



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 42070/18

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	14/10/2019
	DATE
	<i>H. Constantinides</i>
	SIGNATURE

In the matter between:

TAOLE, RETSELISITSOE LEHLOHONOLO

Applicant

and

MOTHIBE, TEKE ELIAS

Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Matter heard on: 4th October 2019

CONSTANTINIDES AJ:

1. This is an application wherein the Applicant seeks leave to appeal to the Full Bench of this Division against the entire Judgment and Orders granted by me in my Judgment which was handed down on the 30th May 2019 and which is attached hereto for ease of reference.
2. The Applicant states that:
 - 2.1. He was unsuccessful in the application wherein he sought an interdict against the Respondent more particularly that the Respondent be interdicted from making any further defamatory or derogatory remarks with regard to the Applicant;
 - 2.2. The Respondent be ordered to issue a written statement withdrawing all derogatory or defamatory remarks which the Respondent had already made with regard to the Applicant, and that the Respondent be ordered to pay the costs.
3. The Court found that there were fundamental disputes of fact in this application which could not be resolved on the papers and dismissed the application. The Court ordered the Applicant to pay the Respondent's costs of the application for condonation for the late filing of their Affidavit despite having obtained a Court Order from the Honourable Madam Justice Mosopa and having filed their Affidavit in accordance with her directions. The condonation application was argued at the insistence of the Applicant.
4. The Applicant now applies for leave to appeal to the Full Bench of this Division against the entire Judgment of this Court that was handed down

on 30 May 2019.

5. The application for leave to appeal is accompanied by an application for condonation for the late filing of the Appeal Application.
6. The Court indicated that the condonation application will be decided upon hearing argument of the entire matter and will ascertain whether condonation should be granted in the event of any prospects of success in the application for leave to appeal exists.
7. There is no purpose in repeating all the facts relating to this case as same have been detailed in my Judgment.
8. Briefly a summary of the main contentions that were argued by the Applicant Mr Taole who appeared in person in this matter are as follows:
9. He contended that:
 - 9.1. There should not have been costs granted against him for the failed argument relating to the requirement for the Respondents in the main application to request condonation for having filed their papers late. The aforesaid argument is unsustainable due to the fact that the Honourable Lady Justice Mosopa had granted a postponement and placed the Respondent on terms to file his Answering Affidavit. The Respondent was also ordered by Mosopa J to pay the wasted costs. The Respondent complied with the Order and filed his Answering Affidavit on the 29th October 2018. Therefore it was not prudent to revisit orders of other Judges.

- 9.2. The Respondent's second argument was that due to the fact that there were factual disputes in the Founding Affidavit the Court should have made a decision or alternatively *mero motu* referred the matter to oral evidence.
10. The Applicant's reasons for the delay are due to the fact that he allegedly is *"not a legally trained person, and lack the necessary familiarity with the applicable High Court Rules and Procedures. ..."* He admitted in Court and on the papers that he had received the Judgment on the 30th May 2019 via email. His Attorney advised him not to pursue an application for leave to appeal due to the fact that it would be *"costly to do so"*.
11. The Applicant stated that the details furnished by his erstwhile Attorneys were *"very sketchy"* and therefore he decided to do his own research relating to when he could launch his application for leave to appeal.
12. The Applicant also states that he was also involved in *"deliberations between the Applicant and the Respondent through his other Attorneys, Webber Wentzel, around the 1st July to the 22nd July 2019."* He claims that those negotiations eventually failed due to *"unreasonable and unattainable demands by the Respondent requesting that the Applicant also waives his rights to appeal the present High Court Judgment ... as part of any possible settlement in the Labour Court matter."*¹
13. He states further in paragraph 5.9 of his Application for Leave to Appeal for Condonation:

¹ Page 9, para 5.7 – Application for Condonation

*"5.9 More significantly, I wish to submit that due to experiencing several bereavements in the family recently, my ability to process information and to promptly compile meaningful write-ups has been greatly affected. Even currently, as I strive to put pen to paper to seek further justice to protect my rights to dignity, I am still going through a difficult grieving process. All these events have also affected my health. ..."*²

14. The Applicant's argument is that the prejudice he will be suffering is that if he is not granted condonation, "*... the Court will be shutting the door of access to further administration of justice ...*" to the Applicant. He also says that the refusal to grant him condonation will actually result in him forever suffering reputational harm and danger "*to his overall welfare correlated to the malicious accusations – which the Applicant maintains were false and Mr Mothibe has never ever proven their truthfulness.*"³
15. The Respondent states that there were material errors made by the Court *a quo* and that a Court of Appeal would probably come to a different conclusion.

Condonation

16. Condonation is not a formality and not "*merely for the asking*".⁴
17. The Superior Courts Act 10 of 2013 has raised the bar for granting leave to

² Page 8, para 5.9 - Application for Condonation.

³ Page 9, para 7 - Application for Condonation.

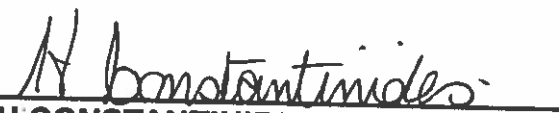
⁴ *Uitenhage Transitional Local Council v. South African Revenue Service* 2004 (1) SA 292 (SCA) at para 6.

appeal in the case of *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others, Bertelsmann J* held as follows:

"It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see *Van Heerden v Cronwright & Others* 1985 (2) SA 342 (T) at 343 H. The use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."

18. Based on the aforesaid, I am not persuaded that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. The decision sought on appeal does not fall within the ambit of Section 16(2)(a) and the decision sought to be appealed does not dispose of all the issues in the case or that the appeal would lead to a just and prompt resolution of the real issues between the parties as the Applicant admits that there are factual disputes in this matter.
19. Due to the fact that it is apparent that another court will not be able to determine the issues in this case and will not differ from the court a quo, there is no merit in granting the application for condonation for the late filing of this application for leave to appeal. It is trite that in the absence of good cause and in the interests of finality condonation should not be granted.
20. Having heard Counsel and having considered the submissions of the Applicant in person, I make the following order:

1. Condonation for the late filing and prosecution of the application for leave to appeal is refused.
2. The application for leave to appeal to the Full Bench of this Division against the Judgment of this Court which was handed down on the 30th May 2019 is dismissed.
3. The Applicant is ordered to pay the costs of this application.


H CONSTANTINIDES
Acting Judge of High Court
Gauteng Division
Pretoria
14 October 2019

Attorneys for the Applicant:	APPLICANT IN PERSON R L TOALE
Counsel for the Applicant:	APPLICANT IN PERSON R L TOALE
Attorneys for Respondent:	EDWARD NATHAN SONNENBURGS INC. [ENS AFRICA]
Counsel for the Respondent:	ADVOCATE C. BOTHMA
Date the Application for leave to appeal was heard:	04 October 2019