



IN THE LAND CLAIMS COURT OF SOUTH AFRICA


HELD AT RANDBURG

CASE NO: LCC19/2022

Before: The Honourable Acting Judge Muvangua

Heard on: 17 November 2022

Delivered on: 1 March 2023

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
1 March 2023	
..... DATE SIGNATURE

In the matter between

**MINISTER OF DEPARTMENT OF RURAL
DEVELOPMENT AND LAND REFORM**

First Applicant

**DIRECTOR GENERAL OF DEPARTMENT OF
RURAL DEVELOPMENT AND LAND REFORM**

Second Applicant

CHIEF LAND CLAIMS COMMISSIONER

Third Applicant

**REGIONAL LAND CLAIMS COMMISSIONER:
EASTERN CAPE PROVINCE**

Fourth Applicant

and

NOSE PRINCESS JACOBS

First Respondent

NOMATEMBA PHALI

Second Respondent

JUDGMENT

MUVANGUA AJ

Introduction

- [1] The applicants seek an order from this court condoning the late filing of their answering affidavit in review proceedings before this court and under the same case number. I will refer to those proceedings as the main proceedings in this judgment.
- [2] The application for condonation arises out of the following background. On February 2022, the respondents, who are the applicants in the main proceedings, filed an application for the review and setting aside of a decision to pay them compensation of R36 000.00 in respect of claims lodged by the applicants (in the main proceedings).
- [3] The applicants (who are respondents in the main proceedings) were, in terms of the rules of this court, required to file the record of decision within 15 days from the date of the review application. The record should therefore have been filed on 25 February 2022. It was, however, only provided on 13 April 2022. This was about a month and a half after the prescribed period.

- [4] The respondents filed their amended notice of motion and supplementary founding papers on 10 May 2022. The applicants had 15 days from that date to file the answering affidavit. This means that it was due to be filed on 31 May 2022. It was, however, filed on 22 June 2022.
- [5] The respondents served the applicants with a notice to bar on 16 May 2022. Although served before the *dies* for the filing of answering affidavit was up, this notice got the applicants to jump into action and start preparing the answering affidavit. The draft was sent to the clients for signature on 26 May 2022.¹ The applicants' legal representative, Ms Hanli Glanvill (“**Ms Glanvill**”) says in her founding affidavit that she did not follow up with her clients (the applicants) on the signing of the affidavit “*because there was no pressure . . . as there was no notice of bar.*”
- [6] The respondents served a notice of bar on the applicants on 9 June 2022. Ms Glanvill says in her found affidavit that she only became aware of the notice of bar by chance on 22 June 2022.

Legal Principles Applicable to the Granting of Condonation

- [7] The principles applicable to the granting of condonation are settled in law. The Constitutional Court in *Mphephu-Ramabulana*² summarised the legal position as follows:

“ . . . compliance with this Court's Rules and timelines is not optional, and . . . condonation for any non-compliance is not at hand merely for the asking. The question in each case is "whether the interests of justice permit" that condonation be granted. Factors such as the extent and cause of the delay, the reasonableness of the explanation for the delay, the effect of the delay on the administration of justice

¹ It was not clear to me when the consultation with the applicants took place, where they gave a factual account of what happened (the evidence), in order for the answering affidavit to be prepared.

² *Mphephu-Ramabulana and Another v Mphephu and Others* (CCT 121/20) [2021] ZACC 43; 2022 (1) BCLR 20 (CC); 2021 JDR 2796 (CC).

and other litigants, and the prospects of success on the merits if condonation is granted, are relevant to determining what the interests of justice dictate in any given case.”³

[8] The court may take the following factors into account when determining whether the interests of justice permit the granting of condonation: the nature of the relief sought;⁴ the extent and cause of the delay;⁵ the reasonableness of the explanation for the delay;⁶ the importance of the issue to be raised;⁷ the effect of the delay on the administration of justice and other litigants;⁸ and the prospects of success on the merits if condonation is granted.⁹

[9] The Constitutional Court in *Mphephu-Ramabulana* also noted that “*the extremity of the delay, coupled with the paucity of the explanation provided, justify the immediate refusal of condonation*”, but “*lateness and inadequacy of the explanation provided are not necessarily dispositive of the question of condonation. This is because the other factors relevant to condonation may favour its granting and tilt the interests of justice to the other side of the scale.*”¹⁰

³ *Mphephu-Ramabulana* at para 33.

⁴ *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) at para 22.

⁵ *Brummer v Gorfil Brothers Investments (Pty) Ltd* [2000] ZACC 3; 2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC) at para 3

⁶ *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) at para 20.

⁷ *Grootboom* at para 22.

⁸ *Brummer* at para 3.

⁹ *Mankayi Mankayi v AngloGold Ashanti Ltd* [2011] ZACC 3; 2011 (3) SA 237 (CC); 2011 (5) BCLR 453 (CC) at para 8.

¹⁰ *Mphephu-Ramabulana* para 38.

Reasons for the delay

[10] It seems apparent to me that the applicants, and/or their legal representatives adopted a dilatory disposition to this matter from its onset.

10.1 The record was dispatched over a month and a half after it was due.

10.2 Ms Glanvill says in her affidavit, effectively, that notwithstanding the 15 days within which the applicants were required to file the affidavit, she: (a) only provided a copy of the draft affidavit to the applicants for signature two court days before it was due for filing, and (b) did not follow up because the respondents had not placed her under pressure. This way of thinking is perplexing: why should it be the respondents' responsibility to take steps to ensure that the applicants' affidavit is filed; especially since they took care and filed a notice to bar before the affidavit was due for filing? The rules of court prescribe a period within which to file court process.

[11] That there was no notice of bar seems to be the only reason why the affidavit was not filed on time. The applicants' legal representative says that she did not follow up because there was pressure to do so – there was no notice of bar.

[12] At any rate, it seems apparent that the notice of bar made no difference. It was served on the applicants on 9 June 2022, but was discovered some two weeks later (by chance), on 22 June 2022.

Interest of Justice Override

[13] I was unpersuaded by applicants' explanation for the delay in the filing of their answering affidavit. In my view, the explanation provided fell short of the required standard of good cause. I am, however, minded to grant the application, because it is (in the circumstances of this case), in the interests of justice to do so. Disallowing the applicants' answering affidavit would mean that the matter would proceed without hearing from them. That cannot serve the proper administration of justice.

[14] It is in the interests of justice for a court to adjudicate a dispute on the basis of the fullness of all the evidence before it. It would not be in the interests of justice for the court to determine the review application without the views and evidence of the applicants.

Costs

[15] The delay in the filing of the applicants' answering affidavit was largely the result of their legal representatives' *laissez-faire* attitude (at best). This is rather unfortunate. However, the respondents were justified in opposing the application for condonation on the grounds that they did. They ought to be entitled to costs, especially given that the reasons for the delay were simply not satisfactory.

[16] The circumstances of this case justify a departure from this court's practice of not ordering costs. The applicants in this case must bear the costs of the application for condonation.

Order

[17] The following order is made:

17.1 The applicants' failure to file their answering affidavit timeously is condoned.

17.2 The applicants are granted leave to file their answering affidavit within five (5) days from the date of this order.

17.3 The applicants are to pay for the costs of this application.



N Muvangua

Acting Judge

Land Claims Court

Appearances

Counsel for the applicants: L Hesselman
Instructed by: State Attorney

Counsel for the first respondent: AM Maseti
Instructed by: Maci Incorporated