

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 14576/2017

Date:

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED
06/02/2019
DATE SIGNATURE

In the matter between:

INDWE AVIATION (PTY) LTD

APPLICANT

And

MINISTER OF ENVIRONMENTAL AFFAIRS

1ST RESPONDENT

ULTIMATE HELI (PTY) LTD

2ND RESPONDENT

JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)

PRETORIUS J.

- (1) Both the first and second respondents, in the court *a quo*, launched applications for leave to appeal, albeit on different grounds. The first respondent, firstly, requests condonation for the late filing of its leave to appeal application. Should condonation be granted, then the first respondent applies for leave to appeal as set out in the application for leave to appeal.
- (2) The first respondent, the Minister of Environmental Affairs, applies for leave to appeal against the findings on the facts by the court, whilst the second respondent takes issue with the remedies that were granted.
- (3) Both respondents argued that leave to appeal should be granted in terms of section 17(1)(a)(i) of the **Superior Courts Act**¹, as, according to them there are reasonable prospects of success in the appeal and the issues in the appeal will have a practical effect or result.

CONDONATION:

- (4) Judgment in this application was delivered on 27 November 2018. According to the Uniform Rules of Court the respondents had 15 days to apply for leave to appeal the judgment. The last day to do so was 19 December 2018.
- (5) The application for leave to appeal was only served and filed on 23 January 2019 – 22 days late. The reasons are set out in the affidavit

¹ Act 10 of 2013

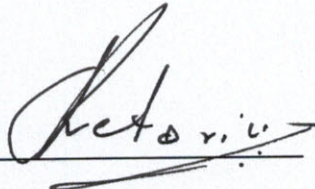
as being due to the holiday period, the annual leave of certain officials, who had knowledge of the matter and who had to issue instructions and the absence of the State Attorney delayed the filing of the application for leave to appeal. It is so that all this occurred during the holiday period, but there is no real explanation as to what had ensued from 27 November 2018 until 22 December 2018.

- (6) The second respondent filed an application for leave to appeal timeously. This fact the court has to take into consideration, as there would be an application for leave to appeal by the second respondent, in any event.
- (7) Counsel for the applicant argued that should the court grant condonation and leave to appeal, it would cause the matter to be moot, as an appeal would, most probably, not be heard before the contract expires in 2021. The argument is that a party, by delaying court processes, can stretch a matter until the contract runs out through effluxion of time. I cannot agree that a court has to take into consideration, when making decisions, how long it will take for an appeal to be heard, due to congestion of court rolls. Special arrangements are made quite often to accommodate appeals, where it is necessary.
- (8) I have considered all the arguments, as well as what will be in the interest of justice, and the reasonable prospect of success the second

respondent may have, should leave to appeal be granted. In these circumstances, I am of the opinion that condonation must be granted to the first respondent, as I intend granting leave to appeal to the second respondent. I am of the opinion that there is a reasonable prospect that another court may come to a different conclusion in this application.

(9) Therefor I make the following order:

1. Condonation for the late filing of the application for leave to appeal, is granted to the first respondent;
2. Leave to appeal is granted to both the first and second respondents; to the Full Bench of the High Court, Gauteng Division (Pretoria);
3. Costs to be costs in the appeal.



A handwritten signature in black ink, appearing to read 'Pretorius', is written over a horizontal line. The signature is stylized and cursive.

Judge C Pretorius

Case number : 14576/2017

Matter heard on : 1 February 2019

For the Applicant : Adv M Chaskalson SC
Adv C Tabata

Instructed by : Ramsay Webber Incorporated

For the 1st Respondent : Adv C Janse van Rensburg

Instructed by : The State Attorney

For the 2nd Respondent : Adv A Subel SC

: Adv K Hofmeyr

Instructed by : Terry Mahon Attorneys

Date of Judgment : 06/02/2019