



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 276/2024

In the matter between:

WARREN CARL PACE

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Pace v The State* (276/2024) [2026] ZASCA 132 (1 October 2026)

Coram: HUGHES ADP, KGOELE, KEIGHTLEY and COPPIN JJA and MOOKI AJA

Heard: 17 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 1 October 2026.

Summary: Criminal procedure – prosecution of appeal – late noting of appeal – application for condonation – lapsed appeal – absence of application for reinstatement – inadequate explanation for delay – conduct of attorneys – failure to comply with the SCA Rules – condonation refused – appeal struck from the roll.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Allie and Kusevitsky JJ sitting as court of appeal):

- 1 Condonation is refused.
- 2 The appeal is struck from the roll.
- 3 It is directed that the appellant shall not be liable for costs in respect of the condonation application and the appearance on 17 August 2026.

JUDGMENT

Mooki AJA (Hughes ADP, Kgoele, Keightley and Coppin JJA concurring):

[1] The appeal in this matter had lapsed and required reinstatement when it came before this Court on 17 August 2026. A condonation application by the appellant was refused and the matter was struck from the roll. The reasons for the order were to follow. These are the reasons.

[2] The appellant was charged with several counts and appeared before the Wynberg Regional Court (regional court). The counts entailed sexual grooming of children (counts 1 and 2), exposing children to pornography (count 3), rape (counts 4, 5, 6, 13, 14 and 15), sexual assault (counts 7, 8, 9, 16, 17, and 18) and child abuse (counts 10, 11, 12, 19, 20, and 21). The regional court convicted the appellant on certain of the counts as well as of attempted rape in respect of the rape counts. He was sentenced to a cumulative period of 15 years' imprisonment. The regional

court refused the appellant's application for leave to appeal against the conviction and sentence.

[3] The Western Cape Division of the High Court (the high court) granted the appellant leave to appeal and released him on bail pending the outcome of the appeal. The high court later acquitted him on counts 1, 2, and 3. However, it sentenced him to a total of 15 years in prison and declared him unfit to possess a firearm. Additionally, the court ordered his name to be included in the National Register for Sex Offenders.

[4] On 29 November 2023, on petition to this Court, the appellant was granted special leave to appeal to it against the orders of the high court. The appellant was, in terms of rule 7(1)(b) of the Rules Regulating the Conduct of the Proceedings of the Supreme Court of Appeal of South Africa (the SCA Rules), supposed to have filed his notice of appeal within a month of the granting of special leave, i.e. 28 January 2024. Instead, the appellant's notice of appeal was only filed on 20 March 2024 together with an application to condone the late filing.

[5] The Registrar wrote to the appellant on 22 March 2024, advising that the record had to be filed within 6 weeks of 20 March 2024. The record was therefore due on 20 June 2024. The appellant did not file the record by that date. He filed it on 19 July 2024. The late filing was not accompanied by a request to condone the non-compliance. Because the record was filed on 19 July 2024, the appellant had to file his heads of argument by 30 August 2024. He did not file them by that date. He filed the heads on 1 December 2025. I deal with this aspect below.

[6] The appellant's failure to file his heads of argument by 30 August 2024 meant that a further application for condonation was required for such failure. The

appellant's attorneys only wrote to the Registrar on 1 December 2025. The letter mentioned, among others, a notice of motion and condonation to reinstate the appeal. The appellant's attorneys, in their letter to the Registrar, were aware that the appeal had lapsed. A litigant whose appeal has lapsed and who seeks to further execute it must bring a substantive application for condonation and reinstatement, and must do so promptly. This was not done in this instance. Instead, the appellant filed only an application to condone the late filing of his notice of appeal.

[7] A few days before the hearing in this Court, the appellant's attorneys informed the Registrar that the parties had purportedly agreed, in terms of 'Rule 19A', not to appear in person and that the matter could be decided on the record and the papers filed in this Court. There is no Rule 19A. The reference was purportedly to s 19(a) of the Superior Courts Act 10 of 2013, which empowers this Court to dispense with oral argument in appeals. The section does not enable parties to agree to do so, as the appellant's attorney purported to do in this case. Mr Viljoen appeared for the appellant when the matter was called. His address on the condonation application was essentially confined to confirming that the appellant stood by the papers filed.

[8] Ms Charmaine Dippenaar (Ms Dippenaar), who describes herself as a senior paralegal at William Booth Attorneys, deposed to the affidavit in support of the condonation application. She states that the appellant's correspondent attorneys notified Mr Booth's office on 4 December 2023 that this Court had granted the appellant special leave to appeal. Thereupon, one Rejean Maralack (Mr Maralack) in Mr Booth's office was tasked with preparing the notice of appeal.

[9] According to Ms Dippenaar, office personnel went on annual leave on 14 December 2023, and upon returning on 15 January 2024, it was discovered that

the notice of appeal had not been prepared. Mr Maralack is said to have given repeated assurances that the notice would be submitted shortly. This was not done, despite Ms Dippenaar's bi-weekly requests to Mr Maralack for a draft of the notice for approval by Mr William Booth (Mr Booth).

[10] Ms Dippenaar said Mr Maralack advised on 5 February 2024 that he was medically booked off until 9 February 2024. Further, Mr Maralack, according to Ms Dippenaar, gave notice on 12 February 2024, tendering his immediate resignation from William Booth Attorneys. A different member of staff was then appointed to draft and finalise the notice. Ms Dippenaar contended that the appellant was not at fault in the delay and that the appellant had reasonable prospects of success in the appeal. There is no confirmatory affidavit from Mr Maralack or Mr Booth.

[11] As mentioned above, there is no application to reinstate the appeal. This is so despite reference to such application in the appellant's letter of 1 December 2025 to the Registrar. Thus, this judgment deals only with the application to condone the late noting of the appeal.

[12] The condonation application was dismissed because it was considered that a case for that relief had not been made out, and that in any event, and primarily, the appeal had lapsed. The pertinent question in considering the condonation application was also whether it would be in the interests of justice to grant the condonation being sought.¹ In *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)*,² the Constitutional Court held that

¹ *S v Mercer* [2003] ZACC 22; 2004 (1) SACR 1 (CC); 2004 (2) SA 598 (CC); 2004 (2) BCLR 109 (CC) para 4.

² *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) para 20.

whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. It stated the following:

‘Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.’³

[13] Ms Dippenaar makes unsubstantiated claims in her affidavit in support of condonation. There is no particularity to her averments. She does not say who discovered, on returning to the office, that Mr Maralack had not finalised the notice. She does not identify the member of staff appointed to finalise the notice, or when that member of staff was appointed. Her affidavit mentions no confirmatory affidavits by third parties. There is not even a confirmatory affidavit from Mr Booth, the attorney on record. Nothing is said about why a confirmatory affidavit was not obtained from Mr Maralack. The fact that Mr Maralack resigned with immediate effect does not, without more, excuse the failure to obtain his confirmatory affidavit, or, if that affidavit could not be obtained, an explanation of why. This Court has said that ‘[...] if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.’⁴

[14] The notice of appeal, which has since been filed, is not a complex document. The same may be said of the condonation application. It could not have taken weeks to draw and file the notice of appeal with the Registrar. There is simply no credible explanation for why the appellant only filed the condonation application on 20 March 2024. Ms Dippenaar deposed to her affidavit in support of

³ Ibid.

⁴ *Uitenhage Transitional Local Council v South African Revenue Service* [2003] 4 All SA 37 (SCA); [2003] ZASCA 76; 2004 (1) SA 292 (SCA); 66 SATC 265 para 6.

condonation on 28 February 2024. Mr Booth signed the notice of motion in the condonation application on 14 March 2024. The condonation application was filed with the Registrar on 20 March 2024. It is plain from this timeline that the appellant's attorneys adopted a lackadaisical approach to his appeal, ignoring not only the appellant's rights, but also the SCA Rules.

[15] It bears reminding that an application for condonation is a self-standing process. A condonation application is determined with reference to the interests of justice.⁵ A court considers, among other things, the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised and the prospects of success.⁶ The appellant does not address the prospects of success in his application. All that is said about the prospects of success is that the appellant has such prospects. Nothing is set out, with reference to the record filed by the appellant, why there are said to be prospects of success. It is not for a court to delve into the record to find those references.

[16] It was not in the interest of justice to grant condonation. Ms Dippenaar says that the appellant is faultless in the late noting of the appeal. This Court said the following a long time ago:

‘There is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. . . . The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of failure to comply with a Rule of Court, the litigant should be absolved from

⁵ *Brummer v Gorfil Brothers Investments (Pty) Ltd and Others* [2000] ZACC 3; 2000 (5) BCLR 465 (CC); 2000 (2) SA 837 (CC) para 3.

⁶ *Director of Public Prosecutions Johannesburg and Others v Schultz and Others* 2026 JDR 0439 (CC); [2026] ZACC 3; 2026 (3) BCLR 175 (CC) para 105.

the normal consequences of such a relationship, no matter what the circumstances of the failure are.’⁷

[17] The appellant’s attorneys disregarded the rules governing process in this Court. Courts frown on such conduct. The Constitutional Court said the following regarding the rules of court:

‘I need to remind practitioners and litigants that the rules and courts’ directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management of our courts’ rolls, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the ever-increasing costs of litigation, which if left unchecked will make access to justice too expensive.’⁸

[18] The Constitutional Court also said the following:

‘One gets the impression that we have reached a stage where litigants and lawyers disregard the Rules and directions issued by the Court with monotonous regularity. In many instances very flimsy explanations are proffered. In others there is no explanation at all. The prejudice caused to the Court is self-evident. A message must be sent to litigants that the Rules and the Court’s directions cannot be disregarded with impunity.’⁹

[19] The appellant’s attorneys’ disregard for the SCA Rules is compounded by the late filing of the record without seeking leave to extend the filing date; the filing of heads of argument more than a year after the date by which they should have been filed, and the failure to lodge an application to reinstate the appeal and to seek condonation for the late filing of the heads.

⁷ *Saloojee and Another, NNO v Minister of Community Development* 1965 (2) SA 135 (A) at 141C-E. See also *Tshivhase Royal Council and Another v Tshivhase and Another; Tshivhase and Another v Tshivhase and Another* 1992 (4) SA 852 (A) at 859E-F.

⁸ *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC); [2013] ZACC 37; 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) para 32.

⁹ *Ibid* para 34.

[20] The conduct of legal practitioners in this matter falls well below the standard required of practitioners. Both parties are to blame in this respect. Neither party filed the heads on time despite a directive from the Registrar to do so.

[21] The respondent (the State) also did not file heads in accordance with the SCA Rules. The heads on behalf of the State are dated 9 October 2024. The heads do not bear the Registrar's stamp. The heads were thus not served in accordance with the SCA Rules. There was no explanation. Ms Engelbrecht, of the Cape Town Director of Public Prosecution's office, appeared on behalf of the State. She was unable to explain the State's conduct in relation to the shortcomings mentioned above. The heads were not filed as directed by the Registrar on 22 March 2024.

[22] The so called 'notice' in terms of 'Rule 19A' was sent to the Registrar on 23 July 2026. This was essentially on the eve of the scheduled hearing of the appeal. This appeal was enrolled for a hearing months ago. The belated attempt to request a hearing in terms of s 19 of the Superior Courts Act is a further instance of practitioners disregarding steps required for the proper functioning of the Court. The appeal was not heard on the merits because of the failure by practitioners to perform their duties, both to the Court and to their respective clients. Judges were allocated for the hearing and had to prepare in the usual fashion. The fact of the appeal not being heard on the merits resulted in the already limited judicial resources being put to waste. More importantly, the Court could not attend to appeals by other litigants who complied with the SCA Rules, depriving those litigants of the opportunity to have their matters heard.

[23] Litigants entrust the care of their matters to legal practitioners. Practitioners have a duty to do right by their clients, more so in matters affecting the liberty of a person. Those meant to represent the appellant in prosecuting his appeal did so in

a shambolic manner. The appellant should not have to bear costs associated with the prosecution of the appeal, particularly for the condonation application and appearance on 17 August 2026.

[24] The following order is made:

- 1 Condonation is refused.
- 2 The appeal is struck from the roll.
- 3 It is directed that the appellant shall not be liable for costs, in respect of the condonation application and the appearance on 17 August 2026.

O MOOKI
ACTING JUDGE OF APPEAL

Appearances

For appellant: C Viljoen

Instructed by: William Booth Attorneys, Cape Town
Van Dyk Attorneys, Bloemfontein

For respondent: M Engelbrecht

Instructed by: The Director of Public Prosecutions, Cape Town.