

IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA
NORTH GAUTENG, PRETORIA

Case Number: 54183/2008

15/6/2012

In the matter of

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

And

BARBARA DANIELS	REPORTABLE <input checked="" type="checkbox"/>	First Respondent
VENICIA NAIDOO	OF INTEREST TO OTHER AIDERS <input checked="" type="checkbox"/>	Second Respondent
SANOOSHIA ABRAHAMS	REVISED <input checked="" type="checkbox"/>	Third Respondent
THILOSHNEE NAIDOO	15/06/2012	Fourth respondent

JUDGMENT -- APPLICATION FOR LEAVE TO APPEAL -- 2ND, 3RD AND 4TH RESPONDENTS

BAM AJ

1. On 19th March 2009 a preservation order was granted to the applicant in terms of the provisions of the Prevention of Organized Crime Act, Act 121 of 1998 ("POCA"). The order concerned certain immovable and movable property allegedly belonging to the respondents. On 19 April 2009 the respondents filed a notice of motion to anticipate and rescind the preservation order. On 11 June 2009 the applicant applied for a forfeiture order in terms of POCA.
2. On 12 October 2010 I handed down my judgment in the above matter. The application for the forfeiture of the property in question was granted with costs.
3. On 23 March 2011 the second, third and fourth respondents filed their application for condonation of the late filing of their application for leave to appeal.

4. On 30 September 2011 the application for leave to appeal was filed by the said three respondents.
5. Both applications were eventually enrolled on 26 April 2012. On this date Mr Dorfling, appearing for the applicants (respondents 2, 3 and 4) applied for a postponement of the application. The application for postponement was not opposed by Mr Dodson SC, appearing for the NDPP, the original applicant, with Mr Wilson, on condition that the respondents pay the wasted costs. The matter was postponed and the respondents were ordered to pay the costs. One of the reasons for the application for postponement was to enable Mr Dorfling to prepare properly for argument. The record on the court file was in total disarray and it was undertaken by the respondent's attorney of record that the court file will be attended to, to enable me to read the papers beforehand. This would have occurred at least two weeks before the date arranged for the arguing of the application, 6 June 2012. It suffices to say that the file was returned to my chambers at 14h00 on 4 June 2012 and that the papers were in any event not bound in accordance with the practice rules of this division. However, in order to dispose of the matter, I indicated to counsel on 6 June 2012 that the application should be proceeded with. Mr Scheepers appeared for the respondents.
6. The respondents concerned relied upon, what purports to be, an affidavit by the second respondent, confirmed by the third and fourth respondents. During argument it was pointed out by Mr Dodson SC that the statement of the second respondent upon which the respondents were relying, was not properly commissioned by the commissioner of oaths in that the commissioner did not sign the document. The confirming statements of the third and fourth respondents suffered the same fate. Mr Dodson further pointed out that the statement was signed by the second respondent on 2 March 2012 and that it appears, *ex facie* the document that the stamp bearing the particulars of the commissioner of oaths was affixed to the document on 17 March 2011. These facts create the impression that the deponent to the statement were not present when the commissioner's name stamp was affixed to the document.
7. The respondents did not apply for a postponement to rectify or explain the discrepancies pointed out by Mr Dobson.

8. It is trite that in order to succeed with an application for condonation for late filing of the application for leave to appeal, the applicant must show that good reasons exist for the delay and that reasonable prospects exist that the appeal may be successful. In this regard Mr Dodson referred to the recent decision of **Laerskool Generaal Hendrik Schoeman v Bastian Financial Services 2012(2) SA 637(CC)**. Mr Dodson also referred to the provisions of section 55 of POCA limiting the time period for the lodging of an appeal against a forfeiture order to 30 days.
9. It was argued on behalf of the respondents that the delay in lodging the condonation application, and for that matter the application for leave to appeal, was not due to any conduct of the respondents. The legal representatives are apparently to be blamed for all the problems. The second respondent's allegation that she was told by her legal representative *from around October 2009* that judgment was granted in their favor, seems to me, to say the least, very strange, in view of the fact that the first preservation order was granted on 21 November 2008, and after it had lapsed that a second preservation order was granted on 10 December 2009. On 24 April 2009 the respondents gave notice of their intention to oppose the preservation order and on 11 June 2009 the applicant applied for the forfeiture order. The parties continued to file their respective papers up to October 2009. Notice of enrollment for 19 October 2009 was served on the respondents' attorneys on 1 October 2009. On the latter date the matter was postponed *sine die*. It was thereafter again enrolled for 26 July 2010. When the matter was argued before me on 29 July 2010 the respondents were represented by senior counsel. On the probabilities the respondents would, at least been aware of the appointment of senior counsel to argue the matter. I deem it totally unlikely that the respondent's attorney would have appointed senior counsel without specific instructions by the respondents.
10. The second respondent stated that she was informed by a family member of the forfeiture order, who read about it in the media. The date the second applicant received the information is unknown. On the probabilities the matter would have been reported in the press soon after the forfeiture order was granted. After having failed to contact her erstwhile lawyer, the second respondent instructed another attorney, apparently in December 2010. The latter attorney obtained the court order *around* the first week of January 2011.
11. There is no explanation why the condonation application was filed only on 23 March 2011. In this regard it appears that the respondent's attorney of record is blaming counsel for wrong advice. The shifting of blame by the respondent's attorney does not avail the respondents.

Section 55 of POCA is clear and cannot, in my view, be misinterpreted. The attorneys' negligence in this regard was not explained at all.

12. Accordingly the respondents have failed to advance an acceptable explanation for their delay in lodging the condonation application, and the application for leave to appeal. The fact that the respondents' founding affidavit was not commissioned, in any event, in my view, is fatal to the application.

13. I have in any event perused the respondents' grounds in their notice of appeal. After having considered the merits of the matter again, I am of the opinion that no prospects to succeed on appeal exist.

14. Accordingly the application for condonation and the application for leave to appeal are dismissed with costs.

AJ BAM Acting Judge of the High Court. 15 June 2012.