

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 4278/2018

DATE: 2022-08-29

**DELETE WHICHEVER IS NOT APPLICABLE**

**(1) REPORTABLE: YES / NO.**

**(2) OF INTEREST TO OTHER JUDGES: YES / NO.**

**(3) REVISED.**

**DATE**

**SIGNATURE**

10 In the matter between

LRP MIMBIRI

Applicant

and

ROAD ACCIDENT FUND

Respondent

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***EX TEMPORE JUDGMENT***

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**STRIJDOM, AJ:** Yes, this is an *ex tempore* judgment in this matter:

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1. In this matter applicant seeks an order to rescind and set aside the court order granted by My Honourable Sister Tolmay, J on 24 June 2020 and condonation for the late filing of the application.

2. In respect of the condonation application, it was

stated in *Du Plooy v Anwes Motors* (Edms) Bpk 1984 (4) SA 213 (O) that rule 27(1) of the uniform rules of court requires good cause to be shown.

3. This gives the Court a wide discretion which must, in principle, be exercised with regard also to the merits of the matter, seen as a whole. The graver the consequences which have already resulted from the omission of the applicant, the more difficult it will be to obtain the indulgence.

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4. There is an interdependence of, on the one hand, the reasons for the delay, and on the other hand, the merits of the case.

5. The application must be *bona fide* and not made with the intention of delaying the opposed party's claim.

20 6. The second requirement is that the applicant should satisfy the Court that it has a *bona fide* defence.

7. This matter was on trial on 22 June 2020. There was no appearance for the defendant in that matter. The matter rolled over to 23 June 2020 - still no

appearance for the defendant. On 23 June 2020 the matter was allocated to Tolmay, J for trial. The matter was postponed to 24 June 2020. The Presiding Judge gave a directive that there must be legal representation for the defendant and/or the defendant must apply for a postponement.

8. The directive was sent to the defendant and the attorneys for the plaintiff, engaged with the Claim's handler.

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9. On 24 June 2020 there was no appearance for the defendant (the applicant) and default judgment was granted on the merits in favour of the plaintiff.

10. There is no explanation by the applicant in this matter, why there was no compliance with the Court's directive.

20 11. Counsel for the applicant conceded that there is no explanation why there was no appearance for the defendant and no compliance with the Court's directive.

12. The counsel further conceded that the applicant has

no *bona fide* defence to the respondent's claim.

13. Having considered the papers and submissions made by counsel for the parties, I am of the view that the proper case has not been made out for condonation and that the applicant has no *prima facie* defence in this matter. The witnesses who were passengers in the insured vehicle made statements to the effect that they were forced by the driver of the vehicle to state that the deceased was the driver of the vehicle. It is their version now that the deceased was not the driver of the vehicle involved in the accident.

14. In my view there has been a reckless disregard of the rules and directive of this Court and that an appropriate costs order would be on attorney-and-client scale.

15. In the result the following order is made:

1. Condonation for the late filing of the application is dismissed.
2. The application for rescission is dismissed with costs on an attorney-and-client scale.

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**STRIJDOM, AJ**

**JUDGE OF THE HIGH COURT**

**DATE: .....**