



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 5796/2022

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

DATE: 29 May 2025

SIGNATURE: _____

In the matter between

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY **Applicant**

And

TSHOLOFELO MANYETSA **Respondent**

Summary: Condonation - Rule 27(3) of the Uniform Rules of the Court. Late submission - application - leave to appeal judgment of this Court. Lateness - unavailability of the Counsel and an administrative error. Delay is not excessive. Thus, reasons proved unreasonable, and application dismissed.

LEAVE TO APPEAL: JUDGMENT

NTLAMA-MAKHANYA AJ

[1] This is an application for leave to appeal against the judgment of this Court delivered on 05 March 2025. The application is comprised of two parts. Part A dealt with an application for condonation regarding the late filing of the leave to appeal application. Part B dealt with the merits of the application for leave to appeal. Both parties were legally represented and appeared before me on 19 May 2025.

[2] The Applicant sought an order for condoning the failure to timeously serve the notice of leave to appeal the judgment granted against him by this Court.

[3] The application was opposed by the Respondent in that the delay in filing the notice of the leave of appeal was unreasonable and failed to comply with the requirements of Rule 27(3) of the Uniform Rules of the Court (Rules). In terms of the aforesaid Rule, the application for condonation must be granted by the Court after it has satisfied that 'good cause' has been shown for the delay in submitting the main application of the dispute.

Background

[4] This was an application for condonation of the Applicant's late filing of the notice of leave to appeal the judgment of this Court. Following the delivery of the judgment on 05 March 2025, the Applicant ought to have filed the notice of leave to appeal on or before

27 March 2025. Instead, it was only filed on 14 April 2025 which meant eleven (11) days from the date it ought to have been filed or brought before this Court. According to the Applicant, he submitted the judgment to his Legal Department (Department) on 06 March 2025 to determine any prospects of appeal as the latter Department deals with legal issues. The Applicant submitted that on 12 March 2025, the Legal Department requested the Counsel who dealt with the matter to provide a legal opinion on the prospects of success. The said legal advice was provided on 25 March 2025 with an affirmative indication of the prospects of success on appeal. The Applicant further submitted that on 01 April 2025, his attorneys were instructed to prosecute the appeal which was served on the Respondent on 09 April 2025. The Applicant submitted that the delay in bringing the application was not inordinate because he had to satisfy himself whether there were prospects of success before the application for leave to appeal could be made.

[5] The main reason advanced by the Applicant for the delay in submitting the notice of the leave to appeal was based on the non-availability of the Counsel who dealt with this matter which then transmitted to an 'administrative error' on his part to act timeously.

[6] The application was opposed by the Respondent and filed a notice to oppose which was then unpacked during oral hearing. Broadly, the Respondent's opposition was based on the unreasonableness of the application for condonation considering the Applicant's receipt of the legal advice on 25 March 2025 and still failed to file the application timeously.

The parties' submissions

[7] The Applicant submitted that the reasons for the late filing of the application before this Court were not due to his fault because he had to consult with his legal Department and obtain an advice on the prospects of success before it could initiate the prosecution of the application for leave to appeal. He further submitted that due to the non-availability of the Counsel who dealt with this matter, the legal advice could only be furnished on 25 March 2025. According to him, the eleven-day (11) period was inordinate and not

excessive and requires this Court to adopt a ‘holistic approach’ in considering the factors that constituted the delay. Further, as indicated in the application for leave to appeal, the delay in failing to serve and file the applicant's Plea was due to the ‘administrative error’ on the part of the attorneys of the applicant and it is not inordinate. He further submitted that this case is of extreme importance in that he is an organ of state entrusted with public funds.

[8] On the other hand, as noted above, the Respondent opposed the application citing the length of the delay as unreasonable because of the delivery of the judgment on 05 March 2025. He further submitted that the Applicant had an ample opportunity to submit the application, and the reasons provided were not justifiably.

[9] It is therefore important that I provide a brief discussion on the principles regulating application for condonations. Such brief is motivated by the fact that the principles of condonation are in the public domain and mostly well known.

Legal framework for condonation

[10] The application for condonation is explicitly stated in Rule 27(3) of the Uniform Rules of the Court. The said Rule provides as follows:

“(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

.....

(3) The court may, on good cause shown, condone any non-compliance with these Rules.”

[11] In essence, a 'good cause' must be shown for the court to exercise its discretion based on the reasonableness of the delay. In this regard, the Applicant must demonstrate specific factors that caused the delay without providing pure sequence of events relating to the said delay. This means that the application should give substantive reasons as to the underlying factors that constituted the delay. Of further importance is the reasonableness of the furnished reasons.

Analysis

[12] The foundation for the determination that serves as the basis for the justification of the delay was laid bare by Conradie AJ in *Independent Municipal and Allied Trade Union (IMATU) obo Zungu v SA Local Government Bargaining Council and others* [2009] ZALC 137 at para 7. In that case, Conradie AJ held:

“in explaining the reason for the delay, it is necessary for the party seeking condonation to fully explain the reason for the delay for the court to be in a proper position to assess whether the explanation is a good one. This in my view requires an explanation which covers the full length of the delay. The mere listing of significant events which took place during the period in question without an explanation for the time that lapsed between these events does not place a Court in a position properly to assess the explanation for the delay. This amounts to nothing more than a recordal of the dates relevant to the processing of a dispute or application.”

[13] As deduced from Conradie AJ with an affirmative endorsement from other cases that have since dealt with the application for condonation, it is evident that a party seeking relief for condonation must demonstrate but not limited to (i) cause of the delay, (ii) length of the delay, (iii) reasonableness of the delay, (iv) prospects of success in the main application and (v) effect on the administration of justice, (Meyerowitz AJ in *Motloung v Malabane* [2024] 11 BLLR 1166 (LC) at para 7. These factors are interdependent and do not exist in the separation of each other as they must be considered in the context of the

interests of justice. The interdependence of these factors when put in a judicial stand, as much as each case must be determined according to its own merits, the basic question is to establish whether the granting of condonation will serve the interests of justice. According to Myburgh JP in *Allround Tooling (Pty) Ltd v NUMSA* (DA2/97) [1998] ZALAC 8 at para 8 gave emphasis on the ‘importance of the timeous submission of the notice and the reasonableness of the explanation to minimise any opportunity that may border on contempt of Court amounting to an unprofessional and irresponsible attitude towards the interests of the Respondent and ultimately the interests of justice’. Similarly, Ngcobo J in *National Education Health and Workers Union v University of Cape Town* 2003 (2) BCLR 154 (CC) at para 31 endorsed the quest for timely submission of applications for condonation and held “by their nature, [issues of public governance] must be resolved expeditiously and be brought to finality so that the [interface] between the parties [because it is in the public interest that to eliminate any form of public administration that may negatively affect the system of governance].”

[14] In this case, I have noted above that I will provide a brief of the principles regarding the application for condonation. I further mentioned that these factors are interdependent and should not be considered in isolation of each other. Therefore, I need not analyse each of the factors as they are all encompassed on the consideration of the reasonableness of the underlying reasons that constituted the delay as envisaged in Rule 27(3).

Evaluation

[15] This application is of fundamental importance in the development of the principles relating to jurisprudence that gives content to the meaning of the merited or unmerited application for condonation. As explicitly stated by the Applicant’s Counsel, this case is of significance because of his status as a sphere of governance.

[16] In this case, the cause of the delay in submitting the notice of the application for leave to appeal was characterised by the (i) internal consultative processes, (ii) the non-

availability of the Counsel that dealt with the matter and (iii) the Applicant's 'administrative error' on his part.

[17] I must state that at face value, the 11-day period might not be excessive, thus the reasons proffered by the Applicant in that he had to get internal advice before proceeding with filing of the notice to appeal is not a reasonable and acceptable explanation. It is my view that in considering the possibility of an appeal, the Applicant could have timeously ensured that this matter received the attention it deserves from his Legal Department so that the application is not found wanting for lack of compliance with the prescribed rules. The lack of compliance with the basic rules of this Court undermines the interests of justice regarding the finality of the matter and has a negative effect on the functioning not only of this Court but the entire judiciary. Waglay JP in *Govender v Commission for Conciliation, Mediation and Arbitration* [2024] 5 BLLR 453 (LAC) at para 69 held that "it is trite that there is a limit to which the litigant can escape the result of his attorney's lack of diligence, [...] however, it is equally true that the facts of matter will dictate whether or not the (in)actions of a litigant can be attributed to the litigant." This principle is of direct relevance to this matter because the Applicant's Legal Department as drawn from Waglay JP at para 70 is not "merely some other role player that played an insignificant role in prosecuting the filing of the [notice of the leave to appeal]. [The Department] is the representative of the [legal affairs of the Applicant that is bestowed with legal authority in ensuring compliance with the laws] and there is little reason why in regard to condonation of a failure to comply with the Rule of Court should be absolved from the normal consequences of [of the failure to submit timeously] [despite] the circumstance," (all footnotes omitted). I find it difficult to understand that the Applicant's consultation process could take precedence over the basic rules of this Court for the submission of the notice timeously. The rules cannot be relegated to a sphere of lack of accountability in the overall scheme of ensuring that the entrusted public funds as the Applicant contended, are used in a justified manner. This Court is not to determine how the Applicant should use the public funds, of importance is how it exercises its administrative processes on the use of these funds. Therefore, the consultation process is not a 'good cause' for lack of compliance with the expeditious submission of the notice of the leave to appeal. As

expressed by Conradie AJ above, citing with approval *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 at 353 that:

“In this regard the phrase “good cause” has been interpreted to mean:

“...the defendant must at least furnish an explanation of his default sufficiently full to enable the Court to understand how it really came about, and to assess his conduct and motives”.

[18] Similarly, Adams AJ in *Groenewald v National Transport Movement* [2024] ZALCJHB 35 at para 4 contextualised the showing of ‘good cause’ for the delay and held:

“The Courts have endorsed the principle that where there is a delay with no reasonable, satisfactory, and acceptable explanation for the delay, condonation may be refused without considering prospects of success, and to grant condonation where the delay is not explained may not serve the interests of justice. The expeditious resolution of [...] disputes is a fundamental consideration.”

[19] In this case, on paper and during argument, the Counsel for the Applicant boldly stated that he had an excellent explanation that is indicative of the principle of ‘good cause’ for the delay because ‘he is an organ of state that is entrusted with public funds for the residence of the City of Johannesburg’. Such status cautions him to thread carefully in engaging in frivolous litigation. The Applicant contended that due to non-availability of the Counsel who dealt with the case and the consequent result of receiving the legal advice on 25 March 2025, the late submission of the notice of the leave to appeal was beyond his control under the circumstance because he finally served the notice. The Applicant, in the absence of the original Counsel, I doubt that he has a limited legal capacity in extending the net wide to eliminate any possibility for the late filing of the notice of the leave to appeal. The non-availability of the Counsel that dealt with this matter is a flawed justification of the reason for the delay. This application falls flat on this ground

alone. I believe that the Applicant as an organ of state failed to keep up with the constitutionalised responsibility that is attached to his status as a local sphere of governance in the regulation of his administrative processes. This reason 'waters down' any legitimacy that could have justified the condonation for the late filing of the notice of the leave of appeal. It is my opinion that for an accountable system of administrative regulation, it is prudent for the Applicant to ensure the 'watertight systems' on administration so that his own processes do not 'slip through the fingers'. This Court is being put in an 'awkward' position of having to compromise and bend the knees for the Applicant's internal processes that do not constitute any legal basis for the determination of the adequacy of the proffered reasons.

[20] This Court is empowered to grant condonation that was sought by the Applicant provided it is satisfied that 'good cause' has been shown to exist. In this case, the Applicant's internal consultative processes should not have been taken at the prejudice of the Respondent.

[21] As deduced from Conradie AJ and Adams AJ above, it is evident that the bar has been set very high to establish the reasonableness of the explanation of the delay. The granting of the application for condonation is not a 'mere' principle that is designed to flout the content of the basic principle regulating the system of the Court's discretion in its adjudicative role. The unreasonableness of the delay, which is then attempted to be justified by an application for condonation hinders the finality of the matter and compromises the quality of access to justice by bringing a matter that could not have seen the court's doors.

[22] The Applicant further contended that he should not be faulted for the delay because it was due to 'an administrative error' on his part. In this application, it is my accorded view that the administrative processes are a foundation upon which to determine the efficacy of any institution, including the Applicant. The reliance on the error on his administrative processes does not constitute a justified lack of adherence to the

basic principles that regulate his own system of exercising authority as a sphere of governance.

[23] Let me reiterate, I am motivated by the Applicant's own endorsement that 'he is an organ of state that is entrusted with public funds,' which entails that as a local sphere of governance, he is foundational to an effective system of democratic governance. The Applicant is what I refer to as an 'agent' of government that is closest to the public and plays a fundamental role in the democratisation of the country. Such characterisation is drawn from the objects of the local sphere of governance as envisaged in section 152(1) of the Constitution of the Republic of South Africa 1996 (Constitution) that is meant, amongst others, the provision of a "democratic and accountable government for local communities". This object is important in the context of this case particularly the Applicant's own affirmation as an organ of state that is entrusted with the effective use of public funds. Today, the Applicant must uphold public confidence and apply his own laws and regulations for the efficient use of public resources. I found it difficult with the justification of the delay to be due to 'an administrative error'. I am of the considered view that this is not a reasonable explanation for the delay particularly on his expression before this Court that 'he is an organ of state'.

[24] I find the Applicant's reasons for failure submitting the notice of the application for leave to appeal within the prescribed time frames of this Court unreasonable. Although the explanation tendered by the Applicant for the period of delay attempted to provide accuracy on the cause of the delay, such reasons are flawed and far from convincing to put this Court in a better understanding of the reasons for the delay. I am not satisfied that the reasons for the delay are all-encompassing and amount to the abuse of this Court. In the circumstances, it does not serve any purpose to deal with the merits of the application for leave to appeal as intended in PART B because the application was made fatal by the late submission alone.

COSTS

[25] This Court is not to move from the basic principle on the exercise of judicial discretion regarding the awarding of costs. Both Parties are not to be faulted for bringing and defending this matter before this Court. The Applicant prayed for costs against the Respondent and the latter for attorney and client scale costs to deter the Applicant from any future frivolous litigation. It is my considered view that without laws being tested in courts of laws including this one, the development of principles regulating the area of law would limit the quality of an interpretative approach and advancement of the said principles with the consequent result of compromising the core content of the right to access the courts as envisaged in section 34 of the Constitution. The costs of this application would be indicated as they appear below.

ORDER

[26] Under the circumstances, it is ordered as follows:

[26.1] The application for condonation is dismissed.

[26.2] The costs of this application are on a party and party scale on Scale B in terms of section 69 including the costs of one Counsel where so employed.

N NTLAMA-MAKHANYA
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Delivery: This judgment is issued by the Judge whose name appears herein and is submitted electronically to the parties /legal representatives by email. It is also uploaded on CaseLines and its date of delivery is deemed 29 May 2025.

Date Heard: 19 May 2025

Date Delivered: 29 May 2025

Appearances:

Counsel for the Applicant: Advocate S Dlali

Instructing Attorneys: K Matji and Partners

Counsel for the Respondent: Advocate HW Theron

Instructing Attorneys: HW Theron INC