



IN THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD AT CAPE TOWN

Case Number: **LCC 39 R/2017**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~
(3) REVISED: ~~YES~~ / NO

23/06/2020

DATE


SIGNATURE

Delivered on: 23 June 2020

In the matter between:

MERLE ANTROBUS

Applicant

and

HENDRIK WITBOOI

First Respondent

DRAKENSTEIN MUNICIPALITY

Second Respondent

JUDGMENT

MEER AJP

[1] The Applicant applies for leave to appeal to the Supreme Court of Appeal against my order of 23 November 2017 which confirmed an eviction order of Magistrate A Fourie granted in the Wellington Magistrate Court on 23 October 2017. My order was granted after reviewing the order of the court *a quo* in terms of section 19(3) of the Extension of Security of Tenure Act 62 of 1997 (“ESTA”).

[2] An application for leave to appeal dated 1 August 2018 bears a date stamp from this Court of 4 September 2018, the date it was issued. After several postponements the application was eventually set down for hearing during the current lockdown period. At a telephonic conference on 21 May 2020 the parties agreed that the application could be adjudicated in terms of section 19(a) of the Superior Courts Act 10 of 2013 on the pleadings and heads of argument and without oral argument. The First Respondent was directed to file heads of argument by 27 May 2020. The legal representative for the Second Respondent indicated that it would abide the decision of the court and would not file heads. The Applicant was directed to file replicating heads by 1 June 2020. My Registrar

was informed on 2 June 2020 that the Applicant would not be filing replicating heads.

[3] In the heads of argument on behalf of the First Respondent, it was aptly pointed out that in terms of Land Claims Court Rule 69(1)(b), a party wishing to appeal against an order of the Court must apply for leave to appeal by notice of application for leave to appeal delivered within 15 days after the order was made. It is further pointed out and aptly so that the Applicant failed to comply with Rule 69(1)(b), launching the application for leave to appeal as he did, on 1 August 2018 and issuing it thereafter, well beyond the peremptory time period of 15 days prescribed in Rule 69(1)(b). The Applicant in fact launched this application some eight months after the expiry of the 15 day period and issued the application almost nine months thereafter, and astonishingly did so without an accompanying condonation application.

[4] Startlingly absent from the Applicant's lengthy heads of argument and notice of application for leave to appeal is any mention of condonation for the woefully late application for leave to appeal. There appears to have been a flaunting of Rule 69(1)(b) without more on the part of the Applicant. In the circumstances I directed the parties to file written submissions by 19 June 2020 on the following issue: Can the Court consider the application for leave to appeal in the absence

of a condonation application by the Applicant for noncompliance with Land Claims Court Rule 69?

[5] The Respondents furnished submissions in which they argued that absent an application for condonation the application stands to be dismissed. The Applicant failed to file submissions by 19 June 2020. Instead, a letter from the Applicant's attorneys, without seeking permission to do so, simply prescribed new deadlines, informing the Registrar that submissions would be furnished by the morning of 22 June 2020. This did not occur.

[6] It is trite that a party does not have a right to condonation. As was aptly said in *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at paragraph 6 "condonation is not a mere formality and is not to be had 'merely for the asking'".

[7] The requirements of a condonation application were succinctly set out by the Supreme Court of Appeal in *Mulaudzi v Old Mutual Life Insurance Company (South Africa) Limited and Others, National Director of Public Prosecutions and Another v Mulaudzi* [2017] ZASCA 88 at paragraph 26 –

"What calls for an explanation is not only the delay in the timeous prosecution of the appeal, but also the delay in seeking condonation. An appellant should, whenever he realises that he has not complied with a rule of this court, apply for condonation without delay. A full, detailed and accurate account of the causes

of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. 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." (footnotes omitted)

[8] As to the Court's discretion in deciding if sufficient cause has been established, it was stated in *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (AD) at page 532 B—F that —

"In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interest in finality must not be overlooked."

[9] Rule 28(4) of the LCC Rules provides that —

"The Court may, on good cause —

- a) deviate from these rules or from the Uniform Rules and act in a manner which it considers to be appropriate in the circumstances; and
- (b) condone any deviation from or non-compliance with these rules.”

The Applicants have flaunted this Rule also.

[8] In view of all of the above, given that the Applicant has bothered neither to apply for condonation and establish good cause, nor to respond to this Court’s invitation for submissions, the Applicant’s woefully late application stands to be dismissed. In keeping with the practice of this Court I intend making no order as to costs.

[9] I grant the following order:

The application is dismissed.

A handwritten signature in black ink, appearing to read 'Y S Meer', is written over a horizontal line.

Y S MEER

Acting Judge President

Land Claims Court

APPEARANCES

For the Applicant:

Duncan E Korabie
Duncan Korabie Attorneys

For the First Respondent:
Instructed by:

Adv. J J Rysbergen
De Villiers & Schreve Attorneys