IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. **35659/2021**

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

19.09.23

In the matter between:

THE CHIEF LAND CLAIMS COMMISSIONER	**First Applicant**
THE MINISTER OF AGRICULTURE, RURAL DEVELOPMENT AND LAND REFORM	**Second Applicant**
THE INFORMATION OFFICE : DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	**Third Applicant**

and

THE SOUTH AFRICAN AGRI INITIATIVE	**Respondent**

In re:

THE SOUTH AFRICAN AGRI INITIATIVE	**Applicant**
And	
THE MINISTER OF AGRICULTURE, RURAL	**First Respondent**

DEVELOPMENT AND LAND REFORM

THE INFORMATION OFFICE : DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND REFORM **Second Respondent**

THE CHIEF LAND CLAIMS COMMISSIONER **Third Respondent**

JUDGMENT

YENDE AJ

Introduction

[1] This is an opposed rescission application (in terms of the Uniform Rule 31(2)(b) alternatively Uniform Rule 42 of the Uniform Rules of Court ("the Rules"), launched by the applicants in relation to an order granted by default on 22 February 2022 by the Honourable Justice Madiba, directing the applicants to comply with the respondent's request in terms of section 18 of PAIA, dated 4 May 2021, by providing the following documents to the respondent (the applicant in the PAIA application), within 30 days from the date of the order:

[1.1] an electronic copy of each land claim published in the government Gazette between 1998 and 2021: and

[1.2] all reports filed by the Chief Land Claims Commissioner with the Land Claims Court as from the date of 19 March 2019 to date of the PAIA application (20 July 2021).

[2] Having failed to bring this rescission application within the time period as prescribed within the rules, the applicants also seek condonation for the failure to issue the rescission application within 20 days as envisaged in Rule 31(2)(b) of the Rules.

ISSUES TO BE DETERMINED BY THE COURT:

[3] Whether the applicants have shown good cause for condonation to be granted following the late filing of this application,

[4] Whether the applicants have shown sufficient and/or good cause for the rescission of the order to be granted, more particularly:-

[4.1] An absence of wilfulness and a reasonable explanation for the default.

[4.2] Whether this application is bona fide and has been instituted not with the intention to delay the respondent's claim and that the Applicants have a bona fide defence thereto.

[5] The Court will in its judgment at the onset deal with the applicants condonation for the failure to issue the rescission application with 20 days as envisaged in Rule 31(2)(b) as mentioned *supra*.

Condonation:

[6] The rescission application was launched by the applicants in relation to an order granted by default on 22 February 2022 by Justice Madiba. The order pertinently

directed the applicants to comply with the respondent's request in terms of section 18 of PAIA, dated 4 May 2021.

[7] The applicants failed to bring the rescission application within the stipulated time period as prescribed within the rules and applied for condonation in terms of Rule 31(2)(b).

[8] The applicants rescission application was brought after the respondent had applied for a contempt of court order holding the applicants sin contempt of court order dated 22 February 2022, since the applicants had failed to comply with Honourable Justice Madiba order.

[9] It is apposite to note that the applicants have launched this main rescission application almost after (103) one hundred and three days has lapsed since the order by Justice Madiba was granted.

[10] For the purposes of my judgment I deem it necessary to provide a succinct analysis of the key dates in this litigation matter.

[10.1] On May 2021 the respondent submitted a request for access to information in terms of section 18 of the Promotion of Access to Information Act,2 of 2000.

[10.2] On 12 May 2021 the respondent received a letter from the third applicant's representative refusing the respondent's request for access to information.

[10.3] On 20 May 2021 respondent lodged an internal appeal in terms of section 74(1)(a) of PAIA.

[10.4] After no timeous response to the internal appeal was forthcoming, the appeal was deemed to be dismissed in terms of section 77(7) of PAIA.

[10.5] Thereafter on 20 July 2021 the respondent filed an application under the above-mentioned case number seeking that the applicants deemed refusal to provide the requested information be reviewed and set aside.

[10.6] The application for reviewing and setting aside the applicants deemed refusal thereof was served on the three applicants on the 29 July 2021 and 10 August 2021 respectively.

[10.7] The final notice of set down, indicating the date of the hearing of the PAIA application as 21 February 2022, was served on the first applicant's legal department at its principal place of business on 1 February 2022;

[11] After the court order by Honourable Justice Madiba was granted on the 22 February 2022, the sheriff of the court was instructed to serve same to the applicants and same was done on the 29 March 2022. The service of the court order was sent to the applicants via email *ex abundanti* cautela on 24 February 2022 requesting compliance with same.

[12] Accordingly, no response was received from the applicants, later on 24 March 2022 the respondents attorneys re-send the court order to the applicants requesting compliance therewith.

[13] The Court order was served on the first applicant's legal department and its principal place of business on 18 May 2022

[14] Having not received a courtesy of response from the applicants, the respondent launched the contempt of court proceedings and the application for contempt of Court was served on the legal department and its principal place of business on 11 May 2022; as appears from the sheriff's return of service attached as hereto.

[15] Insofar as the State Attorney is concerned:

[15.1] The PAIA application was served on the State Attorney at its principal place of business on 23 July 2021;

[15.2] The final notice of set down, was served on the State Attorney at its principal place of business on 25 January 2022;

[15.3] The application for contempt of Court was served on the State Attorney at its principal place of business on 6 May 2022.

[16] Having outlined the key dates in this matter as mentioned *supra,* I now turn to deal with the legal framework pertaining to condonation which is extremely supreme prior to considering the merits of the main application.

Principles governing condonation.

[17] The approach to adopt when deciding an application for condonation was set out by Boshielo AJ (writing for the majority refused to condone the delays of 30 court days)

(as he then was) in *Grootboom v National Prosecuting Authority and Another*[1] where he stated that:

> *"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance*

> *with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default."*[2]

[17.1] At paragraph 32 he continued to state that:

> " *I need to remind practitioners and litigants that the rules and court's directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management*
>
> *of our courts' roll, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the ever-increasing costs of litigation, which if left unchecked will make access to justice too expensive ".*

[17.2] He continues to note at paragraph 33 that:

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[1] 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) (21 OCTOBER 2013)

[2] Id at paragraph 23

Recently this Court has been inundated with cases where there have been disregard for its directions. In its efforts to arrest this unhealthy trend, the Court has issued many warnings which have gone largely unheeded. This year, on 28 March 2013, this Court once again expressed its displeasure in eThekwini[3] as follows:

" The conduct of litigants in failing to observe Rules of this Court is unfortunate and should be brought to a halt. This term alone, eight of the 13 matters set down for

hearing, litigants failed to comply with the time limits in the rules and directions issued by the Chief Justice. It is unacceptable that this is the position in spite of the warnings issued by this Court in the past. In [Van Wyk[4]], this Court warned litigants to stop the trend".

The Court said:

" There is now a growing trend for litigants in this court to disregard time limits without seeking condonation. Last term alone, in eight out of ten matters, litigants did not comply with the time limits or the directions setting out the time limits. In some cases, litigants either did not apply for condonation at all or if they did, they put up flimsy explanation. This non-compliance with the time limits or the rules of Court resulted in one matter being postponed and the other being struck from the roll. This is undesirable .This practice must be stopped in its tracks".

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[3] eThekwini Municipality v Ingonyama Trust [2013] ZACC 7; 2013 (5) BLR 497 (CC)

[4] Van Wyk v Unitas Hospital and Another (Open Democracy Advice Centre as Amicus Curiae) [2007] ZACC 24; 2008 (2) SA 472 CC; 2008 (4) BCLR 442 (CC)

[17.3] Earlier in paragraph 30 of that same judgment he noted that

" There is another important dimension to be considered. The respondents are not only ordinary litigants. They constitute an essential part of government. In fact, together with the office of the State Attorney, the respondents sit at the heart of the

administration of justice. As organs of state, the Constitution obliges them to " assist and protect the courts to ensure the Independence, Impartiality, Dignity, Accessibility, and Effectiveness of the Courts"[5].

[18] The test for condonation is set out in a separate judgment in *Grootboom* by Zondo J (as he then was), where he stated that:

"*In this Court the test for determining whether condonation should be granted or refused is the interest of justice. If it is in the interest of justice that condonation be granted, it will be granted. If it is not in the interest of justice to do so, it will not be granted. The factors that are taken into account in that inquiry include:*

(a) the length of the delay;

(b) the explanation for, or cause for, the delay;

(c) the prospects of success for the party seeking condonation;

(d) the importance of the issue(s) that the matter raises;

(e) the prejudice to the other party or parties; and

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[5] Section 165 (4) of the Constitution of the Republic of South Africa Act 108/1996.

(f) the effect of the delay on the administration of justice."[6]

[18.1] In principle, the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor to be considered in favour of granting condonation.

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[18.2] Recently the Constitutional Court in *Steenkamp v Edcon limited*[7] in the judgment of Basson AJ said that*:*

> *"The principle is firmly established in our law that where time limits are set, whether statutory or in terms of the rules of court, a court has inherent discretion to grant condonation where the interests of justice demand it and where the reasons for non-compliance with the time limits have been explained to the satisfaction of the court"*[8]

[18.3] The Constitutional Court in *Steenkamp* further endorsed with approval the earlier judgment in *Grootboom* where that court held that *"[i]t is axiomatic that condoning a party's non-compliance with the rules of court or directions is an indulgence. The court seized with the matter has discretion whether to grant condonation."*[9]

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[6] *Grootboom* at paragraph 50

[7] [2019] ZACC 17

[8] *Steenkamp* at paragraph [26]

[9] *Grootboom* at paragraph 20.

[19] **Rule 27(3)** of the **Uniform Rules of Superior Courts** stipulates that: *"The court may, on good cause shown, condone any non-compliance with these rules"*. The learned author of Superior Court Practice provides the following guidelines to the consideration of an application for condonation.

[20] The courts have a discretion, which must be exercised judicially on a consideration of the facts of each case; in essence it is a matter of justiciable fairness to both

sides[10]. A judicial discretion is not an absolute or unqualified discretion but must be exercised in accordance with recognised principles[11].

[21] Among the factors that the court has regard to are: the degree of non-compliance, the explanation of the delay, the prospects of success, the importance of the case, the nature of the relief sought, the other party's interest in finality (an inordinate delay induces a reasonable belief that the order had become unassailable), prejudice to the other side, the avoidance of unnecessary delay in the administration of justice and the degree of negligence of the persons responsible for the non-compliance[12].

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[10] Dada v Dada 1977 (2) SA 287 (T); Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Limited and Others [2013] 2 All SA 251 (SCA)

[11] Setsokosane Busdiens (Edms) Bpk v Voorsitter Nasionale Vervoerkommissie 1986 (2) SA 57 (A) 75.

[12] Harms Superior Court Practice B27.7 and precedent referenced therein.

[22]The principles applicable to applications for condonation are trite and as enunciated in Melane v Santam Insurance Co Ltd[13]. The following was said about the factors that will be considered when considering a Condonation Application:

> "In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. Ordinarily these facts are interrelated, they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of

> what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interests in finality must not be overlooked[14].

[23] The Court in Melane v Santam Insurance Co Ltd *supra* emphasised that any attempt to formulate a rule of thumb should be avoided. These factors are not necessarily cumulative, but they are interrelated, and the Court or Tribunal has a

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[13] Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A).

[14] Ibid at 532B-E.

judicial discretion in deciding whether or not in any given case these factors have been canvassed[15].

[24] The Supreme Court of Appeal in Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited[16] reiterated the applicable principles as follows:

> "A full, detailed, and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation therefor, the importance of the case, a respondent's interest in the

> finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice.[17]"

Consideration of condonation

[25] The first applicant in paragraph 63 of her founding affidavit states that " *I have requested the commission's legal unit to give an explanation as to what transpired pursuant to the issuing of the application. I, however, wish to categorically state from the onset that neither the Minister nor I were aware of the legal proceedings or court*

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[15] Minister of Justice and Constitutional Development v General Public Service Sectoral Bargaining Council and Others 2017 (38) ILJ 213 at paras 3-4.

[16] Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited 2017 (6) SA 90 (SCA).

[17] Ibid at para 26.

order until early May 2022, when I was advised of the contempt proceedings. I have requested information pertaining to what transpired upon the application being served on the Department's legal department and the Commission's legal unit[18]"

[25.1] In this regard it is apposite to point out that as adumbrated *supra* on key dates to this matter the following is incontrovertible;

[25.1.1] that the PAIA review application was served on the first applicant's legal department and its principal place of business on the 10 August 2021.[19]

[25.1.2] that the final notice of set down,[20] indicating the date of the hearing of the PAIA application as 21 February 2022, was served on the first applicant's legal department at its principal place of business on 1 February 2022;[21]

[25.1.3] that the Court order was served on the first applicant's legal department and its principal place of business on 18 May 2022;[22]

[25.1.4] that the application for contempt of Court was served on the first applicant's legal department and its principal place of business on 29 March 2022.[23]

[26] What is more incompatible with her previous statement that, the second applicant became aware of same during early May 2022 is the following:

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[18] FA: par 63, Caselines paginated pgs. 481

[19] Annexure "FR4.1".

[20] Annexure "FR4.2".

[21] Annexure "FR4.3".

[22] Annexure "FR4.4".

[23] Annexure "FR4.5".

[26.1] at paragraph 65 thereof, the first applicant further states that " *Similarly, the Minister was not aware of the application and the subsequent orders until she was briefed about a need to sign a supporting affidavit during the week of the 20th of June 2022*."

[26.1.1] at 66 thereof, the first applicant further states that " *As to what happened when the application was served, It appears that the legal department of both the Commission and the Department belaboured under the impression that the matter was being attended to by the other without verifying what was being done*……"

[26.1.2] at 67.1 thereof, the first applicant further states that " *The application was served on 29 July 2021 on the legal directorate of the Department, the information officer, and the Commissioner;*

[26.1.3] at 67.2 thereof, the first applicant further states that " *The legal unit of both the Minister and the Commission failed to promptly instruct the attorney to appoint Counsel. The matter was neither brought to my attention nor to the Minister's attention";*

[26.1.4] at 68 thereof, the first applicant further states that " ….*Therefore, I was not aware of the application until mid-May 2022. There also appear to have been a communication breakdown between the commission, the department's legal services directorate and the State Attorney. This all happened without my or the Minister's knowledge."*

[27] In this regard it is apposite to point out that as adumbrated *supra* on key dates to this matter the following is irrefutable;

[27.1] That the PAIA application was served on the second applicant's legal department at its principal place of business on 29 July 2021;[24]

[27.1.2] That the final notice of set down, was served on the second applicant's Senior Legal Administration Officer and at its principal place of business on 27 January 2022;[25]

[27.1.3] That the Court order was served on the second applicant's legal department and its principal place of business on 29 March 2022;[26]

[27.1.4] That the application for contempt of Court was served on the second applicant's at its principal place of business on 11 May 2022.[27]

[28] The second applicant has filed a supporting affidavit where she states under oath that she confirms the allegations made by the first applicant in so far as it pertains to her, and further, that she only became aware of this matter on 20 June 2022 when she was briefed to sign the supporting affidavit.[28] It is concerning to note that the second applicant in her affidavit, however, fails to disclose that on 3 May 2022, a WhatsApp message was personally sent by Mr. Theo De Jager ("Mr. De Jager"), the chairperson of SAAI, to the Minister which included the Court order and the

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[24] Annexure "FR5.1".

[25] Annexure "FR5.2".

[26] Annexure "FR5.3".

[27] Annexure "FR5.4".

[28] Caselines paginated pgs. 384-386.

correspondence dated 24 February and 24 March 2022.[29] This message was read by the Minister as can be seen from the blue ticks depicted by the WhatsApp message.[30]

[28.1] The first applicant is further non-verbal as to when precisely the Information Officer of the Department (being the third applicant herein) and the State Attorney became aware of the legal proceedings and the court order.

[29] As regards the third applicant the following remains incontestable;

[29.1] That the PAIA application was served on the legal department and its principal place of business on 29 July 2021;[31]

[29.2] That the final notice of set down, was served on the Senior Legal Administration Officer at its principal place of business on 27 January 2022;[32]

[29.3] That the Court order was served on the legal department at its principal place of business on 29 March 2022;[33]

[29.4] The application for contempt of Court was served on the legal department and its principal place of business on 11 May 2022;[34] as appears from the sheriff's return of service attached as hereto.

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[29] Annexure "FR6.1" Caselines paginated pgs. 577

[30] Id.

[31] Annexure "FR7.1".

[32] Annexure "FR7.2".

[33] Annexure "FR7.3"

[30] As regards the office of the State Attorney, the following remains undisputed;

[30.1] That the PAIA application was served on the State Attorney at its principal place of business on 23 July 2021;[35]

[30.2] That the final notice of set down, was served on the State Attorney at its principal place of business on 25 January 2022;[36]

[30.3] That the application for contempt of Court was served on the State Attorney at its principal place of business on 6 May 2022.[37]

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[31] As adumbrated *supra* with particular reference to Mulaudzi matter,[38] a party seeking condonation must provide a Court with a comprehensive explanation as to the events that occurred which prohibited it from taking the necessary and urgently required steps during the period for which it is seeking condonation. It is the Court's firm view that this has not been done by the Applicants *in casu*.

[32] It is worth noting that the Court was also able to decipher the following from the first applicant's founding affidavit which the Court consider to be fatal to the applicants condonation application;

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[34] Annexure "FR7.4".

[35] Annexure "FR8.1".

[36] Annexure "FR8.2".

[37] Annexure "FR8.3".

[38] See f/n 17 *supra.*

[32.1] Save for what is contained in paragraph 67,[39] it appears to the Court that there has been some measure of slacken-off on the applicants in dealing with this matter.

[32.2] From perfunctory reading of the applicants founding affidavit it became evident to the Court that the applicants' attempts to proffer a good explanation is desperate and wanting .

[32.3] That the applicant's' explanation for delay is not satisfactory and the flimsy reason for its default is completely insufficient. Furthermore, it is evident from the succinct analysis of the key dates mentioned *supra* that the delay in instituting this particular application has been wilful, deliberate and the is not *bona fide.* Accordingly, it is intended to delay proceedings as adumbrated *supra.*

[33] It is apparent to the Court that the respondent did all what was reasonably expected of a litigant in the circumstances to bring the legal proceedings and the Court Order by the Honourable Justice Madiba to the attention of the applicants.

[34] The applicants are not the ordinary litigants they constitute an important part of administration of justice. As part of the eco-system of the state, it is expected of them to ensure that there is effective and efficient administration of justice.

[34.1] It is further the court firm view that the applicants were not paying the necessary attention to this matter up until the contempt of Court application was issued and

[39] Applicant's founding affidavit; Caselines paginated pgs. 452-489

served upon the second applicant in particular. This the Court find to be in direct opposite to what the Apex- Court said in the Grootboom[40] matter mentioned *supra*.

[35] In Chetty v Law Society of Transvaal 1985 (2) SA 756 (A) at 756 Miller JA defined the test for determining good cause thus:

> "*The term "sufficient cause" (or "good cause") defies precise or comprehensive definition, for many and various factors require to be considered. (See Cairn's Executors v Gaarn 1912 AD 181 at 186 per Innes JA.) But it is clear that in principle and in the long-standing practice of our Courts two essential elements of "sufficient cause" for rescission of a judgment by default are:*
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> *(i) that the party seeking relief must present a reasonable and acceptable explanation for his default; and*

> *(ii) that on the merits such party has a bona fide defence which, prima facie, carries some prospect of success. (De Wet's case supra at 1042; PE Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd 1980 (4) SA 794 (A); Smith NO v Brummer NO and Another; Smith NO v Brummer 1954 (3) SA 352 (O) at 357 - 8.)*
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> *It is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default. And ordered judicial*

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[40] 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) (21 OCTOBER 2013), at par 30 and 31.

process would be negated if, on the other hand, a party who could offer no explanation of his default other than his disdain of the Rules was nevertheless permitted to have a judgment against him rescinded on the ground that he had reasonable prospects of success on the merits.

The reason for my saying that the appellant's application for rescission fails on its own demerits is that I am unable to find in his lengthy founding affidavit, or elsewhere in the papers, any reasonable or satisfactory explanation of his default and total failure to offer any opposition whatever to the confirmation on 16 September 1980 of the rule nisi issued on 22 April 1980."

[36] At 767J–769D:

the learned Judge expounded further as follows in relation to the application of this test:

"As I have pointed out, however, the circumstance that there may be reasonable or even good prospects of success on the merits would satisfy only one of the essential requirements for rescission of a default judgment. It may be that in certain circumstances, when the question of the sufficiency or otherwise of a defendant's explanation for his being in default is finely balanced, the circumstance that his proposed defence carries reasonable or good prospects of success on the merits might tip the scale in his favour in the application for rescission (cf Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 532).

But this is not to say that the stronger the prospects of success the more indulgently will the Court regard the explanation of the default. An unsatisfactory and unacceptable explanation remains so, whatever the prospects of success on the merits. In the light of the finding that appellant's explanation is unsatisfactory and unacceptable itis therefore, strictly speaking, unnecessary to make findings or to consider the arguments relating to the appellant's prospects of success."

[37] The Court find that the applicants have not shown good cause for condonation to be granted, in the court's view there can be no doubt that the delay of some odd one hundred and three days is excessive. As adumbrated *supra* the Court find that all the applicants knew and /or were made aware of the Court Order by the Honourable Justice Madiba dated the 22 February 2022 and that same was formerly served and informally provided to all the relevant role players within the legal structures of the applicants. It is mindboggling that none of these officials, who received the said Court order acted thereupon on time. The only plausible inference is that there was a sheer wilful disregard of the court order.

[38] This lackadaisical behaviour on the part of the applicants and the first applicant in particular is contrary to what she deposed to on her founding affidavit[41].

[41] FA at paragraph 68 ;Caselines paginated pgs.483. par 68. " *Due to the litigious nature of the land restitution process, almost weekly, applications gets issued against Commission and the legal unit deals with them and escalates only when it is necessary. Therefore, I was not aware of the application until mid-May 2022….".*

[39] The admission of lack of urgency by the first applicant[42] is a clear indication to this court that this matter was not given proper attention it deserves given the Court order granted by the Honourable Justice Madiba dated the 22 February 2022. The notion of " *justice must not only be done but must be seened to be done*" find application in this regard. The fact that a Court order was duly granted by this court is justice in itself but the failure and/ or the delay to execute the said Court order by the applicants is a sheer injustice to the respondent.

[40] The applicants have failed to make out a case for condonation for late launching of this rescission application.

[41] Consequently I make the following order.

Order

[42] The application for condonation for the failure to issue the rescission application within 20 days as envisaged in Rule 31(2)(b) of the Uniform Rules of Court is refused.

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[42] Id FA at paragraph 71 ; Caselines paginated pgs. 484 par 71 and 80*" With all the relevant role players attending various meetings of the Commission and the Department Legal Services Officials being away of family responsibility leave; the state attorney unable to access his office for his file, it proved difficult to trace and collate all the necessary information and hand over a clear picture to our counsels*", at par 80 "...,.It was also due to the failure of effective communication between the State Attorney, the Commission and Department's legal services".

[43] The applicants are ordered to pay the costs of this application including the costs of two counsel.

J YENDE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 19 September 2023

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Date heard:	**1 June 2023**
Date of Judgment:	**19 September 2023**