

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 28013/19

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

Date: 8 March 2022

E van der Schyff

In the matter between:

CLIFFENDALE VILLAS BODY CORPORATE APPLICANT / APPELLANT

and

ALFRED THEODORE MBOWANE

RESPONDENT

JUDGMENT

Van der Schyff J

- [1] The applicant filed a notice of motion seeking an order that an adjudication award dated 9 March 2019 be stayed pending the finalisation of the applicant's appeal in terms of s 57(3) of the Community Schemes Ombud Service Act, 9 of 2011 (CSOS).

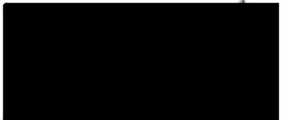
- [2] The applicant's replying affidavit was filed on 14 June 2019 and on 24 October 2019 the judgment of the Full Bench of this court pertaining to how appeals against adjudication orders are to be dealt with, was handed down. On 2 June 2021 the applicant's heads of argument and practice note in this application were filed. The respondent served a notice of an interlocutory application to file an additional affidavit on 18 August 2021. Although a notice to oppose the interlocutory application was filed, counsel for the applicant indicated from the bar that the applicant will abide in the court's decision relating to the filing of the additional affidavit. The leave sought by the respondent is granted due to the fact that the supplementary affidavit succinctly sets out the chronology of events and sheds light on the prejudice suffered by the respondent.
- [3] It is common cause that the appeal has lapsed because the applicant failed to prosecute the appeal. Although the applicant has not as yet, filed an application for condonation and the reinstatement of the appeal, counsel indicated that the applicant is set on reinstating the appeal. It is trite that an applicant may seek condonation for not-prosecuting an appeal.
- [4] It would not be fair to the respondent to allow the applicant to reinstate the appeal at its leisure. However, the court cannot merely disregard the applicant's expressed intention to reinstate the appeal. The application to stay the execution of the award pending the appeal can, however, not be decided before a court has decided whether to grant condonation and reinstate the appeal.
- [5] The applicant's lackadaisical approach will be met with an appropriate costs order.

ORDER

In the result, the following order is granted:

1. This application is stayed, pending:
 - 1.1. The applicant launching an application for condonation for not prosecuting the appeal against the CSOS-award and the reinstatement of the appeal within 15 days of the date of this order, failing which the respondent is given leave to re-enrol this application for hearing;

- 1.2. In the event of the applicant having complied with paragraph 1.1 above, the court having heard the condonation application, granting the relief sought;
2. The parties may enrol this application to be heard simultaneously with the condonation application and the application for the reinstatement of the appeal; or upon finalisation of the application for condonation and the reinstatement of the appeal, either party may enrol this application for hearing, on the same papers, duly amplified where necessary;
3. The applicant is to pay the costs of this application thus far incurred.


 E van der Schyff
 Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 8 March 2022.

Counsel for the applicant:	Adv. T A L L Potgieter SC
Instructed by:	Loock Du Pisanie Inc.
For the respondent:	Adv. R Raubenheimer
Instructed by:	Mbowane Inc.
Date of the hearing:	3 March 2022
Date of judgment:	7 March 2022