



**IN THE LAND CLAIMS COURT OF SOUTH AFRICA**

**HELD AT RANDBURG**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: ✓
13 June 2018 <i>Molefe</i>	

Before: **Molefe J**

Heard: **11 June 2018**

Judgment delivered: **13 June 2018**

**CASE NO.: LCC 208/2017**

In the matter between:

**ANNAH MASILELA**

Applicant

and

**CHARLES SLABBERT ENTERPRISES CC**

First Respondent

**THE MINISTER OF RURAL DEVELOPMENT**

Second Respondent

**AND LAND REFORM**

**DIRECTOR-GENERAL OF THE DEPARTMENT OF**

Third Respondent

**RURAL DEVELOPMENT AND LAND REFORM**

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## JUDGMENT

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**MOLEFE J**

[1] The applicant in this application (the first respondent in the main application) (hereinafter referred to as 'the first respondent') brings an interlocutory application for condonation of the following:

- 1.1. the late filing of the first respondent's answering affidavit;
- 1.2. the late bringing of this application;
- 1.3. the late filing of the first respondent's heads of argument, practice note and list of authorities;
- 1.4. the late filing of the affidavit of Rachel Van Rensburg, allowing the first respondent to supplement its papers by the filing of the abovementioned affidavit and accepting it into evidence;

[2] No costs order is sought against a party who does not oppose the relief sought.

[3] The applicant in the main application (the first respondent in this application) (hereinafter referred to as 'the applicant') opposes the application.

## FACTUAL BACKGROUND

[4] The applicant has brought an application for the following relief:

- “4.1. that she be declared a labour tenant in terms of section 33(2A) of the Land Reform (Labour Tenants) Act 3 of 1996 (“the Act”) as defined in section 1 of the Act, in respect of the farm portion 68 (a portion of portion 5) of the farm Eenzaamheid No 534 JR, in the district of Balmoral, Middelburg, Province of Mpumalanga (“the property”)*
- 4.2. to award the applicant and her family 93.6830 hectares of land which is and was used by the applicant and her family before the first respondent purchased the farm;*
- 4.3. directing the third respondent to purchase the land on behalf of the applicant and her family on the amount to be agreed by the parties and/or market value;*
- 4.4. that an order as to costs be granted against any party opposing this application. “*

[5] The applicant caused the application to be served on the first respondent on 26 September 2017. Subsequent to the first respondent’s notice of appearance, the applicant served a notice of bar on the first respondent’s attorney of record. The first respondent’s attorney came to an agreement with the applicant’s attorneys to be

allowed to file the answering affidavit on or before 15 April 2018<sup>1</sup>. Accordingly, the first respondent's answering affidavit was filed within the time periods agreed to by the parties.

[6] On 20 March 2018, the Court granted a directive that the first respondent's heads of argument must be filed on or before 30 May 2018. Due to lack of funds, the first respondent's attorneys withdrew as its attorney of record on 30 May 2018 and the first respondent was unable to comply with the Court's directive<sup>2</sup>.

[7] At the hearing of this application, counsel for the applicant<sup>3</sup> decided to condone the late filing of the first respondent's answering affidavit, heads of argument, practice note and list of authorities. The only issue to be determined by this Court is the condonation of the late filing of this application as well as the affidavit by Rachel Van Rensburg.

[8] Rule 32(4) of the Land Claims Court Rules provides:

*“(4) The Court may, upon application and on good cause shown at any stage of the proceedings –*

*(a) extend or abridge any period of time prescribed by these rules or by any order or direction of the Court;*

*(b) condone any irregular step or any non-compliance with these rules or with any order or direction of the Court; or*

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<sup>1</sup> Bundle page 185 annexure “FA1”

<sup>2</sup> Bundle page 186 annexure “FA2”

<sup>3</sup> Adv. H.J. Strauss

*(c) reinstate any appeal which has lapsed in terms in rule 70(7) or (8), upon terms which it considers just.”*

[9] First respondent's counsel<sup>4</sup> submitted that the applicant in her founding affidavit testified that the portion 68 of the farm in question was previously owned by Ms Rachel van Rensburg as evidenced by title deed number T43926/2004 and the applicant and her family members were her labour tenants. However, the applicant did not attach Ms Van Rensburg's confirmatory affidavit to her founding affidavit to confirm the applicant's version. Even though the first respondent raised this point in its answering affidavit, the applicant still did not attach Ms Van Rensburg's affidavit to her replying affidavit served on the first respondent on 28 May 2018.

[10] The first respondent only started to trace Ms Van Rensburg through various sources after 28 May 2018 and she was located at her residence in Strand, Western Cape. She was requested to confirm the allegations made by the applicant in her founding affidavit. Ms van Rensburg consequently declared under oath on 05 June 2018, *inter alia* that the applicant and/or her predecessors and/or those she is a successor in title, were not labour tenants but were farm workers who were duly remunerated for their services.

[11] Applicant's counsel argued that the condonation application should be dismissed on the basis that the application is purportedly moved on an urgent basis and there is no request to Court to condone the non-compliance with the normal time limits. Counsel relied on Rule 37(2)(b) of this Court which provides that formal

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<sup>4</sup> Adv. JH Sullivan

applications for interlocutory orders in pending cases must be set down for a time, date and venue to be determined by the presiding judge.

[12] In my opinion, this argument has no merit. This application is not brought on an urgent basis and the Court may, on application by any party or of its own accord make an interlocutory order in a pending case.

[13] The Court may on good cause shown condone any non-compliance with the rules. The circumstances or 'cause' must be such that a valid and justifiable reason exists why compliance did not occur and why non-compliance can be condoned. The applicant for any such relief must, at least, furnish an explanation of his default sufficiently to enable the Court to understand how it really came about and to understand his conduct and motives<sup>5</sup>. It is generally accepted that condonation is not to be had merely for the asking. The party asking for condonation must provide a full, detailed and accurate account of the reasons for the delay. If the non-compliance is time related, the date, duration and extent of the problem that occasioned such delay, should be set out. It is trite that where non-compliance of the rules has been flagrant and gross, a court should be reluctant to grant condonation whatever the prospects of success might be<sup>6</sup>.

[14] The Courts have an extensive discretion, which must be exercised judicially on a consideration of the facts of each case; in essence it is a matter of fairness to both sides. In each case the question is whether good cause has been shown for the relief sought. Good cause requires that the application be *bona fide*.

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<sup>5</sup> *Standard General Insurance Co Ltd v Eversafe (Pty) Ltd* 2002(3) SA 87(W) at 93.

<sup>6</sup> *Darries v Sheriff, Magistrate's Court, Wynberg* 1998 (3) SA 34 (SCA) at 41D

[15] In *casu*, I have considered *inter alia* the degree of non-compliance, the first respondent's explanation of the delay, the importance of the case, the nature of the relief sought and prejudice to the other side. Condonation will be granted if it is in the interest of justice to do so. It is trite that the interest of justice requires that all issues pertaining to a matter be ventilated fully and for all parties to be given the opportunity to state their case as comprehensively as possible<sup>7</sup>.

[16] The degree of the evidence by Ms Rachel van Rensburg is in *casu*, of such a material extent that it will amount to a travesty of justice if this affidavit is not accepted and allowed into evidence. I have considered that the first respondent's explanation of the delay in bringing the application for condonation and I am satisfied that the application is *bona fide* and is not made with the intention to delay the proceedings. In my opinion, there is no prejudice to the applicant as the matter is to be postponed to allow the applicant to supplement and/or reply to Ms van Rensburg's affidavit.

## COSTS

[17] Counsel for the first respondent submits that taking into consideration the lateness of the applicant's replying affidavit and the short period of time between the filing of the replying affidavit and the date of hearing of the main application, the first respondent should not pay the costs of the condonation application. Ordinarily, in applications for condonation for non-observance of court procedure, a litigant is obliged to seek the indulgence of the court whatever the attitude of the other side,

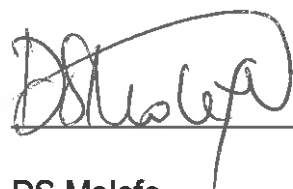
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<sup>7</sup> *F v Minister of Safety and Security and Others* 2012(1) SA 536 (CC) at [28]

and for that reason will have to pay the latter's costs if it does oppose, unless the opposition was unreasonable<sup>8</sup>.

[18] In the circumstances, I make the following order:

1. *Condonation is granted to the first respondent for the late filing of the application and for the late filing of the affidavit of Rachel van Rensburg which is accepted into evidence.*
2. *The first respondent to pay the costs of this application.*
3. *The main application is postponed sine die.*

A handwritten signature in black ink, appearing to read 'DS Molefe', is written over a horizontal line.

DS Molefe  
Judge, Land Claims Court

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<sup>8</sup> *Premier, Western Cape v Lakay* 2012(2) SA 1 (SCA) at [25]



**APPEARANCES:**

For the applicant: Adv. HJ Strauss

Instructed by: Marivate Inc. Attorneys, Pretoria

For the First Respondent: Adv. JH Sullivan

Instructed by: Anton Claasen Attorneys, Witbank