



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 782/11
Not reportable

In the matter between:

**EUGENE ADLEM
JOSEPH ADLEM**

**FIRST APPELLANT
SECOND APPELLANT**

and

NESTOR ALGEMUS ARLOW

RESPONDENT

Neutral citation: *Adlem v Arlow* (782/11) [2012] ZASCA 163 (19 November 2012).

Coram: Cloete, Cachalia, Shongwe and Theron JJA and Erasmus AJA

Heard: 6 November 2012

Delivered: 19 November 2012

Summary: Costs: opposition to application for condonation.

ORDER

On appeal from: North West High Court, Mafikeng (Leeuw JP sitting as court of first instance):

In each application for condonation:

- 1 The appellants are ordered to pay the costs on an unopposed basis.
- 2 The respondent is ordered to pay the appellants' costs occasioned by his opposition.

JUDGMENT

CLOETE JA (CACHALIA, SHONGWE AND THERON JJA AND ERASMUS AJA CONCURRING):

[1] This judgment deals with the costs of the two applications for condonation delivered by the appellants and which were opposed by the respondent. Condonation in each case was granted after brief argument and the costs were reserved.

[2] The first application was necessitated by the fact that the appellants' attorneys delivered their clients' notice of appeal one day late. This was occasioned by the fact that the appellants' attorneys had requested the respondent's then attorneys to furnish the address of their Bloemfontein correspondents so that the notice of appeal could be served on them, and the respondent's attorneys ultimately agreed that the notice should be sent to them by telefax. The criticism by the respondent's present attorney of record that this is what should have been done in the first place is as applicable to her predecessors as it is to the appellants' attorneys.

[3] The second application was necessitated by the fact that the appellants' attorneys simply miscalculated the date by which heads of argument had to be delivered, and they were delivered seven days late. This

is obviously not the extreme type of case such as *Beweging vir Christelik-Volkseie Onderwys v Minister of Education* [2012] SASCA 45 referred to by the respondent in his answering affidavit.

[4] In each case an acceptable explanation was given; and the prospects of success were good — in fact, the appellants have succeeded in the appeal. The respondent claimed prejudice in each case on the basis that the appellants were deliberately delaying the finalization of the matter. In the second application the respondent annexed an affidavit from one Birch to support the allegation that the appellants are causing serious damage to the property owned by him by overgrazing their cattle. But the hearing of the appeal was not delayed in either case. In addition, in the first application the respondent annexed to his answering affidavit 153 pages comprising heads of argument in the court below, copies of statutes, copies of reported cases and copies of extracts from textbooks. All of this was quite unnecessary.

[5] In my view the opposition in each case was so unreasonable that the respondent should be visited with an adverse costs order.

[6] The following order is made in each application for condonation:

- 1 The appellants are ordered to pay the costs on an unopposed basis.
- 2 The respondent is ordered to pay the appellants' costs occasioned by his opposition.

T D CLOETE
JUDGE OF APPEAL

APPEARANCES:

For Appellant:

P J van der Walt

Instructed by:

F & F van der Walt Attorneys, Rustenburg

Bezuidenhouts Inc, Bloemfontein

For Respondent:

S Güldenpfennig

Instructed by:

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