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

Case number: A291/2020

(1) REPORTABLE: **No**

(2) OF INTEREST TO OTHER JUDGES: **No**

(3) REVISED: **Yes**

2 September 2026

SIGNATURE

In the matter between:

MOHAMMED FARID ABDEL WAHAB

Applicant

and

MINISTER OF POLICE

First Respondent

MINISTER OF JUSTICE

Second 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 3 August 2026, after which I reserved judgment.
- [2] The applicant is Mr Mohammed Farid Abdel Wahab ("**Wahab**"). The first and second respondents are the Minister of Police and the Minister of Justice respectively (collectively "**Ministers**").
- [3] The relevant facts are as follows. On 8 August 2016 Wahab instituted an action in this court against the Ministers. In the action Wahab claimed the payment of damages for his alleged unlawful arrest and detention, and for malicious prosecution. Pursuant to a ruling that was made by the honourable Madam Justice Molefe in terms of Uniform Rule 33(4), at the commencement of the trial and by agreement between the parties, the trial proceeded before her on the issue of the merits only, with the issue of the quantum being held over for later determination (if necessary).
- [4] In a judgment and order that was granted on 20 November 2019, Molefe J dismissed the action with costs. Wahab was dissatisfied with the outcome of the action and in December 2019 he duly applied for leave to appeal.¹
- [5] On 3 August 2020 Molefe J dismissed Wahab's application for leave to appeal with costs.

¹ The notice of application for leave to appeal does not reflect a day in the date.

[6] Still dissatisfied, on 11 September 2020 Wahab applied to the Supreme Court of Appeal for leave to appeal. In an order dated 7 December 2020 the Supreme Court of Appeal granted Wahab leave to appeal to the Full Court of this Division. The order that was made was in the following terms:

- “1. Leave to appeal is granted to the Full Court of the Gauteng Division of the High Court of South Africa, Pretoria.
2. The costs order of the court *a quo* in dismissing the application for leave to appeal is set aside AND (sic) the costs of the application for leave to appeal in this court and the court *a quo* are costs in the appeal. If the applicant does not proceed with the appeal, the applicant is to pay these costs.”

[7] As conveniently summarised in *Aymac CC & Another v Widgerow*,² according to the rules that govern the appeal, the following ought to have occurred once leave to appeal had been granted:

[7.1] Wahab had to deliver a notice of appeal to the Ministers within twenty court days after the date upon which leave to appeal was granted (Uniform Rule 49(2)).

[7.2] Within sixty court days³ after delivery of the notice of appeal, Wahab had to make written application to the Registrar of this court for a date for the hearing of the appeal (Uniform Rule 49(6)(a)).

[7.3] If Wahab failed to do so, the Ministers could within ten court days thereafter apply for the set down of the appeal (Uniform Rule 49(6)(a)).

² [2008] JOL 21738 (W); 2009 (6) SA 433 (W) at para 3.

³ The period of sixty court days is, in the North and South Gauteng High courts, a period of three months: see Transvaal Rule 6(1).

- [7.4] If no such application was made by any of the parties, the appeal would be deemed to have lapsed, and the Ministers would have the right to apply for an order for their wasted costs (Uniform Rule 49(6)(a)).
- [7.5] At the same time as the application for a date for the hearing of the appeal in terms of Uniform Rule 49(6)(a), Wahab had to:
- (a) file three copies of the record with the Registrar (Uniform Rule 49(7)(a));
 - (b) furnish two copies of the record to the Ministers (Uniform Rule 49(7)(a)); and
 - (c) file a power of attorney with the Registrar authorising his attorney to appeal (Uniform Rule 7(2)).
- [7.6] If Wahab neglected to file or furnish the copies of the record within forty days after the Registrar's acceptance of the application for a date for the hearing of the appeal, the respondent could approach the court for an order that the application (for a date for the hearing of the appeal) had lapsed (Uniform Rule 49(7)(d)).
- [7.7] After delivery of the copies of the record, the Registrar had to assign a date for the hearing of the appeal, and set the appeal down for hearing on that date, giving at least twenty days' notice thereof (Uniform Rule 49(7)(c)).
- [8] On 15 December 2020 Wahab noted an appeal to the Full Court. As indicated, in terms of Uniform Rule 49(6)(a) Wahab had sixty court days (or three months) from 15 December 2020 to apply in writing to the registrar of this court for a date for the hearing of the appeal.

- [9] According to the Wahab, the appeal record was obtained on 6 July 2021. Counsel then prepared heads of argument, a practice note, a chronology and a bibliography. These were provided to Wahab's attorneys at the time ("**first attorneys**") on 13 December 2021, who reviewed them and found them to be satisfactory. Wahab's first attorneys then provided the documents to him and on 14 December 2021 he likewise reviewed them and found them to be satisfactory.
- [10] It appears that the record was uploaded onto Caseline on 11 March 2022. The papers do not show if, or when, Wahab filed three copies of the record with the Registrar (as per Uniform Rule 49(7)(a)); furnished two copies of the record to the Minister of Police and the Minister of Justice (as per Uniform Rule 49(7)(a)); or filed a power of attorney with the Registrar authorising his first attorney to appeal (as per Uniform Rule 7(2)).
- [11] On 31 March 2022 Wahab's first attorneys applied in writing to the Registrar of this court, on notice to the other parties, for a date of hearing the appeal. By that time the appeal had already lapsed some two years before, as per Uniform Rule 49(6)(a).
- [12] On 6 May 2022 the appeal was set down for hearing by the Full Court, to be heard on 17 May 2023. It must be noted that the fact that the Registrar assigns a date for the hearing of the appeal that has lapsed for non-compliance with the applicable requirements does not mean that those requirements have been waived.⁴
- [13] On 15 May 2023 the appeal was removed from the roll for hearing on 17 May 2023 by way of a notice that was delivered by Wahab's first attorneys. According to Wahab, this happened because of a "dispute regarding payment". Wahab did not explain the nature and outcome of the dispute,

⁴ See *Nawa v Marakala* 2008 (5) SA 275 (B).

which he said was not relevant to the proceedings, nor furnish any evidence in support of his submissions about same.

- [14] On or about 4 September 2023 Wahab appointed new attorneys (“**second attorneys**”) to further his appeal. Wahab was then in Egypt from 11 September 2023 to 11 March 2024 for purposes of receiving medical treatment. According to Wahab, the second attorneys took no steps to further his appeal in this time.
- [15] On 12 June 2024 Wahab terminated his second attorney’s mandate and started looking for new attorneys. On the same day Wahab appointed his third attorneys (“**third attorneys**”).
- [16] On 22 August 2024 Wahab’s third attorneys apparently discovered that the evidence of two witnesses, Mr JH Pauley (“**Pauley**”) and Detective Warrant Officer G Henning (who is referred to as Sargeant Henning on the papers) (“**Henning**”) was missing from the appeal record.
- [17] On 13 September 2024 Wahab’s third attorneys contacted the company that had recorded and transcribed the evidence at the trial about the missing evidence of Pauley and Henning.
- [18] On 24 October 2024 Wahab’s third attorneys contacted Wahab’s first attorneys as well as the State attorney, asking if they had any notes of the evidence given at the trial by Pauley and Henning.
- [19] Also on 24 October 2024, Wahab’s first attorneys replied to his third attorneys that they did not have any notes of the evidence given by Pauley and Henning. Wahab does not explain what reply, if any, was received from the State Attorney to the request that was made by Wahab’s third attorneys.
- [20] On 4 November 2024 the recording and transcribing company notified Wahab’s third attorneys that the evidence of Pauley and Henning could not be found.

- [21] On 12 November 2024 Wahab consulted with his third attorneys, who advised him to launch the present application.
- [22] The present application was then launched by Wahab's third attorneys on 2 April 2025. The relief that is sought in the notice of motion (as amended) is the following:
- [22.1] that any non-compliance with the Uniform Rules of Court or directives of this court be condoned;
- [22.2] that Wahab's appeal be reinstated;
- [22.3] that the matter be remitted to the trial court to convene a hearing in open court for purposes of the reconstructing the record as far as the evidence of Pauley and Henning is concerned;
- [22.4] that the appeal be re-enrolled for a further hearing on an expedited basis on request to the Deputy Judge President; and
- [22.5] an order for costs if the application is opposed.
- [23] Curiously, a second notice of motion seeking the same relief against the Ministers but signed by yet further attorneys ("**fourth attorneys**") on 31 July 2025 appears on Caselines. There is no explanation for this.
- [24] On the papers, Wahab explains that in its entirety he was in Egypt receiving medical treatment during or about the following times: 18 January 2019 to 17 February 2019; 15 January 2020 to 8 March 2020; 3 September 2021 to 20 January 2022; 6 April 2022 to 15 September 2022; 15 January 2023 to 6 May 2023; 11 September 2023 to 11 March 2024; and 4 December 2024 to 21 March 2025. In support of this Wahab provided what are alleged to be copies

of pages from his passport, which are of a very poor quality, that purportedly show the dates of his exits from and entrances into South Africa.

- [25] The Ministers correctly point out that the corollary of the foresaid evidence is that Wahab was in South Africa in between those times. This includes periods between 16 September 2022 and 14 January 2023, 7 May 2023 and 10 September 2023, 12 March 2024 and 3 December 2024, and 22 March 2025 and following.
- [26] The medical treatment that Wahab claims to have received in Egypt is described by him as having entailed consultations with medical practitioners such as ear, nose and throat specialists, an orthopaedic surgeon and a cardiologist; the restructure (sic) of his nose channels; the restructure (sic) of his upper and lower jaws; and bone replacements, structural restoration and maintenance through dental implants.
- [27] The evidence that is given by Wahab regarding the medical treatment that he claims to have received in Egypt is self-evidently vague. It lacks any detail regarding, for example, the nature of his condition; the type of treatment that was prescribed and the treatment that he received; the dates when he received this treatment; the recovery times for the treatment; the medical specialists and facilities that provided the treatment, and etc. This is inexplicable. Wahab has also not put up any corroborating evidence regarding this medical treatment, such as a medical report from a treating specialist, before the court. This is also inexplicable.
- [28] According to Wahab, whilst he was in Egypt receiving this medical treatment he could not attend to day-to-day functions, let alone his appeal. Wahab does not, however, explain what he did about his appeal whilst he was in South Africa during the periods mentioned above.

[29] It is common cause that Wahab's appeal has lapsed. This would have happened during or about the first quarter of 2021, upon the lapse of sixty court days (or three months) after 15 December 2020.

[30] In the heads of argument that were prepared by Wahab's counsel, it was submitted that the first issue that arises for determination is whether Wahab has made out a proper case for the reinstatement of his appeal. I agree. If this relief is not granted, then the remainder of the relief that is sought by Wahab will fall away. On the other hand, if this relief is granted, then the remainder of the relief that Wahab seeks arises for consideration. Accordingly, I intend to determine this issue first.

[31] Uniform Rule 49(6)(a) provides (as far as is applicable) that-

"[t]he court to which the appeal is made may, on application of the appellant ... and upon good cause shown, reinstate an appeal ... which has lapsed."

[32] The legal prescripts that apply where a party is applying for the reinstatement of a lapsed appeal was again conveniently summarised in *Aymac* in the following terms:

"[37] Rule 49(6)(b) permits this Court of appeal, on application and upon 'good cause shown' to reinstate an appeal which has lapsed. In an analogous context, Holmes JA laid down the applicable principles 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 it is a question of fairness to both sides. In this enquiry, relevant considerations may include the degree of non-compliance with the rules, the explanation therefor, the prospects of success of appeal, the importance of the case, the respondent's interest in the finality of his judgement. The convenience of the court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive.

These factors are not individually decisive but are inter-related and must be weighed one against the other; thus a slight delay and a good explanation may be held to compensate for prospects of success which are not strong' (*United Plant Hire (Pty) Ltd v Hills* 1976 (1) SA 717 (AD) at 720E–G).

- [38] It is accepted that, whilst an appellant should not be prejudiced by his or her attorney's incompetence, there is a degree beyond which a litigant cannot be excused thereby. This was put as follows by Steyn CJ in *Saloojee & another NNO v Minister of Community Development* 1965 (2) SA 135 (AD) at 141C–E:

'I should point out, however, that it has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with the attorney. There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations *ad misericordiam* should not be allowed to become an invitation to laxity. In fact this Court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of the failure to comply with a rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are.'

... .

- [39] Culpable inactivity or ignorance of the rules by the attorney have in a number of cases been held to be an insufficient ground for the grant of condonation (see *PE Bosman Transport Works Committee & others v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 794 (AD) at 799B *in fin*; *Rennie v Kamby Farms (Pty) Ltd* 1989 (2) SA 124 (AD) at 131I–J; *Ferreira v Ntshingila* 1990 (4) SA 271 (AD) at 281G–282A; *Blumenthal & another v Thomson NO & another* 1994 (2) SA 118 (AD) at 121C–122C). The principle established by these cases is that the cumulative effect of factors relating to breaches of the rules by the attorney may be such as to render the application for condonation unworthy of consideration, regardless of

the merits of the appeal. The same principle would apply to applications for reinstatement.

[40] There is a further reason why the court should not grant condonation or reinstatement in the face of gross breaches of the rules. Inactivity by one party affects the interest of the other party in the finality of the matter. See in this regard *Federated Employers Fire & General Insurance Co Ltd & another v McKenzie* 1969 (3) SA 360 (AD) at 363A in which Holmes JA said the following concerning the late filing of a notice of appeal:

‘The late filing of a notice of appeal particularly affects the respondent’s interest in the finality of his judgment – the time for noting an appeal having elapsed, he is *prima facie* entitled to adjust his affairs on the footing that his judgment is safe; see *Cairns’ Executors v Gaarn* 1912 AD 181 at p. 193, in which Solomon JA said:

“After all the object of the rule is to put an end to litigation and to let parties know where they stand” (see also *Minister of Land Affairs & Agriculture & others v D&F Wevell Trust & others* 2008 (2) SA 184 (SCA) ... at 199B–D).”

[33] This court is of the view that this is a case where the cumulative effect of the factors relating to the breaches of the rules, and times, that are applicable to appeals, and the very poor explanation given for the breaches by Wahab, mean that the application for reinstatement of Wahab’s appeal cannot succeed.

[34] As indicated, Wahab’s appeal lapsed sixty court days after 15 December 2020. The present application was only launched by Wahab’s third attorneys on 2 April 2025, or otherwise by his fourth attorneys on 31 July 2025. There was thus a lapse of approximately five years, or more, between when Wahab’s appeal lapsed and the lodging of this application. That is a significant period time.

[35] Wahab’s explanation for the delay of the five years between when his appeal lapsed and when this application was lodged is unacceptably thin. Wahab has not substantiated the reasons for his absence from South Africa and his

alleged inability to deal with his appeal during those times, with corroborating evidence. He has also not explained what steps he or his attorneys took to further his appeal whilst he was otherwise in South Africa.

- [36] It was argued strongly for Wahab that he should not be blamed for any remissness of his first and second attorneys. This court does not agree. On the facts as set out above, this court is of the view that this is a case where Wahab should not be absolved from the normal consequences of the remissness of erstwhile attorneys.
- [37] In his founding affidavit Wahab submits that he has good prospects of success on appeal. He says that this is evident from, first, the content of his notice of appeal and, second, from the fact that the Supreme Court of Appeal granted him leave to appeal.
- [38] Concerning the first point, the Ministers contest Wahab's grounds of appeal as contained in his notice of appeal, and with the same fervour as Wahab has arguing for them. This court cannot find that Wahab has shown that he has good prospects of success on appeal simply on the basis of his notice of appeal.
- [39] Concerning the second point, this court cannot find that Wahab has good prospects of success on appeal from the mere fact that the Supreme Court of Appeal granted him leave to appeal. This is because the Supreme Court of Appeal only granted an order for leave to appeal and not a motivated judgment explaining the bases for the order. This court is thus not privy to the thinking of the Supreme Court of Appeal in this regard.
- [40] Taking the facts and the applicable legal prescripts into account, this court is of the view that Wahab has not made out a case for the reinstatement of his appeal.

- [41] For the reason given, it follows that the remainder of the relief that is sought by Wahab falls away.
- [42] As a general principle the successful party is entitled to costs.⁵ 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 C.
- [43] Unfortunately I must also address the following issue in this judgment. Just before 11h30 on 3 August 2026, when the court intimated that it intended to adjourn for tea at 11h30 and whilst advocate Phaswane was busy with his argument for the Ministers, he replied that he was hoping to continue with his argument because he was briefed in another matter that was standing down while he attended to the matter before me. The court nevertheless adjourned.
- [44] After argument was concluded I asked Advocate Phaswane to elaborate on his utterances as above. Advocate Phaswane candidly told me that in addition to being briefed in the present matter before me for this week, 3 to 7 August 2026, he was briefed in a trial in this court between one Betty Seipei, the plaintiff, and the Minister of Police, the defendant, under case number 3928/2018, which was set down for hearing on 3 to 14 August 2026. Advocate Phaswane told me that this trial was standing down for him, while he was attending to the present opposed motion before me.
- [45] It is evident from what Advocate Phaswane has told the court that he could be guilty of double briefing in contravention of Rule 2.4 of the Uniform Rules of Professional Conduct, and Paragraph 28.9 of the Code of Conduct for All Legal Practitioners and Juristic Entities, 2019. The court accordingly directed Advocate Phaswane to report himself to the Legal Practice Council in writing regarding this issue, within 10 days from 3 August 2026, and to copy the report to the court's Registrar by way of email to a given email address. To his

⁵ *Fripp v Gibbon & Co* 1913 AD 354 at 357.

credit, Advocate Phaswane has by the date of this judgment acted accordingly.

[46] The court will also direct the Registrar to bring this judgment to the attention of the Chairperson of the Pretoria Society of Advocates, by way of email to m[...].

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

1. The application is dismissed.
2. The applicant is to pay the costs of the respondents on a party and party basis, and on Scale C.

3. The Registrar is directed to bring this judgment to the attention of the Chairperson of the Pretoria Society of Advocates, by way of email to m[...].

CP WESLEY, AJ.

Acting Judge of the High Court

Date heard: 3 August 2026.

Judgment date: 2 September 2026.

Appearance:

Applicant:

Counsel: AL Legong

Instructed by: Etienne Bedecker Inc

Respondents:

Counsel: MS Phaswane

Instructed by: State Attorney, Pretoria