

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, PRETORIA

CASE:NO: 13438/2018

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

19 August 2021

DATE

SIGNATURE

In the matter between:

**JANSEN VAN VUUREN, DILLON WESLEY**

**Applicant**

And

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR  
HEALTH, GAUTENG PROVINCE**

**Respondent**

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**LEAVE TO APPEAL - JUDGMENT**

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**MOGALE, AJ:**

**INTRODUCTION**

[1] This is an application for leave to appeal to the full court of this division alternatively the Supreme Court of Appeal, against the whole judgment and the order handed down on 08 April 2021.

[2] The application for leave to appeal is against the refusal of condonation in terms of the Institution of Legal Proceedings Against Certain Organs of the State Act, Act 40 of 2002 by the applicant. The application for leave to appeal is opposed by the respondents.

[3] The grounds for leave to appeal are to a large extent factual, inter alia, submissions, and arguments of what I should have considered and where I erred in not considering factors, in not taking certain factors into account, in making incorrect factual findings, and in applying the incorrect legal principle.

[4] Both Advocate W L Munro for the applicant and Advocate M Barnard for the respondents submitted oral arguments which were structured in accordance with their heads of arguments. Their heads of arguments are very much helpful in that they outlined the issues clearly. For this, I appreciate and indebted to both councils

[5] It is trite that an application for leave to appeal a decision from a Single Judge of the High Court is regulated by Rule 49 of the Uniform Rules of Court. The substantive law pertaining to application for leave to appeal is dealt with in section 17(1) of the Superior Courts Act 10 of 2013 which state that leave to appeal may only be granted where the judge or judges concerned are of the opinion that:

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration;

[6] I agree with the submissions made by Advocate Barnard that, the test which was applied previously in applications of this nature was whether there were reasonable prospects that another court may come to a different conclusion as mentioned in **Mont Chevaux Trust v Tina Goosen & 18 Others**<sup>1</sup> where Bertelsmann J held as follow:

*"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.*

[7]. The applicant argued that their appeal would have a reasonable prospect of success in another court. Many of the grounds were addressed adequately in the judgment, and there is no need for repetition. It is unnecessary to deal with each of the different grounds individually

[8] The grounds for appeal are found in the applicant's Notice of Leave to Appeal

8.1 That I erred in finding that the issues to be determined are whether the applicant's claim has prescribed, that the delays in serving the statutory notice, as well as the launching of the condonation application have to be set out in the particulars of claim or not. The court also has considered whether the applicant had shown good cause and that the respondents will suffer unreasonable prejudice if condonation is granted.

8.2. That I erred in not finding that the allegations of negligence by the nursing staff pleaded by the applicant as well as the allegations set out in the statutory notice have been at the disposal of the applicant since 2012. The facts pertaining to the sad knowledge as set out in the opposing affidavit are not disputed by the applicant in their replying affidavit as the applicant did not file any response to the allegations made.

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<sup>1</sup> 2014 JDR 2325 (LCC) at para 6

8.3. That I have erred in finding that the applicant and or his attorney failed to tender sufficient and or proper explanation to his failure to act in terms of the time frames prescribed by the Act. That I erred to find that the replication and the statutory notice filed by the attorney for the applicant confirmed non-compliance with the act.

8.4. That I erred in finding that the applicant attained age of majority in 2016 but waited three years and five months after his statutory notice to bring an application for condonation.

8.5. That I erred in finding that the applicant's claim is for R1 500 000, 00 for loss of support and general damages, when the claim on the pleadings is for R500 000 00 general damages and R262 956 00 for past and future loss of support.

8.6. That I erred in finding that there was no merits in the main action when I ought to have found that the applicant, in claiming for loss of support has to prove a nominal degree of negligence to succeed in his claim, that the hospital records demonstrate a deterioration in the deceased's condition which was never attributed to uncontrolled diabetes. I erred in finding that the applicant did not discover a medical record supporting the allegations in the merits in support of the deceased cause of death.

8.7. That I erred in finding that the applicant and his family knew the identity of the debt and the fact upon which its cause of action is based from 2012 as the applicant was a 14years old minor.

[9] As a result, the applicant argues that in terms of section 17 (1) (a) they should be granted leave to appeal on the grounds set out in their notice for leave to appeal and the appeal is oppose

[10] In **MEC Health, Eastern Cape v Mkhitha (1221/15) [2016] ZASCA 176 (25 November 2016) paragraph 17**, it was held that:

*An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.'*

[11] This court in its judgment evaluated the issue of condonation based on the requirements and correctly finds that the applicant's claim has prescribed, that the applicant has not shown good cause further that the respondent will suffer unreasonable prejudice if condonation is granted.

[12] The court correctly finds that the cause of death is a fundamental issue that should determine the applicant's prospects of success in the main application if condonation is granted. This court further correctly find that, the respondent cannot be held liable for the death of the deceased due to the discovery made by the applicant regarding the cause of death. Notice of death proves that cause of death was uncontrolled diabetes and that is contrary to the applicant's findings that cause of death emanates from complications of her pressure sores developed while admitted by the respondent.

[13] This court correctly find that the applicant failed to make out a proper case for condonation for late service. This court is also in agreement with the applicant's notice dated 30 March 2017 and 10 July 2018 replication that they out to have applied for condonation. As a result, this court correctly reject the submissions by Advocate Murno that it is in the interest of justice and fairness that the application be granted.

[14] I made a finding that I am not convinced that the applicant's biological father and his family did not know the identity of the debt and the facts upon which its cause of action was based from 2012 after evaluating all surrounding factors and correctly find that that the applicant failed to establish good cause by meeting the criteria established for condonation in terms of s 3(4) as their explanation is not full enough to enable this court to understand how the default came about and to assess its conduct and motive.

[15] I am of the view that this court evenly balanced and evaluated all factors. As a result, I can find no fault in the reasoning of the court as the judgment is well reasoned and is also based on the applicable legal principles.

[16] I do not believe that the appeal has a reasonable prospect of success. Another court is, in my view, unlikely to come to a conclusion than this one.

[17] The application for leave to appeal therefore stands to be dismissed with costs.

Order

[18] As a result, the following order is made:

1. Application for leave to appeal is dismissed
2. Applicant to pay the costs

A handwritten signature in black ink, consisting of a series of vertical, slightly wavy lines, with a horizontal line crossing through the middle. The signature is positioned above a solid horizontal line.

**K J MOGALE**

ACTING JUDGE OF THE  
GAUTENG DIVISION,  
PRETORIA

Electronically submitted.

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 19 August 2021.

Date of hearing: The matter was heard by way of video conferencing or otherwise, the matter may be determined accordingly. The matter was set down for court date of 13 August 2021.

Date of judgment: 19 August 2021