



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not Reportable

Case no: 69/2024

In the matter between:

SIMON LINDSAY DRAYCOTT

APPLICANT

and

MAX HURBERT BEGA

FIRST RESPONDENT

SERGE PHILIPPE BEGA

SECOND RESPONDENT

PIERROT SERGE BEGA

THIRD RESPONDENT

ROSALYN MAY MAUD BEGA

FOURTH RESPONDENT

DOUGLAS CRAIG HALL

FIFTH RESPONDENT

Neutral citation: *Simon Lindsay Draycott v Max Hurbert Bega and Others* (69/2024)
[2025] ZASCA 123 (2 September 2025)

Coram: HUGHES, MEYER, WEINER, COPPIN JJA AND KUBUSHI AJA

Heard: 20 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and released to SAFLII. The date for hand down is deemed to be 2 September 2025 at 11h00.

Summary: Reconsideration in terms of s 17(2)(f) – lapsing of the reconsideration of the appeal – no condonation for late filing of the heads of argument and the reinstatement application – matter struck off the roll.

REASONS

Hughes JA (Meyer, Weiner, Coppin JJA and Kubushi AJA concurring):

[1] On 20 August 2025, we granted an order striking the matter off the roll with costs and indicated that reasons would follow. These are the reasons. The crisp question is whether this Court can reinstate the application for reconsideration of the leave to appeal, where the application for leave to appeal and condonation was referred to oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 (Superior Courts Act).

[2] The dispute in this case concerns the purchase and sale of two immovable properties, Erf 547 and Erf 551, by the respondents from the applicant. The transfer of the properties to the respondents occurred on 9 September 2016 and 12 September 2016, respectively. However, it later emerged that the properties belonged to the Ethekwini Municipality, and the applicant lacked the legal standing to sell the properties because he did not own or hold title to them. Ultimately, the transfers of the properties were set aside as a result of an urgent declarator granted on 6 September 2018. The respondents successfully sued the applicant on 10 October 2022 for the amounts the respondents paid for the properties. The applicant sought leave to appeal in the KwaZulu-Natal Division of the High Court, Durban (the high court), which was refused. He petitioned this Court, and on 16 November 2023, Goosen JA and Chetty AJA refused leave to appeal, citing that there were no reasonable prospects of success and no compelling reasons to grant leave.

[3] On 29 January 2024, the applicant applied in terms of s 17 (2)(f) of the Superior Courts Act for condonation and reconsideration of the decision made by two judges of this Court. On 6 March 2024, this Court, through Mocumie ADP, granted condonation and referred the decision to refuse leave to appeal for reconsideration. The following order was issued:

- '1. Condonation as applied for is granted. The applicant for condonation is to pay the costs of the application

2. The decision of the court dated 16/11/2023 dismissing the applicant's application for leave to appeal with costs is referred to the court for reconsideration and, if necessary, variation.
3. The application for leave to appeal and condonation is referred for oral argument in terms of s 17(2)(d) of the Superior Court[s] Act 10 of 2013.
4. The parties must be prepared, if called upon to do so, to address the court on the merits.
5. For this purpose the applicant is to file 6 copies of the initial application for leave to appeal and 6 copies of the application in terms of s 17(2)(f) of the Superior Court[s] Act 10 of 2013, within one month of the date of this order and thereafter, to comply with the rules of this Court by filing the records in terms of rule 8 within three months of this order and both parties are to comply with all the remaining rules relating to the prosecutions of an appeal.
6. If the applicant does not proceed with the application, the applicant is to pay the costs relating to the application for leave to appeal.'

[4] According to the above order, the records were due to be filed by 8 April 2024. The applicant only filed the record on 12 April 2024. In terms of rule 10 of the Supreme Court of Appeal Rules, the heads of argument, practice note, and list of authorities were due to be filed by 16 August 2024, which is six weeks later. However, on 16 August 2024, the applicant attempted to file a letter with this Court's Registrar requesting an extension to file the heads of argument, explaining that his counsel had just realised the matter is complex and required in-depth research. The applicant requested a 10-day extension to submit those documents. According to an email from the correspondent attorney of the applicant, the Registrar refused to accept the letter, stating '[w]e will endeavour to obtain [an] extension on Monday, else you will have to file a reinstatement/condonation application for the appeal together with your heads'.

[5] The Registrar duly notified the applicant's corresponding attorney that if the heads of argument are not filed on time, and since the President of this Court has not granted an extension, the appeal will automatically lapse. The Registrar of this Court requested the applicant to submit a condonation and reinstatement application along with the heads of argument.

[6] According to the applicant's attorney, they received the final drafts of the heads of argument, practice note, and list of authorities from their counsel on 20 August 2024. These documents and an application for reinstatement were filed at this Court on 29 August 2024, with no application for condonation as requested.

[7] Pertinently, what emerges from the reinstatement application affidavit, deposed to by the applicant's attorney, are a few key points. The attorney attributes the delay to his client's failure to make a timely payment, which resulted in a delay in the drafting of the documents. Additionally, the counsel and the attorney were involved in a full bench appeal that consumed their time and delayed preparations in this matter. Moreover, the counsel had taken on an acting judge role and lacked the time to focus on this case. Lastly, the affidavit alludes to the fact that the applicant has good prospects on appeal and that the attorney 'apologise[s]...for the inconvenience [for] the late filing of the heads of argument, practice note and list of authorities may have caused to the court and the respondent'.

[8] I now turn to the proceedings in this Court. The applicant had not sought condonation for the late filing of its heads of argument. As emphasized in *SA Express Ltd v Bagport (Pty) Ltd*, condonation for non-compliance with court rules is not a mere formality and requires a satisfactory explanation not only for the initial delay but also for any delay in seeking condonation, which must be applied for as soon as the party becomes aware of the non-compliance.¹ In terms of rule 10(2A)(a) of the Supreme Court of Appeal Rules, failure to file heads of argument within the prescribed time and without an extension would amount to the lapse of the appeal.

[9] In *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd & Others*², the court held that an appeal which had lapsed due to non-compliance with court rules could only be revived through an application for condonation. In that case, the appeal had not been properly lodged and, by a letter dated 2 March 2012, the registrar notified the appellant that the appeal had lapsed.

¹ *SA Express Ltd v Bagport (Pty) Ltd* [2020] ZASCA 13; 2020 (5) SA 404 (SCA); [2020] JOL 47309 (SCA).

² *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd & others* (619/12) [2013] ZASCA 5.

The court referenced *Court v Standard Bank of SA Ltd*³, where it was held that condonation was required to revive a lapsed appeal. This principle was reaffirmed in this Court in *Moraliswani v Mamili*⁴, where Grosskopf JA confirmed that failure to comply with Rule 6 causes an appeal to lapse and that condonation is necessary to revive it. The Court further noted that this principle applies equally to a failure to lodge the record within the prescribed period. Accordingly, the appeal in that case lapsed when the appellant failed to lodge the record as required and no application for condonation had been brought. Rule 10(2A)(a) states that 'If the appellant fails to lodge heads of argument within the prescribed period or within the extended period, the appeal shall lapse.' An application for condonation is required to reinstate it.

[10] At the hearing of the matter, counsel for the applicant was constrained to the view that the application was not properly before us, considering the facts outlined above and the fact that the appeal had now lapsed due to the applicant's failure to seek condonation for the late filing of the heads. The issue before us was the reinstatement of the reconsideration for leave to appeal. The Registrar had informed the applicant that the appeal had lapsed and requested that he file a condonation application and a reinstatement application. He filed the reinstatement application without a condonation application. Thus, the matter was not properly before us to consider whether to reinstate the appeal.

[11] As a result, the matter was struck from the roll with costs on 20 August 2025.⁵

W HUGHES
JUDGE OF APPEAL

³ *Court v Standard Bank of SA Ltd; Court v Bester NO & Others* 1995 (3) SA 123 (A) at 139 F-H.

⁴ *Moraliswani v Mamili* 1989 (4) SA 1 (A).

⁵ Rule 11A of the Supreme Court of Appeal Rules: Non-compliance with Rules

The Court may make an order for costs to be borne personally by any party or attorney or counsel if the hearing of the appeal is adversely affected by the failure of that party or his or her legal representative to comply with these rules.

Appearances

For the Applicant:

I T Dutton

Instructed by:

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Symington De Kok Attorneys, Bloemfontein

For the Respondents:

J A Ploos van Amstel

Instructed by:

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