

SOUTH AFRICA / JUDGMENT

Rossouw v Blignaut & Wessels and Another (1836/2019) [2021] ZAFSHC 86 (18 March 2021)

[2021] ZAFSHC 86

COURT

Free State High Court, Bloemfontein

BEFORE

Daniso

CASE / FILE NUMBER

1836/2019

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

Number: 1836/2019

In

the matter between:

MARTHA
JOHANNA PETRONELLA ROSSOUW
Applicant
and
BLIGNAUT
&
WESSELS
First Respondent
MEC
POLICE, ROAD AND TRANSPORT
Second
Respondent
FOR
THE PROVINCE OF THE FREE STATE
HEARD

ON: This
matter was disposed of without the hearing of oral arguments as
provided for in s 19(a) of
the Superior
Courts Act 10 of 2013.

JUDGMENT

BY: DANISO, J

DELIVERED ON: 18 MARCH 2021

[1] The applicant seeks leave to appeal to the full bench of this division against the judgment of this court handed down on 05 November 2020, in terms of which the applicant's condonation application for the late service of the notice contemplated in s3

(1) (a) of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 ("The Act") was dismissed with costs.

[2] The application is opposed by the second respondent.

[3] The background of the facts which culminated in the said application are illustrated in the judgment. I therefore deem it unnecessary to repeat them herein.

[4] The applicant's notice of application for leave to appeal was filed with the Registrar on 16 February 2021 and it raises seven grounds of appeal namely, that:

"1. The court erred in finding that good cause does not exist, for the failure by the Applicant, acting on behalf of her minor children, to serve the notice in terms of Act 40 of 2002 timeously;

2. The Honourable court further erred, in finding that the second respondent would indeed be unreasonably prejudiced, if condonation for non-compliance with the stipulations of Act of 2002 is granted;

3. The Honourable court erred in finding that the Applicant is well versed about legal proceedings, and should have enquired regarding the progress of the matter for a time period of six years until 2017;

4. The Honourable court erred, in finding that the explanation of the applicant's delay is not sufficiently full, to enable the court to understand how the delay came about;

5. The Honourable court erred, in finding that the Applicant did not see the accident which claimed the life of the deceased happen, and thus could not give first-hand evidence as to the reasons for the accident, the Honourable court erred in not finding that the accident report completed by the police officials on the scene, just after the accident indicating potholes, as well as the engineers / reconstruction experts reports as well eye witness statement corroborates the version of the Applicant;

5.1. It is respectfully submitted that the Court erred, in not finding that a vehicle does not leave the road surface without reason-without a collision with another object, the only plausible explanation is that the vehicle driven by the deceased left the road surface due to potholes and/or bad road surface;

6. The Honourable court erred in placing too much emphasis on the possible prospects of success of the claim in the main action, in dismissing the Applicant's application for condonation; and

7. The Honourable court erred in finding that the speculation on behalf of the Second Respondent, regarding possible prejudice, and the fact that the Second Respondent only have to lay a basis for prejudice can be construed that the Second Respondent will be unreasonably prejudiced if condonation is granted."

[5] The application is based on the provisions of s17(1)(a)(i)[1] which fundamentally enjoins me to grant leave, only if I'm of the opinion that the appeal would have a reasonable prospect of success. It is trite that '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.' See *Acting National Director of Public Prosecutions & others v Democratic Alliance in re: Democratic Alliance v Acting National Director of Public Prosecutions & others* (19577/09)

[2016] ZAGPPHC 489 para 25.

[6] The onus is on the applicant to convince this court that she has prospects of success on appeal and that based on those facts another court would come to a different conclusion.

[7] The submissions proffered by the applicant are meritless and have no prospects of success on appeal. S 3(4)(b)(ii) and (iii) places the onus on the applicant to satisfy the court that good cause exists for the failure to serve the notice timeously and that the second respondent was not prejudiced by the late notice. In the judgment, pages 9 to 14 at paras 21 to 32, the grounds upon which it was held that the applicant has not met these requirements are set out and having failed to meet these requirements the applicant was not entitled to the court's discretion to condone the late notice. See *United Plant Hire (Pty) Ltd v Hills* 1976

(1) SA 717 (A) at 720E-G.

[8] The submission that this court erred in finding that the applicant did not see the accident which claimed the life of the deceased, and thus could not give first-hand evidence as to the reasons for the accident is quite disingenuous. It was the applicant's case that the deceased was alone in the vehicle when the accident occurred and that the applicant only went to the scene of the accident few days after the accident. (Page 11 at paragraph 20 and page 14 at paragraph 29 of the applicant's

founding affidavit).

- [9] It is also a gross distortion of facts that the accident report referred to by the applicant depicted potholes on the road. The engineer's report referred to the state of the road seven years after the accident not the accident reconstruction.
- [10] It is plainly bad and misleading that the only plausible explanation for the cause of an accident where there were no other vehicles involved is the bad state of the road surface or potholes. Single vehicle collisions can also be caused by driver negligence which is highly probable in this case when taking into consideration the testimony of the only eye witness' version that the accident occurred at night and immediately before the collision the deceased overtook several cars without returning to his lane, his vehicle then veered off the road and capsized.
- [11] Lastly, no finding was made in the judgment to the effect that the respondent will be unreasonably prejudiced if condonation was granted. I held that the respondent was unreasonably prejudiced by the late notice.
- [12] Based on the reasons above I am not persuaded that another court would come to a different conclusion. The following order is issued.
- [13] Order
1. The application for leave to appeal to the full bench of this division against my judgment granted on 05 November 2020 is dismissed with costs.

N.S. DANISO, J

For the applicant: LEON JJ VAN RENSBURG

C/O ROSENDORFF REITZ BARRY

Bloemfontein.

For the 2nd respondent STATE ATTORNEY

Bloemfontein

[1] Superior Courts Act 10 of 2013.

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Prepared on 28 October 2026 · Esheria