

**IN THE SUPREME COURT OF APPEAL
(BLOEMFONTEIN)**

APPEAL COURT CASE NO: 1186/2019

GAUTENG HIGH COURT CASE NUMBER: 76755/2018

In the matter between:

JOAO RODRIGUES

Applicant

and

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS OF SOUTH AFRICA**

First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

THE MINISTER OF POLICE

Third Respondent

IMITIAZ AHMED CAJEE

Fourth Respondent

**APPLICANT'S WRITTEN SUBMISSIONS ON APPLICATION FOR
CONDONATION**

1.

This is an application wherein the applicant seeks condonation and for the reinstatement of the appeal for failure to file the record in terms of rule 8 within three months as directed by this Honourable Court on 27 January 2020. The record was filed a month late.

2.

The application for leave to appeal against the finding by the Court a quo is brought on behalf of the Applicant but funded by the State Attorney instructed by the South African Police Service (hereinafter referred to as SAPS). In terms of financial management of the State funds the State Attorney must authorize all costs and expenses before expenditure.

3.

The Applicant is an 82-year old pensioner and not able to finance this legal action and the facts forming the basis of the appeal stems from his actions in 1972 when he was a member of SAPS.

4.

This above Honourable Court directed on 27 January 2020 that five copies of the application for leave to appeal had to be filed within one month and the record had to be filed by 26 April 2020.

5.

- 5.1 Prorecordings (Pty) Ltd provided a quotation for the preparation of the record. The attorney forthwith of record requested authorization from the State Attorney for the expenditure.
- 5.2 During the lockdown period proclaimed due to the National State of Disaster the State Attorney's office was unavailable to authorize the expenditure in relation to the preparation of the record for filing in this appeal.
- 5.3 The attorney of record later, when authorization was not forthcoming gave the instructions for the preparation of the record at his own financial risk, however this resulted in the late filing of the record.
- 5.4 The record could accordingly only be filed some five weeks late.

APPLICABLE LEGAL PRINCIPLES

6.

It is respectfully submitted that the delay in filing the record caused no prejudice to any of the parties. The delay caused is outweighed by the interest of justice demanding a full ventilation of the matter at hand¹. Should condonation not be granted it will effectively deny the Applicant justice on a matter. The above Honourable Court has already ruled that matter should be argued before it, which illustrates the importance of the matter. The issues to be argued is not restricted to only the applicant, but is of importance for other similar matters that will most

¹ Grootboom v National Prosecuting Authority & another 2014 (2) SA 68 (CC) par [22]; see *eThekweni Municipality v Ingonyama Trust* 2013 (5) BCLR 497 (CC)

certainly will follow. It thus respectfully submitted that the Applicant has a reasonable prospect of success² in the Application for Leave to Appeal³.

7.

The reason for the delay is a unique and extraordinary situation that was caused by the international pandemic, the effect of which was unforeseen by the Applicant⁴. The delay is of a short nature with minimal effect on the administration of justice and other parties⁵.

8.

It is respectfully submitted that Applicant has set out acceptable reasons for nullifying his culpability for the delay in serving the record timeously. It is further respectfully submitted that it would be unfair and exclusionary to deny her an opportunity to apply for leave to appeal.

WHEREFORE we respectfully submit that the Appeal be re-instated, and that Applicant be granted condonation for the late filing of the record.

Done at Pretoria on 10 June 2020

JG CILLIERS SC

SJ COETZEE SC

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) at para 20.

³ *Mathibela v The State (714/2017)* [2017] ZASCA 162

⁴ *Brunner v Gorfil Brothers Investments (Pty) Ltd and Others* [2000] ZACC 3; 2000 (2) SA 837 (CC); 2000 (5) BCLR 465 (CC) at para 3.

⁵ *Hotz and Others v University of Cape Town* [2017] ZACC 10 at par [17]