

In the matter between:

BULELWA PALEDI (nee NDAMASE)

Applicant

and

TITITI BOUTIQUE (PTY) LTD (IN LIQUIDATION)

Respondent

In re:

MTHATHA MALL (PTY) LTD

Applicant

and

TITITI BOUTIQUE (PTY) LTD (IN LIQUIDATION)

Respondent

JUDGMENT

(application for leave to appeal)

Bloem J

1. Although this purports to be an application for leave to appeal, it is more a reflection of the disregard an attorney shows for the rules and orders of this court. The applicant herein is Bulelwa Paledi (nee Ndamase). The respondent is Mthatha Mall (Pty) Ltd (the lessor). The lessee in the main application is Tititi Boutique (Pty) Ltd (in liquidation).
2. The main application was set down for hearing on 2 June 2020. On the date of the hearing, the lessee's local attorney of record had no instructions from anyone to proceed with the opposition of the application. He nevertheless made an application for the postponement of the main application. Despite opposition from the lessor, the application was postponed to 18 June 2020. Ms Paledi was ordered to explain

in an affidavit why she should not be ordered to pay the costs occasioned by the postponement on the scale as between attorney and client. Although she did not deliver that affidavit, she appeared on 18 June 2020 and made submissions in respect of the main application and why she should not be ordered to pay the cost occasioned by the postponement on 2 June 2020. On 30 June 2020 it was ordered firstly, that the main application be suspended until the appointment of a liquidator for the lessee; and secondly, that Ms Paledi pay the wasted costs occasioned by the postponement, those costs to include the party and party costs of the opposed application for the postponement on 2 June 2020. The reason for the costs order was that, had Ms Paledi delivered answering affidavits timeously, the main application would probably have been finalised on 2 June 2020. It is against that costs order that Ms Paledi seeks leave to appeal.

3. As pointed out above, the judgment in the main application was delivered on 30 June 2020. The notice of application for leave to appeal was delivered on 6 July 2021, more than twelve months after the delivery of the judgment. In terms of rule 49(1)(b) of the Uniform Rules of Court the notice of application for leave to appeal should have been delivered on or before 21 July 2020, that is within fifteen days after the date of the delivery of the judgment and order against which leave to appeal is sought. That subrule provides for the court, upon good cause shown, to extend the period of fifteen days. Rule 27(1) also provides that the court may, upon application on notice and on good cause shown, make an order extending the period of fifteen days. Rule 27(3) provides that the court may, on good cause shown, condone any non-compliance with the rules of court.
4. It appears to me that the provisions of rule 49(1)(b) are peremptory insofar as the time within which the notice of application for leave to appeal should be delivered. That rule has its own remedy. If a party realises that he or she would be unable to

deliver a notice of application for leave to appeal within the period of fifteen days, he or she must apply to court to extend the period of fifteen days. Such an application must be made before the expiry of the period of fifteen days. It is for the court to decide whether or not to extend that period. If an application for the extension of the period of fifteen days was not made, such a party could thereafter apply to court, in terms of rule 27(3), to condone his or her failure to compliance with the provisions of rule 49(1)(b).

5. There being neither an application for the extension of the period of fifteen days nor an application for the condonation of the failure to deliver the application for leave to appeal within fifteen days, the application for leave to appeal should be struck off the roll.
6. In the circumstances of this case, it is no answer to submit, as did Mr Mlisana, counsel for Ms Paledi, that the failure to deliver the notice of application for leave to appeal constitutes an irregular step and the lessor should have applied to court to set aside the alleged irregular step.
7. On 8 September 2021 an application was delivered on behalf of Ms Paledi for the application for leave to appeal to be postponed. The history of that application is that, after the notice of application for leave to appeal had been filed of record on 6 July 2021, the parties were informed by email on 29 July 2021 that the application for leave to appeal would be heard on 30 August 2021. There was no appearance on 30 August 2021 on behalf of Ms Paledi. Her attorney, Sithembele Mgxaji, was contacted by telephone. He indicated that his Grahamstown correspondent attorney did not inform him that the application was set down for hearing on that day. That history became obsolete because, by agreement, the application was postponed for virtual hearing to 16h30 on Wednesday, 8 September 2021. The application for a

postponement was delivered a few hours before the commencement of the virtual hearing.

8. Mr Mgxaji deposed to the affidavit in support of that application. The first ground for the postponement was that the lessor set down the application on 30 August 2021 without consulting Ms Paledi to establish her suitability or convenience. That ground has no factual or legal basis because the parties were informed on 29 July 2021 that I would be unable to hear that application until 30 August 2021. The application was set down on 30 August 2021 because it was a convenient date for the court.
9. The second ground was that Ms Paledi presently attends a traditional initiation course in accordance with the Xhosa custom and confined to the rural area from where it is essentially impossible to contact her. At the hearing, Mr Mlisana was asked to explain what was required from Ms Paledi to enable him to make submissions on the application for leave to appeal, since she had given instructions to Mr Mgxaji to seek such leave and an extensive application for leave to appeal had been delivered. Counsel's response was that his brief was limited to the application for a postponement and that he had no instructions in respect of the application for leave to appeal. I am of the view that Ms Paledi's attendance at a traditional course in the rural area is not a sufficient ground for the postponement of her application for leave to appeal. Her legal team could have argued that application in her absence.
10. It was also submitted that Ms Paledi was given inadequate time to prepare for the hearing of the application for leave to appeal. That submission is devoid of a factual basis. Firstly, the application for leave to appeal was delivered as early as on 6 July 2021. Secondly, the parties were informed on 29 July 2021 that the application for leave to appeal would be heard on 30 August 2021. Thirdly, on the latter date the parties agreed, at the request of Mr Mgxaji, to the postponement of

the application for leave to appeal. Against the above factual background, it does not lie in the mouth of Ms Paledi to complain that she had inadequate time to prepare for the hearing.

11. In the circumstances, there were inadequate reasons for the postponement of the application for leave to appeal. That application should accordingly be dismissed.

12. In the result, it is ordered that:

12.1. The application for the postponement of the application for leave to appeal be and is hereby dismissed.

12.2. The application for leave to appeal be and is hereby struck off the roll.

12.3. Bulelwa Paledi shall pay the costs of the hearing on 8 September 2021, such costs to include the costs occasioned by the opposed application for a postponement.

G H BLOEM
Judge of the High Court

APPEARANCE:

For the applicant:

Mr M Mlisana, instructed by Mgxaji and Co Inc,
Mthatha and Joko & Co Inc, Grahamstown.

For the respondent:

Mr T S Miller, instructed by GVS Law, Durbanville and
Wheeldon Rushmere & Cole, Grahamstown.

Date of hearing:

8 September 2021.

Date of delivery of judgment:

28 September 2021.