



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
REASONS FOR ORDER

Not reportable
Case no: 004/2024

In the matter between:

SKHUMBUZO ZULU

APPLICANT

and

VIKIZITHA R MLOTSHWA

FIRST RESPONDENT

SILUNGILE B DUMISA

SECOND RESPONDENT

AHMED M SHAIK-EMAM

THIRD RESPONDENT

Neutral citation: *Skhumbuzo Zulu v Vikizitha R Mlotshwa and Others* (004/2024)
[2025] ZASCA 177 (28 November 2025)

Coram: HUGHES, MEYER, KATHREE-SETILOANE and UNTERHALTER JJA
and BLOEM AJA

Heard: 21 November 2025

Delivered: 28 November 2025

Summary: Appeal – notice of appeal and the record of appeal lodged late – applications for condonation in respect of lateness – application for the reinstatement of the appeal – heads of argument also lodged late, with no application for condonation for the late lodging of the heads of argument – late lodgment of heads of argument

with no application for condonation – the appeal has lapsed – application for reinstatement struck off the roll.

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Pietermaritzburg (van Zyl J sitting as court of first instance):

The application for reinstatement is struck off the roll, with no order as to costs.

JUDGMENT

BLOEM AJA (Hughes, Meyer, Kathree-Setiloane and Unterhalter JJA concurring):

[1] After hearing the applicant's counsel on 21 November 2025, we made the order set out above and indicated that the reasons for the order would follow. These are the reasons.

[2] The issue to be determined in the appeal is whether the conference of the National Freedom Party, a political party, which was held during December 2019 at Ulundi, KwaZulu-Natal (the conference), was lawful. The secondary issue, whether the decisions taken at the conference were valid and enforceable, depends on whether the conference was lawful.

[3] But, before the merits of the appeal could be considered, some procedural issues need to be addressed. The applicant and other members of the National Freedom Party (the party) instituted an application in the Kwa-Zulu Natal Division of the High Court, Pietermaritzburg (the high court) against the party and nine other members of the party. In that application, they sought an order that the conference, as well as the decisions taken at the conference, be declared to be unlawful, invalid and of no consequence.¹ The applicant and the President of the party were two of the nine

¹ The third respondent was granted leave on 10 July 2020 to intervene in the application as the third applicant.

members who were respondents in the high court, the party itself having been cited as the tenth respondent. All nine members opposed the application. Despite such opposition, the high court declared the conference and the decisions taken at the conference unlawful and invalid. It made no order as to costs. On 17 November 2023, the high court granted the applicant² leave to appeal to this Court.³

[4] 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 rules), an appellant shall lodge a notice of appeal with the registrar of this Court and the registrar of the court *a quo* within one month after the date of the granting of leave to appeal where leave to appeal is required. The applicant lodged his notice of appeal with the registrar of the high court on 28 December 2023 and with the registrar of this Court on 5 January 2024. On that same day, the applicant lodged an application for condonation for the late lodging of his notice of appeal with the registrar of this Court. The applicant did not serve that application on the respondents.

[5] In terms of rule 8(1), an appellant shall within three months of the lodging of the notice of appeal lodge with the registrar of this Court six copies of the record of the proceedings in the court *a quo* and deliver to each respondent such number of copies as may be considered necessary or as may reasonably be requested by the respondent. In terms of rule 8(2), the registrar is, on request, entitled to extend the period within which the record must be lodged, but for no longer than two months. The applicant did not request the registrar for an extension of the period to lodge the record. On 26 November 2024, the applicant served an application for condonation for the late lodgement of the record on the respondents' attorneys. He lodged the record and the application for condonation with the registrar on 29 November 2024, approximately ten months after he had lodged his notice of appeal.

[6] The court file contains another application titled 'Amended Notice of Motion', which is dated 24 June 2024. In that application, the applicant seeks an order that 'the late lodging of the Reinstatement of the Notice of Appeal' be condoned. The supporting

² The applicant is the only remaining party who was one of the ten respondents in the high court. The others have either joined other political parties, are deceased or are simply not interested in further litigation in this matter.

³ Mngadi J granted leave to appeal in the absence of van Zyl J.

affidavit by the applicant's attorney is dated 27 June 2024. There is no proof of service of that application on the respondents. There is also no indication when that application was lodged with the registrar.

[7] More importantly, in terms of rule 10(2A)(a), the applicant was required to have lodged with the registrar six copies of his heads of argument within six weeks from the lodging of the record. The record having been lodged on 29 November 2024, the applicant should have lodged his heads of argument on or before 10 January 2025. He did so only on 14 February 2025. His heads of argument were accordingly lodged four weeks late. The rule provides that if an appellant fails to lodge his or her heads of argument within the prescribed period or within the extended period, the appeal shall lapse. The applicant did not make an application for condonation for the late lodging of his heads of argument. The applicant did not make an application for condonation for the late lodging of his heads of argument. The result is that the appeal has lapsed. We were accordingly unable to entertain any of the applications for condonation or the merits of the appeal. The appellant must lodge an application to revive and reinstate the appeal that has lapsed,⁴ before the appeal can be heard.

[8] Another matter is the state of the appeal record. Various pages, some of which are important, are missing from the record. For instance, the one page ends with paragraph 22.6 of the founding affidavit and the next page starts with paragraph 24.4. It is accordingly unknown whether paragraph 22 contains more subparagraphs, and whether paragraph 23 also consists of subparagraphs. What is apparent from paragraph 22 is that the missing pages contain portions of the applicants' cause of action in the high court, the respondents in this Court. Another page ends with paragraph 24.7 and the following page starts with paragraph 27. Obviously, portions of paragraphs 24, the whole of paragraph 25 and a portion of paragraph 26 are missing.

[9] The registrar drew these deficiencies in the record to the attention of the applicant's attorney during October 2025. It was only a few days before the hearing that the applicant's attorney responded in writing. His attitude was that the missing

⁴ *Chairperson of the North West Gambling Board v Sun International (SA) Limited* (1214/2019) [2021] ZASCA 176 (14 December 2021); 2021 JDR 3369 (SCA) para 20.

pages formed part of the first respondent's founding affidavit and that the deficiencies in the founding 'papers should not be an impediment to the Applicant being able to have this matter heard before this Court'.

[10] It is the duty of an appellant's attorney, who prosecutes an appeal on behalf of the appellant, to ensure that a proper record of appeal is placed before the court. To discharge that duty, the appellant's attorney must peruse the record and make sure that it is complete and in compliance with the rules. After all, he or she will raise a fee for executing that duty. The duty to prepare a proper record of appeal is particularly important in a case like the present, where the respondents play no part in the appeal. Furthermore, the applicant is *dominus litus*, which places a duty on him to place a complete record before this Court. Without a complete record, especially where pages containing portions of the cause of action are missing, the appeal cannot be heard.

[11] Absent reinstatement of the appeal, this Court cannot entertain the appeal. Quite apart from the other deficiencies to which I have drawn attention, there is no application to reinstate the appeal which has lapsed. If advised to proceed with the appeal, the appellant, especially his attorneys, must see to it that there is compliance with the rules of this Court in the prosecution of his appeal.

[12] For these reasons, the appeal was struck off the roll.

G.H. BLOEM
ACTING JUDGE OF APPEAL

Appearances

For the Applicant:

JJ Grundlingh

Instructed by:

Nene Sakhile & Co., Pietermaritzburg

Honey Attorneys, Bloemfontein

For the Respondents:

No appearance.