

SOUTH AFRICA / JUDGMENT

Mabuli and Another v South African Legal Practise Council (030312/23) [2025] ZAGPPHC 172 (25 February 2025) [2025] ZAGPPHC 172

COURT

North Gauteng High Court, Pretoria

BEFORE

M M MABESELE, GCAWU-DAMBUZA

CASE / FILE NUMBER

030312/23

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG LOCAL

DIVISION, PRETORIA

CASE NO: 030312/23

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

DATE: 25/02/2025

SIGNATURE

In the matter between: KHOROMMBI
 MABULI
 FIRST
 APPLICANT
 MABULI
 INC ATTORNEY
 SECOND
 APPLICANT
 And
 THE
 SOUTH AFRICAN LEGAL PRACTISE COUNCIL
 RESPONDENT

CORAM: MABESELE J AND GCAWU-DAMBUZA AJ

JUDGMENT

MABESELE J:

- [1] This is a review application in terms of which the relief is sought in accordance with the prayers in the notice of motion, in particular, the review and setting aside the respondent's decision, taken on 3 August 2020, to mandate its members in the Gauteng Provincial Office to approach the court with the application to suspend the first applicant from practice as a legal practitioner, and , to set aside the enrolment of the application under case no:58995/2020.
- [2] The first applicant first seeks condonation for late filing of this review application. This request, together with this review application, is opposed. Both counsel requested to argue condonation and review application at the same time for the sake of time and resources. We have considered their request and concurred with them. This, means that, should the condonation, in all circumstances, be refused, we will not apply our minds to the merits. In the contrary, should condonation be granted, the merits will be entertained.
- [3] A court considering whether or not to grant condonation exercises a discretion. The discretion must, of course, be exercised judicially on consideration of all the facts and 'in essence it is a matter of fairness to both sides'[1] One should always be mindful of the requirements for condonation, such as (i) reasons for delay, (ii) prejudice that the applicant will suffer if condonation is refused, (iii) prospects of success.
- [4] The application of the undue delay rule is outlined by the Supreme Court of appeal in the matter between Opposition to Urban tolling Alliance and South African National Agency Ltd [2] wherein it is held that the application of this delay rule required two stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all circumstances be condoned.

- [5] Section 7(1) of PAJA provides that all proceedings for judicial review must be instituted without reasonable delay and not later than 180 days after the applicant (i) is notified of the administrative action or (ii) became aware of the action or (iii) might reasonably have been expected to have become aware of the action.
- [6] The respondent took decision to approach the court with an application to suspend the first applicant from practice, on 3 August 2020. The review application was launched on 24 March 2023, approximately 29 months after the respondent had taken the decision. The applicant became aware of the decision of the respondent soon after it was taken.
- [7] The first applicant attributes the cause of the delay in the launching of this application to the financial constraints which his firm(second applicant) had experienced due to the failure by the Road Accident Fund to settle claims, timeously, which he had submitted for payment. His firm practices, predominantly, in the area of the third party law and the main income generated from the firm is in respect of the Road Accident Fund matters. He argues that, due to the conduct of the Road Accident Fund he was forced to institute litigation against it, on several occasions, to recover the monies due to the firm. He argues that he spent all his monies on litigation. In addition to this challenge he fell gravely ill during August 2022.
- [8] Although the reasons advanced by the first applicant are understandable insofar as they relate to the challenge he had experienced with the Road Accident Fund, the first applicant has failed to explain how he managed to sustain his practice without income from the Road Accident Fund. There is no evidence that the practice stopped operating due to financial constraints even though the first applicant fell gravely ill and was admitted to the hospital at some stage.
- [9] The applicant disposed to the founding affidavit without record of proceedings of the meeting of members of the respondent. Upon receipt of the record, he disposed to the supplementary affidavit and addressed some discrepancies in the reports of the Chartered Accountants. He argues that the delay by the respondent to forward the record on time and its failure to provide reasons for its decision prompted the delay in launching the review application. This argument, too, does not advance the case of the applicant for granting condonation. This is so because nothing prevented the first applicant from launching the review application on time and supplement the founding affidavit upon receipt of the record which was sent to him late. This does not suggest that the respondent is at liberty to provide information late to those that are affected by its decisions and are entitled to such information to prepare their defence. That said, the applicant has failed to give reasonable explanation for his delay in launching this application.
- [10] The first applicant raises prejudice as another factor which he claims justifies granting condonation. First, he argues that he is the breadwinner and father of a 14 year old daughter. Therefore, if condonation is not granted he will suffer prejudice in that he will not be able to maintain his daughter. This argument is clearly poor. The second leg of argument which is equally poor, in my view, relates to his constitutional rights which he claims will be

violated if condonation is not granted. He does not explain how this right will be violated. It is worth mentioning that the applicant has a right to challenge the application for his suspension, in court, which the respondent intends to launch. In contrast, the respondent, as custodian of the members of the public who are clients of its members, will suffer prejudice if condonation is not granted. The reason is that such a move will cause unnecessary delay in finalizing applications which involve complaints by members the public.

[11] The applicant has no prospects of success on the merits, if regard is had that the respondent has an obligation to approach the court with regard to the professional conduct of its members (who are also officers of the court) which, in the respondent's view, require scrutiny by the court. Since our constitution guarantees everyone's rights to have any dispute decided in a fair hearing before the court, it stands to reason that this court is debarred from closing its doors for the respondent to bring a suspension application against the first applicant.

[12] In the result, the following order is made:

12.1 Application for condonation for late filing of the review application is dismissed with costs on Scale B.

M.M MABESELE

(Judge of the High Court Gauteng Division)

I agree

GCAWU-DAMBUZA

Date of Hearing

: 6 February 2025

Date of judgement

: February 2025

Appearances

On behalf of the applicant : Adv. Kameel Premhid, with Adv. Lesetja Modiba Instructed by

: Lazarus Joshua Attorneys On behalf of the respondent : Adv. Nadine Erasmus Instructed by

: Mphokane Attorneys

[1] 2005(2) SA 117(CC) para 20

[2] 2013(4) All SA 639 (SCA) para 26.

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