at 477A-B.

- [21.1] There was non-compliance with every procedural step in terms of Rule 49, both in substance and time; non-compliance with time periods was substantial, repetitive and not explained in any rational manner.
- [21.2] There is no proper record which can assist this court, and no rational explanation was provided why a compliant record was not prepared;
- [21.3] On an analysis of the Applicant's arguments advanced during the hearing, there is no prospect of success on appeal;
- [21.4] This is not a matter which raises important points of law, nor is it in the public interest that any of the issues raised by Applicant should be resolved. The matter concerns an asserted personal entitlement to the payment of dividends based on alleged shareholding of the Applicant in a deregistered entity;
- [21.5] Should the application for reinstatement be granted, Applicant intends to proceed with an application to adduce substantial further evidence, which is doomed to fail. That issue was the focus point of the Applicant's address to this court during the hearing of the matter. An analysis of the Applicant's argument in that regard discloses that the Applicant now attempts to correct his failure to address material issues raised by the Respondents in their answering affidavit properly, at the first instance, which he ought to have dealt with in his replying affidavit.

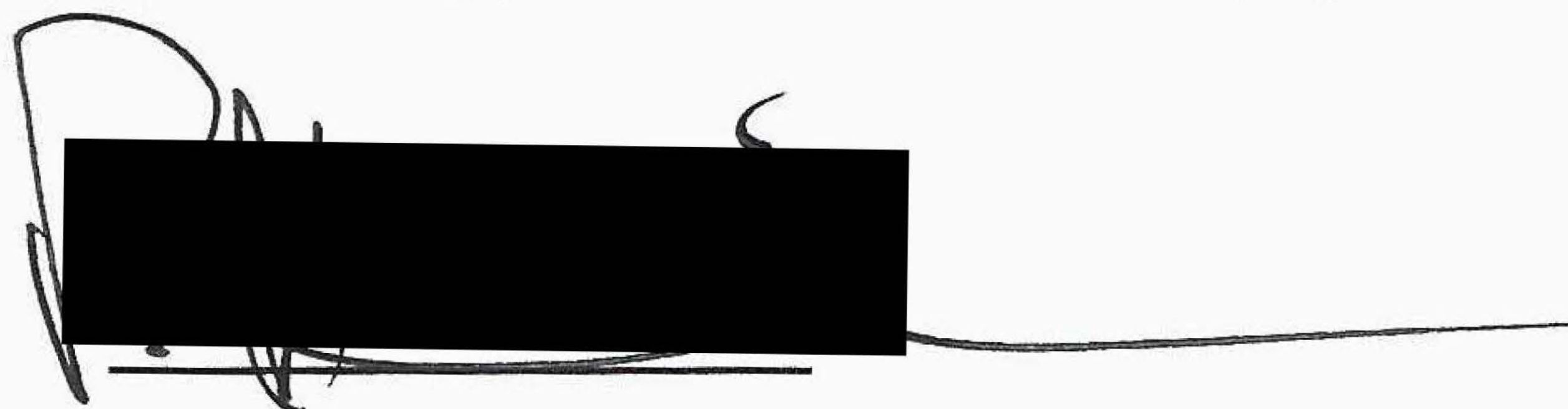
When confronted with factual disputes, Applicant boldly replied that they were irrelevant but now seeks to address those disputes with new evidence. That approach offends the principle of the finality of judgments.

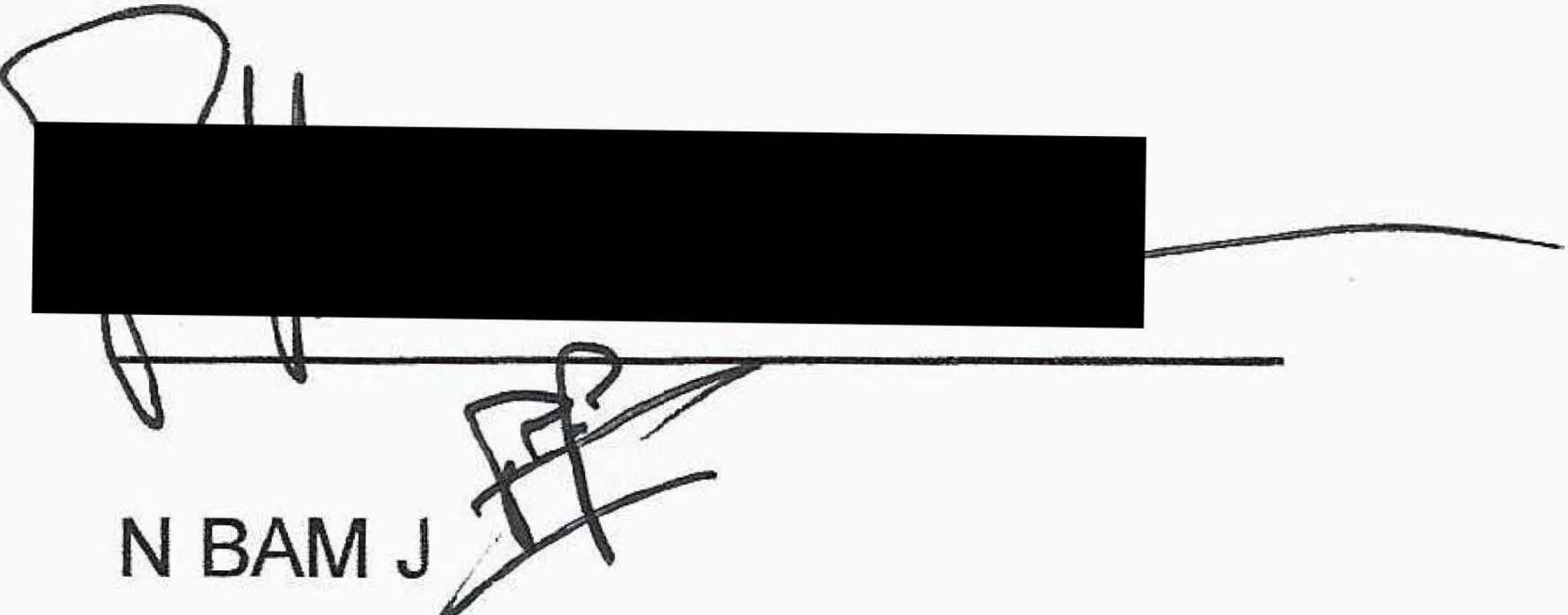
CONCLUSION:

In my view, the application for reinstatement should be refused with the result that the remainder of the relief sought in the amended notice of motion as quoted above becomes moot.

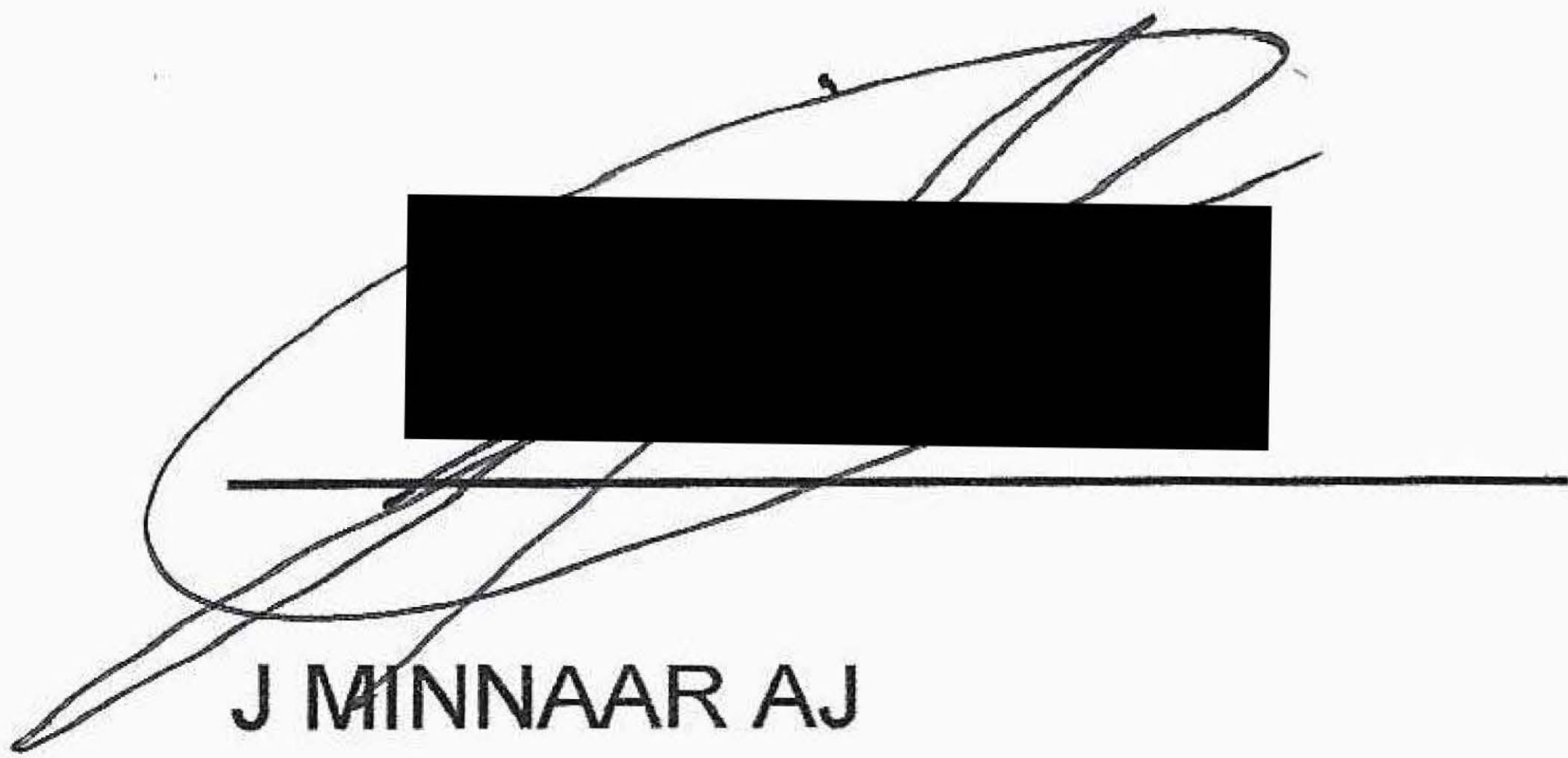
The following order is made:

1. The application for reinstatement of the lapsed appeal is dismissed.
2. Applicant is ordered to pay the costs, costs of counsel to be taxed on Scale C.


P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION, PRETORIA


N BAM J

I agree



J MINNAAR AJ

It is so ordered

APPEARANCES

FOR APPLICANT:

In person

INSTRUCTED BY:

FOR RESPONDENTS:

Adv AW Pullinger

INSTRUCTED BY:

Webber Wentzel