

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 64196/11

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

29/08/2014

29/8/2014

In the matter between:

**SKHUMBUZO SIBUSISO MABUZA**

**APPELLANT**

And

**ROAD ACCIDENT FUND**

**RESPONDENT**

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**JUDGMENT (LEAVE TO APPEAL)**

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**MOSEAMO, AJ:**

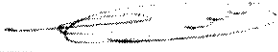
- [1] This is an application to the Full Bench of this Division against my judgement and order handed down on the 16<sup>th</sup> May 2014.
- [2] There is a preliminary issue that I need to dispose of before giving consideration to this application. That issue has to do with the application for condonation of the filing of the application.

- [3] According to the appellant the reason for the delay is because the initial Notice of Application for Leave to Appeal was mislaid at the registrar's office by the messenger. Appellant's counsel had to resubmit the Notice of application for Leave to Appeal and lodge an application for condonation for the late filing of the Notice of Application for Leave to Appeal as the days for lodging the said application had lapsed.
- [4] Respondent's reason for opposing the application for condonation on the basis that the Appellant has failed to explain the delay in full. The Respondent contends that the delay of two weeks is unreasonable under circumstances.
- [5] In considering whether or not condonation ought to be granted, the court will consider all the facts and exercise its discretion.
- [6] The relevant consideration includes (1) the degree of non-compliance with the rules and the explanation thereof; (2) the prospects of success on appeal, the importance of the case, (3) the Respondent's interest in the finality of the judgement. These factors must be weighed one against the other and they are not individually decisive.
- [7] In this case it is clear that the delay was as a result of the Appellant's representative. Although I find the explanation of the Appellant's counsel lacking, it is my view that taking in to account degree of lateness, the importance of the case to the Appellant and the fact that the Appellant was in no way responsible for the delay constitutes sufficient grounds to grant the Appellant the indulgence he seeks.
- [8] It is therefore my judgement that condonation ought to be granted.
- [9] Respondents also contends that the Application for Leave to Appeal does not mention that 'another court will come to a different conclusion' and is therefore defective and should be dismissed. It is Appellant's contention that the omission of those words in the notice is not fatally defective.
- [10] In my view the omission does not warrant the dismissal of the application. I have also noted that it was the Appellant's argument before this court that another court will come to a different conclusion.
- [11] I now turn to consider the merits of the application.

- [12] I have perused the Notice of Application for Leave to Appeal, I have heard the arguments by counsel for the Appellant and counsel for the Respondent and I have considered the authority referred to by Appellant's counsel. I am persuaded that there are reasonable prospects that another court might come to a different conclusion on one or more of the grounds of law or factual findings on which the appeal is based.

IN THE RESULT I MAKE THE FOLLOWING ORDER

1. Application for condonation is hereby granted;
2. Leave to Appeal to the Full Court of this Division against my judgement and order is granted;
3. The costs of this application will be costs in the Appeal.



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P D MOSEAMO

ACTING JUDGE OF THE HIGH COURT