5-11-76

G.P.-S.59968—1970-71—2 500 J 219 194/76

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE ~~Provincial~~ Division)
(~~Provinsiale~~ Afdeling)

Appeal in Civil Case
Appèl in Siviele Saak

D. COREIA *Appellant,*

versus

J. J. VIVIERS *Respondent*

Appellant's Attorney / *Prokureur vir Appellant* NAUDE & KAUDE

Respondent's Attorney / *Prokureur vir Respondent* Siebert & Honey

Appellant's Advocate / *Advokaat vir Appellant*

Respondent's Advocate / *Advokaat vir Respondent*

Set down for hearing on / *Op die rol geplaas vir verhoor op* 22-11-1976

2.

Dat die aansoek om kondonasie van die versuim om sekerheid te stel ~~word~~ van die rol geskrap word met koste, welke koste insluit die verlenigde koste aangegaan ter bestryding van die aansoek, verklaar dat aan die Appellant gegee om binne drie weke aansoek te doen om die voormelde

SOS

(T.I.D.)

Writ issued / Lasbrief uitgereik	Bills taxed—Kosterekenings getakseer		
	Date / Datum	Amount / Bedrag	Initials / Paraaf
Date and initials / Datum en paraaf			

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between:

DAVID COREIA.....Appellant

and

JACOBUS JOHANNES VIVIERS.....Respondent

Coram: Rumpff, CJ., Rabie, Hofmeyr, Kotzé JJA. et Joubert, A.JA.

Heard: 2 November 1976.

Delivered: 26 November 1976.

J U D G M E N T

RABIE, JA.:

This is an application for leave to reinstate on the roll of this court an application for the condonation of the applicant's failure to comply with the provisions of rule 6(2) of the rules of this court, viz., his failure to furnish security within the time

provided...../2

provided by the rules for the respondent's costs in an appeal noted by the applicant against a judgment of the Transvaal Provincial Division. In the event of the application for reinstatement being granted, applicant applies for condonation of his failure to furnish security as required by the rules and for leave to prosecute his intended appeal.

The history of the matter is as follows. The applicant was the defendant in an action in which the respondent (the plaintiff in the action) claimed payment of the sum of R1 570-00, being the loss allegedly sustained by him as a result of the applicant's having negligently collided with and damaged his motor car. The collision took place on 31 October 1970 on the Vereeniging-Alberton road. In his plea the applicant admitted that the collision was caused by his negligence, but he denied that he was liable for the amount claimed and put the respondent to the proof of his loss. It

was...../3

was agreed at a pre-trial conference that the trial would be limited to the issue of "die quantum en die aard van die skade". The matter was heard on 4 and 5 August 1975 and at the conclusion thereof the trial court (Theron,J.) granted judgment in the respondent's favour in the sum of R1 320-00, with costs. An appeal against the judgment was noted timeously. In terms of rule 6(2), read with rule 5(4)(b), of the rules of this court the applicant should have entered into good and sufficient security for the respondent's costs of appeal by 4 November 1975, but he did not do so. Security was furnished only on 23 January 1976, in circumstances which will be discussed later in this judgment. The respondent was not prepared to condone the applicant's failure to furnish security timeously, whereupon the applicant, on 12 April 1976, filed an application for condonation with the registrar of this court. After

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an opposing affidavit had been filed, the application was set down for hearing on 24 August 1976. On that date, however, counsel who had been briefed to appear for the applicant (it was not Mr. Labe, who appeared before us) did not appear, and the application was struck off the roll with costs, including the wasted costs incurred in opposing the application ("die verkwiste koste aangegaan ter bestryding van die aansoek"). Leave was, however, given to the applicant to apply within three weeks for leave to reinstate the application for condonation. An application applying for such leave was duly filed and the matter came before us on 2 November 1976.

With regard to the application for the reinstatement of the application for condonation, counsel who failed to appear on 24 August 1976 has made an affidavit in which he states that he was properly briefed to appear on that date but that he was, somehow, under

the...../5

the impression that he had to appear on 26 August 1976, and that his non-appearance was due entirely to his own fault. Counsel's bona fides in the matter has not been questioned, and it is not necessary to say anything more about the fact of his non-appearance since counsel for the respondent did not advance it as a reason why the court should not grant the application for the reinstatement of the application for condonation. The respondent's opposition to the reinstatement of the application is based on other grounds. The first is that no satisfactory explanation has been given for the failure to furnish security timeously. The second is that the applicant has no prospects of success in his intended appeal and that it would therefore be futile to grant the application for condonation. Full argument was addressed to us by counsel on both these contentions.

The application for condonation is dealt with first. The applicant states that he has no knowledge

of...../6

of what took place with regard to the furnishing of security and that he relies on what is said in the affidavit of his attorney, Mr. Liebenberg, who is a partner in a Pretoria firm of attorneys. The relevant paragraphs of Liebenberg's affidavit read as follows:

"4.

At the time when the copies of the record were forwarded by my office to my Bloemfontein correspondent, enquiries were made by a clerk in my employ, Mr Pieter Charl Spies, with the petitioner's instructing attorney, Mr Slomowitz of Vereeniging, regarding security for the Respondent's costs of appeal. Mr Slomowitz at the time felt that security should be fixed at an amount of R600 and indicated that he would personally guarantee payment. Mr Spies conveyed this information to the Respondent's Pretoria attorneys and informed my Bloemfontein correspondents that in view of Mr Slomowitz's personal guarantee, the question of security would present no problem. It was not expected that the Respondent would raise objection against the nature

of...../7

of the security.

I refer in this regard to the supporting affidavit of Mr Pieter Charl Spies annexed hereto as Annexure "B".

5.

On the 27th of October, 1975, Mr A de Waal Horak, a senior partner of the firm Couzyn, Hertzog & Horak of Pretoria, the Pretoria attorneys for the Respondent, telephoned me and indicated that his Vereeniging correspondent was not happy with the nature or amount of the security suggested and indicated that a cash payment in an amount of R1 500 was required.

6.

On the 31st October, 1975, I arranged with my Vereeniging correspondent that the Registrar of the Court a quo would be requested to fix the nature and extent of the security, that Mr Slomowitz's personal guarantee for payment up to an amount of R600 should be tendered but that, if required to do so, Mr. Slomowitz would make a cash payment of whatever amount was fixed as a reasonable security by the Registrar of the Court a quo.

7.

In view of Mr Slomowitz's assurance, I felt

satisfied...../8

satisfied that the finalising of the nature and extent of the security was a queation of formality.

8.

When discussing the question of security with my correspondent, I formed the impression that my correspondent, Mr Slomowitz, was not flattered by the fact that his personal guarantee was not acceptable to the Respondent's attorneys. Mr Slomowitz is an attorney of long standing and highly esteemed in the Transvaal Provincial Division of this Honourable Court. In view of this, I deemed it advisable that mr. Horak, a senior partner of the firm Couzyn, Hertzog & Horak of Pretoria, be requested personally to attend the proposed discussion with the registrar of the Court a quo. To avoid unnecessarily embarrassing my correspondent, I intended arguing that Mr Slomowitz's personal guarantee be accepted in whatever amount the Registrar should determine, and only in the alternative, should the nature of the proposed security not be acceptable, to offer the cash payment authorised by my correspondent.

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9.

Due to pressure of work, the intervening holiday period and the fact that Mr Horak was away on leave from the 4th December, 1975 until the 5th January, 1976, it was not possible to arrange the discussion with the Registrar of the Court a quo before the 19th January, 1976, on which date the Registrar of the Court a quo determined that a cash payment of R750 should be made into the trust account of either the Respondent's Pretoria attorneys or my firm.

10.

On 23rd January, 1976, my correspondent, Mr Slomowitz, paid an amount of R750 into my trust account as security for the Respondent's costs of appeal.

11.

Although there has not been strict compliance with the provisions of Rule 6(2) of the Rules of this Honourable Court, I respectfully submit that

(a) the notification to my Bloemfontein correspondents to the effect that security

would...../10

would in this instance present no problem, was done in good faith in that it could not be foreseen that the offer of a personal guarantee by a respected attorney of this Honourable Court would be bluntly refused and

(b) that after the Respondent's attorney's unexpected attitude regarding the nature of the security became known, the offer of a cash payment by my correspondent in whatever amount may be determined, dispelled any remaining doubt as to the sufficiency of the security."

Mr. Horak, referred to in paragraph 5 of Liebenberg's affidavit, filed an opposing affidavit on behalf of the respondent. It is not necessary to refer to the whole of it. He states with regard to paragraph 4 of Liebenberg's affidavit that Spies informed him of Mr. Slomowitz's offer on 21 October 1975, but that he told Spies that he would have to take instructions thereon from his correspondent in Vereeniging. He adds that

Spies...../11

Spies should not have told his firm's Bloemfontein correspondents that the question of security would present no problem. Horak confirms the contents of paragraph 5 of Liebenberg's affidavit, but he points out that he also wrote a letter to Liebenberg's firm on 28 October 1975 in which he confirmed that an amount of R1 500 was required as security and that the respondent was not prepared to accept the personal guarantee of Liebenberg's Vereeniging correspondent. In reply to paragraph 9 of Liebenberg's affidavit Horak says the following:

"10.

10. 1. Dit is wel waar dat ek met verlof was van 4 Desember 1975 tot 5 Januarie 1976 maar wys met eerbied daarop dat vanaf 31 Oktober 1975 tot 4 Desember 1975 daar heelwat tyd verloop het waarin die sekerheid vasgestel kon word.

10. 2. Trouens, na my voormelde brief van 28 Oktober 1975 het ek niks van die

Petisionaris...../12

Petisionaris se prokureurs verneem nie ten spyte daarvan dat ek op 18 November 1975 'n brief aan die Petisionaris se prokureurs gestuur het om te verneem inverband met die sekerheidstelling, afskrif van welke brief hiermee saamgaan, gemerk Bylae 'B' waarna ek met eerbied verwys. Ook op hierdie brief is geen antwoord ontvang nie.

10. 3. Eers ongeveer die middel van Januarie 1976 het Mnr. Liebenberg my genader om die vasstelling deur die Griffier a quo by te woon en dit is gedoen op 19 Januarie 1976. Ek het die bespreking bygewoon en Mnr. Liebenberg meegedeel dat dit gedoen word sonder benadeling van regte van die Respondent."

In a letter dated 18 November 1975, referred to in paragraph 10. 2, the following is said:

"Ons verwys na ons brief van 28 Oktober 1975 waarop nog geen antwoord ontvang is nie en ons moet daarop wys dat daar op hierdie stadium nog geen sekerheidstelling gereël is nie."

No...../13

No affidavit was filed in answer to that of Horak.

According to Horak, as pointed out above, Spies acted incorrectly in telling his firm's Bloemfontein correspondents that the question of security would present no problem. But, even if it be assumed that Spies was genuinely of that view when he sent the appeal records to Bloemfontein, Liebenberg knew on 27 October 1975 that both the amount and the form of security which had been suggested by his firm were not acceptable to the respondent's attorneys, and he was again reminded thereof by Horak's letter of 28 October 1975. In paragraph 6 of his affidavit Liebenberg tells of an arrangement which he made with his Vereeniging correspondent on 31 October 1975. This was not communicated to the respondent's attorneys, and I have difficulty in seeing what bearing it has on the delay which occurred

after...../14

after 31 October 1975. Liebenberg states that because of the said attorney's "assurance" - apparently this is a reference to what is said in paragraph 6 of his affidavit - he felt satisfied that "the finalising of the nature and extent of the security was a question of formality", but even if he was so satisfied, it does not explain why he did not seek to bring the matter to finality as soon as he could. As to what is said in paragraph 8 of the affidavit, it is not clear to me why Liebenberg should have deemed it advisable that Horak should be requested "personally to attend the proposed discussion with the registrar of the court a quo", but even if it be accepted that he was of that view, it does not explain why he did not get into touch with Horak sooner than he did. It is notable that his affidavit is silent as to why no steps were taken to bring the matter to finality during November 1975. It will be observed that no mention is made in the

affidavit...../15

affidavit of Horak's letter of 18 November 1975 and, also, that no effort is made to explain the failure to act in response thereto. In paragraph 9 three reasons are advanced as to why it was "not possible" to arrange a discussion with the registrar of the Transvaal Provincial Division before 19 January 1976, i.e. "pressure of work", "the intervening holiday period", and "the fact that Mr. Horak was away on leave from 4th December, 1975 until the 5th January, 1976." It is not stated what the "intervening holiday period" was, but it could certainly not have been November 1975. As to Horak's absence from his office during the period stated, it cannot explain why he was not approached during November 1975. With regard to Liebenberg's statement as to "pressure of work", it should, I think, have been present to his mind that the failure to furnish security by 4 November 1975 had resulted in the lapsing of the appeal which had been noted (Vivier v. Winter 1942 A.D. 25) and that

condonation...../16

condonation of the failure to comply with the relevant rules of court was, in the circumstances, a matter which required urgent attention. Even if one assumes that he might not have appreciated that the matter was one of such urgency, it is difficult to understand why he did not reply to Horak's letter of 18 November 1975. Finally, as to Liebenberg's affidavit, the submissions in paragraph 11 thereof relate to his state of mind as at the end of October 1975 and do not seem to me to be relevant to the question of the subsequent delay in furnishing security.

As will have appeared from what is said above, I am of the view that the explanation offered for the delay in furnishing security can in no way be described as satisfactory. I am mindful of the fact that the blame for the delay does not lie with the applicant personally, but at the same time I do not consider this

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to be a factor which would, in all the circumstances of the case, entitle me to hold that the failure to comply with the court's rules ought to be condoned. Holding the view that I do concerning the explanation offered by Liebenberg, I would not be disposed to grant condonation unless I thought that the applicant's prospects of succeeding in the appeal were good. (See Salojee And Another NN.O. v. Minister Of Community Development 1965 (2) S.A. 135(A.) at p. 141 H; Estate Woolf v. Johns 1968(4) S.A. 492(A.) at p. 497G-H).

I turn, then, to the merits of the intended appeal. On this issue we had before us the full record of the trial proceedings and counsel's heads of argument on the merits, and we heard full argument by counsel on both sides. Mr. Labe contended that the applicant has a good chance of convincing the court on appeal that the trial court's award of R1 320-00 was excessive, and

he...../18

he made a detailed analysis of all the relevant evidence in the case in an effort to show that the respondent should have been awarded the sum of R814-41 (being the amount to which the applicant's witness, a Mr. Hollander, testified), or perhaps (having regard to certain concessions made by Hollander in the course of his evidence) a little more, but certainly not more than R1 000-00. The figure of R1 000-00 is of special importance as far as the applicant's case is concerned, for it appears from the application for condonation and from information given to us by counsel that there was an agreement between the parties that an amount of R1 000-00 which the applicant's attorneys held in trust as from 14 June 1973 would be regarded as money which the applicant had paid into court in respect of the respondent's claim. It was accordingly argued that if the trial court's award was on appeal reduced to a figure of R1 000-00 or less, such award should carry costs on the

Magistrate's...../19

Magistrate's Court scale up to 14 June 1973, and that the applicant should be entitled to all costs thereafter, including the costs of trial, on the Supreme Court scale.

The respondent's motor car, a 1968 two-door Volvo 122S, was struck on its right-hand side by the applicant's car, and most of the damage was on that side of the car. The respondent testified that there was also some damage on the left-hand side of the car. He stated that the left door opened when the collision occurred and that it was then pressed against the ground. The car, he stated, "sou omgeval het as die deur nie oop gewees het nie. Toe druk die deur in die grond vas en buig die hele deur oop." He also said: "Hy was heeltemal gebuig gewees". I mention this point because there was a dispute between the parties as to whether there was damage to the left-hand side of the car. The respondent testified that, with a view to having

his...../20

his car repaired, he first approached a firm called Chingola Panel-Beaters (presumably in Vereeniging), but that they told him that they were too busy to give him a quotation and that he should bring his car to them in December. He could not wait for such a long period and thereupon approached Mr. Verster, who conducted a panel-beating business at Meyerton. Verster arranged for the car to be towed to his workshop and, after he had given the respondent a quotation, he repaired the car. Respondent paid Verster R1 570 for carrying out the repairs.

Verster, who conducted a one-man panel-beating business at Meyerton at the time of the collision with which we are here concerned, gave evidence on behalf of the respondent. He testified to the repairs carried out by him and to his charges in respect thereof. Details of the repairs and charges made are set out in

items...../21

items 1-14 in Annexure "A" to the particulars for trial which were furnished by the respondent. (I shall refer to this annexure as "Verster's quotation").

Verster's evidence was that the total amount charged by him for doing the repairs, viz., R1 570-00, was fair and reasonable. Fuller reference to certain aspects of his evidence will be made later in this judgment.

The respondent's second witness was a Mr. Wilson, an insurance assessor of twenty years' experience. Wilson stated that he inspected the vehicle after it had been repaired, that he had a discussion with Verster concerning certain of the work he had done, and that he was shown a photograph (which was an exhibit at the trial) of the car before any repairs had been done to it. He said, furthermore, that he was satisfied that Verster in fact did all the repairs he claimed to have done, but that he considered Verster's charges in respect of some of the

items...../22

items to be excessive. The witness's estimate of what would have been a reasonable amount to charge for the repairs effected by Verster was R1 145-90, but, as will be pointed out later, he indicated that it would be reasonable to allow for certain further amounts which he did not take into account when he made his calculation of R1 145-90. The applicant called two witnesses. The first was a Mr. Vermaak, whose evidence will be mentioned later. The second was Hollander, to whom I have already referred. He stated that he was a civil engineer and that he had for about eleven years prior to 1970 conducted two panel-beating businesses. He testified that he examined the respondent's car after it had been repaired by Verster, and that in his opinion R814-41 would have been a fair and reasonable amount to charge for the repairs that had been done. He added, I should point out, that he "could make an allowance here and there", but he mentioned only one item, involving R5-20,

when...../23

when he was interrupted by counsel leading his evidence. It may safely be assumed, I think, that the amounts he intended mentioning were small.

The learned trial Judge did not accept Verster's estimate of R1 570-00, holding that his charges were excessive in some respects. He was also not prepared to accept Hollander's estimate, which he described as "n konserwatiewe benadering". He found Wilson's estimate to be more acceptable than that of either Verster or Hollander and he made it the basis of his award, but he considered, at the same time, on the strength of Verster's evidence, that somewhat more time should be allowed as having reasonably been spent in effecting the necessary repairs than that for which Wilson seemed to have allowed. Referring to Wilson's evidence, the learned Judge stated:

> "Gebaseer op sy getuienis en aanpassing van die werksure wat mnr. Verster beweer hy

werklik...../24

werklik gewerk het, is die bedrag wat ek toeken.....R1 320-00."

It was contended, as said above, that the trial Court erred in not accepting Hollander's estimate. I do not agree with this contention. A reference to a few items in Verster's quotation will be sufficient, I think, to show that there was evidence on which the trial court could rightly have found that Hollander's estimate was too low. The items concerned are discussed in paragraphs (a) to (f) below.

(a) Item 1: Supply and fit right front fender.

Verster testified that he could not find a second-hand fender and that he bought a new one for R65-00. He charged R20 for his labour, making a total of R85 for the item. Wilson considered this to be a reasonable amount and he allowed for the same figure in his estimate. Hollander allowed for an amount of R65-15. He stated that a new fender could at the

relevant...../25

relevant time have been bought for R48-15 and that, in any event, Verster did not use a new fender. He testified that his examination of the car revealed that no new parts were used. This evidence was, of course, in conflict with that of Verster, and it was not put to Wilson, who also examined the car after it had been repaired. As to the price that was paid for the fender, Verster was criticised because he could not produce documents to support his evidence. In this connection Verster testified that such records as he had were destroyed by fire when his premises were burgled in March 1971, shortly after the repairs had been completed. My view of the evidence is that there is no good reason for saying that the trial court should have accepted the evidence of Hollander in preference to that of Verster and Wilson.

(b) Item 2: Supply and fit right front door.

Verster charged R155. He stated that he could

not...../26

not find a second-hand door and that he bought a new one for R120. Because the door was new, he said, he also had to buy a few extra fittings, the total price of which was R30. His charge for labour was R5. The applicant's witness, Vermaak, who was an employee of Barnetts Auto Spares in Vereeniging, testified that Verster bought a second-hand door for about R45-00 from his firm, but Verster denied it. Vermaak, who was still with the same firm at the time of the trial, could produce no documents to support his evidence as to the sale of a door to Verster. Wilson testified that he originally calculated the repair cost at R90-00, but that he did so "without knowledge of extra fittings which were necessary, which were only brought to my attention afterwards in my discussion with Mr. Verster, to find out how badly damaged that door was". He added: "I then had to add in the cost of a door trim panel, a door lock, and that is it, yes. I added in

these...../27

these extra items which then increased the value of my assessment to R147, I think is the price, which is slightly lower than Mr. Verster's price." Hollander allowed R64 in respect of the item, being R50 for a second-hand door and the balance for labour. As stated before, Hollander's evidence that Verster did not use new parts was not put to Wilson. As in the case of item 1, I can find no good reason for holding that the trial court should have accepted Hollander's evidence in preference to that of Verster and Wilson.

(c) Item 3: Right rear fender and quarter panel.

Verster claimed R300, being R200 for the part, R30 for its transport, and R70 for labour. He stated that he bought the part, which was second-hand, at Barnetts Auto Spares in Springs, and he denied the evidence of Vermaak that he paid no more than "about R60" for it. Neither Vermaak nor Verster could produce documents relating to the price that was paid for the

part...../28

part. Wilson testified that he originally calculated the repair cost at R170, but that he subsequently made allowance for certain further items which did not appear in Verster's quotation and that these brought his assessment up to a total of R212-60. Hollander stated that the part concerned, even if new, should not have cost more than R48-70, but he said very little more about the item. Counsel for the applicant, referring to a "comparative quotation" (the comparison being with Verster's quotation) prepared by the witness prior to the trial, stated that according to that document Hollander allowed R157-60 in respect of item 3 (as against Wilson's estimate of R212-60). Having considered counsel's argument, I am not persuaded that the trial Court erred in not accepting Hollander's evidence concerning item 3. With regard to this item, Hollander also testified that Verster could have effected an appreciable saving if he had bought and fitted a used

"complete...../29

"complete right side body section" instead of a quarter section. Counsel, relying on Hollander's aforementioned "comparative quotation", said that the saving would have been R179. Verster's evidence on the point was that he had not make a special search for such a part, but that he knew from experience that such parts were not available. There was no evidence to contradict Verster's statement. On the contrary, Vermaak seems to have conceded that used Volvo parts were not easy to come by, and in the circumstances there is no evidence to justify a finding that Verster could reasonably have adopted a more economical way of doing the repairs mentioned in item 3.

(d) Item 12: Supply right side mouldings.

This item is concerned with five mouldings, for which Verster charged R50. Wilson's estimate was R52-50. Hollander allowed only R27-50, but it was

conceded...../30

conceded by Mr. Labe that, in view of the fact that no real reason was given by Hollander for that figure, the amount claimed by Verster should be allowed.

(e) Item 13: Repair to left door.

Wilson allowed R60 in respect of the repair of the left door. Hollander, not accepting that there was damage to the left-hand side of the car, made no allowance for the repair. I can see no reason why the trial court should have declined to accept the evidence of the respondent and Verster that the left-hand side of the car was damaged in the collision. There is, also, no reason why the sum of R60 should not be allowed in respect of the repair of the door.

(f) Item 14: Towing.

Verster stated (and this evidence was not disputed) that he paid R30 to have the car towed to his workshop. This amount formed part of the R1 570 which

he...../31

he charged the respondent for repairing his car. Wilson made allowance for this amount in his calculation of the repair cost, but Hollander did not do so. I can see no reason why the amount should not be allowed.

If one reduces Wilson's estimate in the case of item 12 from R52-50 to R50 (Verster's figure), his estimates in respects of the items dealt with in paragraphs (a) to (f) above exceed those of Hollander in respect of the same items by R270-35. When this figure is added to Hollander's estimate of R814-41, one gets a total of R1 084-76. The items mentioned above are, of course, not the only ones in respect of which Wilson's estimates exceeded those of Hollander, but I do not find it necessary to refer to all of them.

As stated above, Wilson's original estimate of the reasonable cost of repairing the car was R1 145-90. That amount must be increased in the light of evidence given by him at the trial with regard to items 6 and

10...../32

10 in Venter's quotation. As to item 6, which relates to the repair of the right and left side of the dome, Wilson stated that R75-00 would be a reasonable amount to allow for the repair of the right-hand side of the dome, and he allowed for that amount in his original quotation. He said, also, that if there was damage to the left-hand side of the dome as described by Verster in his evidence, he would allow a further R40-00 for the repair thereof. Hollander stated that R75-00 would be a fair amount to allow for the repair of the right-hand side of the dome, but he did not accept that the left-hand side had been damaged as stated by Verster and he was accordingly not prepared to allow any amount for its repair. The question whether an allowance should be made in respect of the repair of the left-hand side of the dome depends on whether or not one accepts the evidence of Verster that there was damage to that part of the car. I do

not...../33

not think that there is any reason to suppose that the trial court did not accept Verster's evidence on the point, and I do not think that we would be entitled to say that his evidence should not have been accepted. It should be remembered that the respondent himself also testified that there was damage to the left-hand side of the car. In the circumstances I think that the amount of R40-00 should be added to Wilson's original estimate. As to item 10 (cost of re-duco) Wilson originally allowed for an amount of R47-50 on the basis that only half the car had to be sprayed. Verster sprayed the whole car and he testified that it was necessary to do so. His charge was R95-00, which both Wilson and Hollander considered to be a reasonable amount for spraying the whole car. Wilson appears to have been of the view that it would have been reasonable to spray the whole car, and Hollander conceded in the course of his evidence in cross-examination

that...../34

that it would not have been unreasonable to do so. In the circumstances it seems to me that Wilson's original estimate in respect of item 10 should be increased by R47-50. If this amount and the R40-00, mentioned above, are added to Wilson's original total estimate of R1 145-90, one arrives at a total figure of R1 233-40, and I have little doubt that the learned Judge had much the same figure in mind when he stated that he accepted Wilson's estimate.

As pointed out above, the trial Judge, while basing his award on Wilson's evidence, arrived at the amount actually awarded by making what he called an "adjustment" ("aanpassing") to the number of working-hours apparently allowed for by Wilson. The judgment contains no particulars as to how the "adjustment" was made, but I think one can fairly safely determine on what basis the trial court awarded an amount which would seem to be about R90 (or say about R100) more than the total amount

testified..../35

testified to by Wilson. Wilson did not state specifically for how many hours' labour he allowed when making his calculations, but one can arrive at an approximate figure by having regard to the amounts allowed by him in respect of the various items and to his evidence concerning the cost of labour and spare parts. According to a calculation made by Mr. Labe, Wilson allowed about 75 (or perhaps 78) hours for work done, and I assume this to be correct. Verster compiled a schedule (Annexure "B" to the particulars for trial furnished by the respondent) setting out the hours worked by him in respect of the various items. At the trial no attempt was made to substantiate the particulars given in this schedule. One can, however, get some idea of the number of hours for which Verster claimed when he submitted his quotation to the respondent by dividing the total of the amounts claimed in respect of the various

items...../36

items by 6, R6 being, according to his evidence, the cost of labour per hour at the time. If a calculation of this kind is made, one arrives at a total of about 109 hours, which is slightly more than 30 hours more than the number of hours which Wilson would seem to have allowed. Considering that the respondent was awarded about R90 (or say about R100) more than the total amount testified to by Wilson (R1 233-40), it would seem that the learned Judge, in effect, allowed for about 15 or 16 hours more than the number of hours which would seem to have gone into Wilson's calculations.

The question arises as to whether it can be said that the learned Judge was, on the evidence, not entitled to make an "adjustment" of the kind mentioned above. In my opinion the answer is "no". Wilson saw the car only after it had been repaired, and in order to determine the nature and extent of the damage and the amount of labour that would be required to effect

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the necessary repairs, he had to rely on what he could see on a photograph of the car after it had been involved in the collision. In such circumstances he might well not have had a proper appreciation of how much work was actually involved in repairing some of the damaged parts. He himself admitted this when he was questioned about the labour involved in fitting the right front fender. He said: "To fit a right front fender is a simple matter, but to fit a right front fender to a damaged motor-car might entail an awful lot more labour than one can see from a photograph here.....".

The final question is whether it can be said that the learned Judge erred in making the "adjustment" he did. I do not think so. His judgment shows that he weighed up the evidence of the different witnesses and that, although he considered the evidence of Wilson to be the most acceptable, he nevertheless

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felt that his estimate of the time reasonably required to effect the necessary repairs was somewhat on the low side. He was, therefore, obliged to make such "adjustment" as he considered to be reasonable, having regard also to the evidence of Verster. The "adjustment" actually made does not involve a large sum, and in all the circumstances I am not persuaded that the trial court erred in its approach to this issue.

In the light of all the aforegoing I am of the opinion that the applicant has no real prospect of succeeding in his intended appeal and that there would consequently be no point in granting him leave to reinstate his application for condonation. Considering all that has been said above, the applicant has, in effect, had the benefit of a full adjudication of his intended appeal.

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