



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 11423/2020

**DELETE WHICHEVER IS NOT
APPLICABLE**

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

DATE; 26/04/2022

Lenyai Aj

In the matter between:

BALOYI: YUZA TITUS

First Applicant

BALOYI: AUDREY CHRISTA

Second Applicant

And

THE BODY CORPORATE OF BRYAN BROOK

Respondent

This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020 and 11 May 2020. The judgment and order are accordingly published and distributed electronically. The date and time of hand-down is deemed to be 14:00 on 26 April 2022

JUDGMENT

LENYAI AJ:

[1] This is an application in terms of which the applicants seek the following orders:

- (a) Condonation for the late filing of the Rescission Application.
- (b) Rescission of the Default Judgement in the amount of R449 955.97 granted against the applicants on the 8th December 2020 and
- (c) The applicants be granted leave to defend the main action.

[2] It is common cause between the parties in terms of the joint minutes, that the applicants are the registered owners of the property situated at Unit 27, Bryan Brook, corner Witkoppen and Main Roads, Paulshof (the property). The said property is a sectional title unit in the Bryan Brook Sectional Title Scheme, of which the Respondent is the body corporate. The sectional title scheme consists of 192 units.

[3] The applicants are liable, in terms of the Sectional Titles Scheme Management Act 8 of 2011, for levies and utilities payable in respect of the property and the common property. The respondent issued summons against the applicants for arrear levies and utility charges in the amount of R449 955.97. The applicants did not defend the action and subsequently default judgement was granted.

[4] The current application was served on the respondents late and not in compliance with the rules of court.

- [5] It is also common cause between the parties, that the issues to be determined be determined by the court are the following:
- (a) Whether the applicants have set out a sufficient explanation for the late filing of their rescission application.
 - (b) Whether the applicants have shown good cause for the rescission of the default judgement and whether it is in the interests of justice to rescind the judgement.
- [6] The applicants aver that the rescission application was brought more than 20 days after they became aware of the default judgement. They contend that they did not willfully fail to oppose the summons as they only became aware of it on the 2nd February 2021 when the sheriff came to attach their movable assets at their residence. They further contend that they would have loved to defend the summons if afforded the opportunity and they genuinely believe that they have a good defense to the action and humbly request the court to grant them an opportunity to state their side of the story in court. The applicants state that the pertinent issues are whether they have a reasonable explanation for failing to enter a notice of intention to defend and whether there is a *bona fide* defense.
- [7] The respondent on the other hand aver that the applicants have not set out a clear explanation for the late filing of their rescission application in their condonation application.
- [8] It is a well-established principle in our law that it is in the interests of the administration of justice to require adherence to well established rules and

that those rules should in the ordinary course be observed. **James Brown & Hamer (Pty) Ltd v Simmons 1963 (4) SA 656 (A) at 660 E-G.**

[9] In the matter of **Grootboom v National Prosecuting Authority and Another 2014 (2) SA 68 (CC), at para [20]**, the Constitutional Court stated that “...*It is axiomatic that condoning a party’s non compliance with the rules or directions is an indulgence. The court seized with the matter has a discretion whether to grant condonation.*”

In the same matter the court **at para [23]** 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.*”

And **at para [50]**, the court further reiterated that “*In this court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests 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) 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

(f) the effect of the delay on the administration of justice.

[10] Turning to the matter before me, the applicants served the rescission application incorporating the condonation application for late filing on the 29th March 2021, 18 court days out of time and filed on case lines on the 26th April 2021, 36 court days out of time. There is no reasonable explanation for this delay. The applicants instead raise an indirect Constitutional challenge in that they allege that Regulation 4(5) of the Sectional Titles Schemes Management Act 8 of 2011 is unconstitutional. However, in their replying affidavit the applicants indicate that they have decided not to seek an order in this regard. Despite having stated this, the applicants still raise a substantial argument against the validity of Regulation 4(5) of the Sectional Titles Schemes Management Act 8 of 2011 in their heads of argument. This line of argument is impermissible as they have already indicated in their replying affidavit that they are abandoning this argument and will not be seeking an order in this regard. The court will therefore not entertain this matter any further.

[11] Other than the above arguments, no explanation for the delay in delivering their rescission application is proffered by the applicants. The respondent contends that the applicants on their own version became aware of the judgment on the 2nd February 2021 when the warrant of execution was served on them. However, no explanation is given as to why they failed to bring their rescission application within the 20 days from the date of service of the warrant of execution. In my view the applicants have not put up any

explanation whatsoever before court for their delay and non compliance with the rules of court.

[12] The applicants have not made out a case for condonation of their late filing of the rescission application in that they have not explained the reason for the delay and non-compliance with the rules or court's directions. Put differently the applicants have not put up any reasonable explanation before court to excuse the default. For this reason alone, the application stands to be dismissed.

[13] Having decided to dismiss the condonation application on the basis indicated above, I consider it unnecessary to deal with the main rescission application.

[14] In the premises, the following order is made:

(a) The application is dismissed with costs.

M.M.D LENYAI
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the Applicant: SR Malatji

Instructed by: Malatji Attorneys

Counsel for the Respondents: T Rossouw

Instructed by: Gerrie Ebersohn Attorneys INC

Date of hearing: 01 February 2022

Date of judgment: 26 April 2022