

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2021/58947

DATE: 11-02-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE



10 In the matter between

WHITEFIELD PROPERTY MANAGEMENT

Plaintiff

and

BODY CORPORATE OF THE PEARLS

Defendant

J U D G M E N T

BARNES, AJ: This is my ex-tempore judgment in this matter. This is an application for condonation for the
20 applicant's failure to comply timeously with the requirements of Section 3(1)(3) and Section 4(1)(a), rather, of the Institution of Legal Proceedings Act, which I will refer to in the course of this judgment as the Act.

Just please, please tell me if you cannot hear me. Sometimes the acoustics are a bit strange, and I think that I

am talking loudly, but if you are not able to hear me, please give me an indication.

Thank you. The applicant's action against the City of Johannesburg arises out of injuries she allegedly sustained when she fell into an open manhole on the 27th of September 2014.

The applicant purportedly delivered a notice in terms of the Act on the 26th of January 2016. I say purportedly because there is a dispute between the parties
10 regarding whether the notice was in fact sent, given that the relevant post office slip does not contain any counter stamp or signature or the initials of a delivery officer.

Be that as it may, it is common cause between the parties that the notice, in the event that it was delivered, was delivered ten months out of time.

On the 5th of April 2016, the applicant issued summons against the respondent, the defendant, in the action. The defendant defended the action and filed a special plea of non-compliance with the Act on the 3rd of
20 April 2018.

Almost five years later, on the 20th of June 2023, the present application for condonation was launched. The application was defended, and an answering affidavit was filed by the respondent and thereafter a replying affidavit was filed by the applicant.

Thereafter, the application for condonation was set down and heads of argument were filed by both sides. After heads of argument had been filed, the applicant purported on the 24th of November 2024, to file a supplementary founding affidavit.

To be precise, the supplementary founding affidavit was served on the 24th of November 2024 but only filed on the 10th of January 2025.

In the supplementary founding affidavit, the
10 applicant purports to augment the original founding affidavit by, for example, dealing with the issue of prospects of success, which had not been dealt with at all in the original founding affidavit.

The respondent objected to the admission of the supplementary founding affidavit and the first question before me is accordingly whether leave ought to be granted for the admission of the supplementary founding affidavit.

It is trite that a party seeking the Court's leave to file a further affidavit must explain why the facts or
20 information had not been put before the Court at an earlier stage.

In exercising the Court's discretion in relation to whether or not to grant leave in this regard, the Court will consider the following factors. The reason the evidence was not produced timeously.

The degree of materiality of the evidence. The possibility that it may have been filed to relieve the pinch of the shoe. The balance of prejudice. The stage of litigation.

The general need for finality in judicial proceedings, to name just some of the various factors that the Court will take cognisance of.

Now, in this case, the applicant has failed to provide the Court with an explanation of why the facts and information in the supplementary affidavit could not have
10 been put before the Court at an earlier stage.

And have failed to address the Court in relation to the relevant factors which I have set out above. In the absence of any such explanation, there is simply no basis for me to exercise my discretion and leave to admit the supplementary founding affidavit is accordingly refused.

Turning then to the merits of the condonation application, which fall to be determined without reference to the contents of the supplementary founding affidavit.

The condonation application is, in my view, fatally
20 defective for two reasons. Firstly, it fails to deal at all with prospects of success, an essential requirement of a condonation application.

See in this regard *Melanie v Santam Insurance Company Limited* 1962(4) SA 531 Appellate Division, as it then was. And secondly, the applicant waited five years

before bringing this condonation application with no explanation in this regard whatsoever.

There is a duty on litigants to bring their applications for condonation as soon as possible, as soon as reasonably possible, at the very least, after they become aware of the need for an application for condonation, and to provide an explanation to the Court where they have failed to do so.

See in this regard *Madinda v Minister of Safety and Security*, 2008(4) SA 312 (SCA) at paragraph 6. Counsel
10 for the applicant accepted the existence of such a duty, and accepted further that there was, that no explanation had been proffered for the delay of five years in the bringing of this condonation application.

That is matter that ought to have been included in the condonation application in the Court's view, quite apart from the fact that prospects of success had not been dealt with at all.

For those reasons I make the following order. The
20 application for condonation is dismissed with costs on scale B.

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A handwritten signature in black ink, consisting of a stylized 'H' followed by a wavy line, is positioned above a solid black rectangular redaction box. The signature is partially obscured by the redaction.

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H BARNES

ACTING JUDGE OF THE HIGH COURT

DATE: 11 February 2025