


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 11045/2024

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| (1) | <u>REPORTABLE: YES/NO</u> |
| (2) | <u>OF INTEREST TO THE JUDGES: YES/NO</u> |
| (3) | <u>REVISED</u> |
| | |
| DATE: 31/01/2025 SIGNATURE:  | |

In the matter between:

RED SAGE PROPERTIES 91 (PTY) LTD

Applicant

And

THE TRUSTEES FOR THE TIME BEING

OF THE REMORA TRUST (KAREN CRONJE N.O)

Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **31 January 2025**.

JUDGMENT

MAKOTI AJ

Introduction

- [1] There are two applications before me. The first is an application for sequestration of the estate of the respondent, which I shall henceforth refer to as the main application. The second application is a condonation application (the application) that was filed by the respondent to condone its delay for filing a Notice in terms of Rule 7(1) of the Uniform Rules of Court (the notice). The notice will stand if condonation is granted and, if not, the main application should progress forward.
- [2] For convenience purposes reference to the parties in this judgment will be as in the main application.

Rule 7(1) of the Uniform Rules

- [3] The notice was delivered simultaneously with the application for condonation on 16 January 2025. The parties are at odds as to how the matter should progress further. This came to light when they appeared before me on 21 January 2025, and subsequently on 23 January 2025. This prompted me to direct the parties to file concise heads of

argument in support or rebuttal of the application, and the legal implications of the notice.

- [4] The wording of Rule 7(1) is important to set the tone for this application. This will enable me to decipher how the rule is to be applied in the circumstances of this case. It reads as follows:

“(1) Subject to the provisions of sub rules two and three a power of attorney did not be filed, but the authority of anyone acting on behalf of a party me, within 10 days after it has come to the notice of a party that such person is so acting, or with leave of the court on good cause shown at any time before judgement, be disputed, whereas such person may no longer act unless he satisfied the court that he is authorised to sew act, and to enable him to do so the court may postpone the hearing of the action or application.” (Emphasis added)

- [5] The applicant opposes the steps taken by the respondent and contents that the filing of the notice was done to delay the hearing and finality of the main application. It highlighted that the main application was issued months ago, on 07 October 2024, after which it was served on the respondent on 10 October 2024. When no affidavit was delivered by the respondent the applicant set the hearing of the application on the unopposed roll of 21 January 2025.

- [6] On the day of hearing of the application the respondent showed up through legal representation in court. But before that it had done the following:

- [6.1] it filed a notice of intention to oppose the main application on 25 October 2024;
- [6.2] on 16 January 2025 it filed the notice together with the application;
- [6.3] on the same date it filed a notice in terms of rule 35(12) of the Uniform Rules, which has since been abandoned.
- [7] Rule 7(1) has the effect that once the notice is filed on opposing party's legal representatives, the attorney whose authority is being challenged may not proceed with the case until such time that prove to the satisfaction of the party that is challenging the authority, and the court is produced. The challenge ends when proof of authority is provided.¹
- [8] Ordinarily, proof of authority is presented in the form of a power of attorney that the affected legal representative would produce, or any confirmation by the client that they have authorised the attorney to represent them in the litigation. I have indicated above that once authority is proven the issue is closed and the matter can progress into further stages without any hindrances.

Condonation

- [9] Owing to all the dates that I have canvassed above, it is self-evident that the notice was served more than 10 days after the respondent

¹ Limpopo Provincial Council of the South African Legal Practice Council v Chueu Incorporated Attorneys and Others (459/22) [2023] ZASCA 112 (26 July 2023) at para [22].

became aware of the application and who the applicant's legal representatives were. It was necessary therefore for the respondent lodge the application and to show good cause why the notice should be allowed to stand. The application is opposed.

- [10] The principles for condonation are well known. A party seeking condonation must fully disclose and a reasonable explanation for its non-compliance, and demonstrate reasonable prospects of success on the merits of the case. The length of delay, which ought to not have been wilful, also plays a crucial role in determining whether to grant condonation.² Logically, the longer the delay, the harder it would be for an applicant to pass the test of reasonable explanation.
- [11] It is common cause that the respondent served its notice of intention to oppose the main application for its frustration on 25 October 2024. After that, it elected to withhold the filing of its answering affidavit and the notice as it was awaiting finalisation of the financial statements. It is not exactly clear why the filing of a notice had to be held up pending the delivery of financial statements, and how the two relate. I don't see how the filing of the notice could not be proceeded with without the statements.
- [12] The filing of the notices appears to have been prompted by the contents of an email exchange dated 16 January 2025. The email contain communication between Ms Karen Cronje and Cornel Smit and

² Grootboom v National Prosecuting Authority and Another (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 para [23]. Von Abo v President of the Republic of South Africa [2009] ZACC 15; 2009 (5) SA 345 (CC); 2009 (10) BCLR 1052 (CC) at para 20.

indicating that the information that was needed was in the hands of one Mr Naudé. The respondent's case is that Mr Naudé refuses to cooperate to ensure that the information needed is made available.

[13] As to why the application was delayed, therefore, the respondent did not provide full disclosure of what impeded it from delivering the notice. On the prospects of success, the respondent presents mere *ipse dixit* that in its belief the applicant owes it lots of money. No figures and objective evidence are disclosed as to how much it is owed by the applicant.

[14] In *Mulaudzi v Old Mutual Life Assurance company (SA) Limited*³ Ponnar JA re-affirmed the factors to be considered in respect of an application for condonation which have long been stated in *Melane v Santam Insurance Co. Ltd*⁴ as follows:

"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."

[14] I am not satisfied that the respondent has presented a case showing good case for its late filing of the notice and I decline to condone its non-compliance. Costs will follow the result.

³ [2017] 3 All SA 520 (SCA); 2017 (6) SA 90 (SCA); 1962 (4) SA 531 (A) at 532 C-E.

⁴ *Melanie v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A).

- [15] My refusal to grant condonation does not imply that the respondent may not participate in the main application. For the fact that it has come forward with an indication that it opposes the matter, I remove the main application from the unopposed roll and the case shall be enrolled on the opposed roll.

ORDER

- [15] I make the following order:

- [a] The application for condonation is dismissed with costs.
- [b] The main application to sequester the estate of the respondent is removed from the unopposed roll to be enrolled on the opposed roll.
- [c] The respondent is to pay the wasted costs occasioned by the removal of the main application from the unopposed roll.



M. Z. MAKOTI
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION

APPEARANCES:

FOR APPLICANT : ADV G J DIAMOND
WF BOUWER ATTORNEYS INC
C/O CHARL NAUDE ATTORNEYS
POLOKWANE

FOR FIRST RESPONDENT : ADV M DE JAGER
MAGDA KIETS INC
C/O KIRK TWINE ATTORNEYS
POLOKWANE

DATE HEARD: 23 JANUARY 2025

JUDGMENT DELIVERED: 31 JANUARY 2025