

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 66076/2020

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED: YES / ~~NO~~

DATE: 23/05/2024

SIGNATURE

In the matter between:

**INHLAKANIPHO CONSULTANTS (PROPRIETARY)
LIMITED**

Applicant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

JUDGMENT

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on Case Lines. The date for hand-down is deemed to be 23 May 2024.

G S Myburgh AJ

[1] This is an application for leave to appeal against the judgment which I handed down on 19 February of this year.

[2] In terms of section 17 (1) of the Superior Courts Act ¹a judge may only grant such an application if either:

[a] He or she is satisfied that the appeal would have a reasonable prospect of success; or

[b] There is some other compelling reason why the appeal should be heard.

[3] *In casu* the argument advanced by the applicant was that it enjoys a reasonable prospect of success. It was not suggested that leave should be granted even if I am not satisfied that the applicant would enjoy reasonable prospects of success, and I do not consider that that would be appropriate in *casu*. This is so notwithstanding that the underlying dispute concerns the application of an important statute, viz the Tax Administration Act.²

[4] A thesis which was central to the applicant's argument was that I erred in granting the respondent's application for condonation in respect of the late delivery of its answering papers. The difficulty that I have with this argument is that the grant or refusal of such an application is matter for the discretion of the judge of first instance , and it is well settled that a decision in respect of such an application will not be overturned on appeal unless the appeal court is satisfied that the discretion was not exercised in a proper manner – i.e. that an incorrect legal principle was applied or that the judge of first instance acted on the basis on an incorrect factual premiss.³ Added to this, while there are numerous precedents for finding, on appeal, that such an application was wrongly refused, thereby excluding evidence which ought properly to have been received into evidence, there is (in my view understandably) a dearth of authority going the other way. In the course of argument Mr Swanepoel SC, who appeared for the applicant, sought to rely on the decision in *Valor IT*⁴ as support for the proposition that a court on appeal would, or at least might, reasonably find that I erred in granting condonation. That decision does not

¹ Act 10 of 2013

² Act 28 of 2011

³ *Valor IT v Premier North West Province and Others* [2020] ZASCA 62

⁴ *Ibid*

however assist the applicant as the court in that matter endorsed the decision of the court of first instance to grant condonation and so receive the contents of the late affidavit into evidence – essentially on the same basis as I did in granting the respondent's application for condonation *in casu*. In my view there is no realistic prospect that the applicant's argument on this issue would be upheld on appeal.

[5] As to the remainder of the applicant's argument, it essentially comprised a rehashing of the arguments which were advanced in the main application, and which I dealt with in my judgment.

[6] On balance, I am not satisfied that the applicant would enjoy reasonable prospects of success on appeal .

[7] The application is accordingly dismissed with costs. As far as counsel's charges are concerned, my view is that the matter as a whole was relatively complex, and I see no reason why a different scale should apply to the application for leave to appeal *per se*. Scale B will therefore apply.

G S Myburgh AJ

Acting Judge of the High Court
Pretoria

Date of Hearing: 21 May 2024

Date of judgment: 23 May 2024

Appearances

For Applicant: P Swanepoel SC assisted by C Boonzaaier

Instructed by: L Mbangi attorneys.

For Respondent: L Haskins

Instructed by:

Mothle Jooma Sabdia Inc