

**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**CASE NO: CT01201ADJ2022**

In the matter between:

**SHIMANE GREGORY SEBELA**

**Applicant**

and

**JULIUS GALANANZHELE**

**First respondent**

**GALANANZHELE SEBELA**

**Second Respondent**

**ATTORNEYS INCORPORATED**

**Presiding Member: Professor Marumoagae**

**Date of Decision: 30 May 2023**

---

**DECISION (Reasons and order)**

---

**A INTRODUCTION**

[1] The Applicant is the First Respondent in the main application. The First Respondent is the Applicant in the main application. For the sake of convenience, I will refer to the parties as they are referred to in the main application.

[2] The Applicant in the main application is **Shimane Gregory Sebela**, a major male practising attorney at Galananzhele Sebela Incorporated Attorneys

(hereafter 'GSI'), with offices situated at 26 Oppenheimer Avenue, Second Floor, Vasco Da Gama House, Bruma, Gauteng. The Applicant is one of the two directors of GSI.

- [3] The First Respondent in the main application is **Julius Galanzhele**, a major male practising attorney at GSI with offices situated at 26 Oppenheimer Avenue, Second Floor, Vasco Da Gama House, Bruma, Gauteng. The First Respondent is also one of the two directors of GSI.
- [4] The Second Respondent is the **Companies and Intellectual Property Commission**, the organ of state established in terms of section 185 of the Companies Act 71 of 2008 (hereafter Companies Act), having its principal place of business at DTI Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng province.
- [5] In the main application, the Applicant approached this Tribunal in terms of section 71(8)(b) of the Companies Act read with sections 71(3)(b), 76(2) and (3) as well as 77(2) of the Companies Act for an administrative order relating to the removal of the First Respondent as a director of GSI.
- [6] In these proceedings, the First Respondent brought an application for condonation/ extension of time, which the Applicant opposes. The parties agree that this application should be determined first before the main application can be argued and determined.
- [7] The Tribunal is required to determine whether the late filing of the First Respondent's answering affidavit in the main application should be condoned and/or whether the First Respondent should be granted an extension of time to officially place his answering affidavit before the Tribunal.

[7.1] However, because the answering affidavit has already been filed, the core question that must be decided is whether the First Respondent's answering affidavit should be considered by this Tribunal for the purposes of determining the main application or the Applicant should be allowed to proceed on an unopposed basis.

## **B BACKGROUND**

[8] The Tribunal received the main application together with the supporting affidavit deposited to by the Applicant on 01 November 2022.

[9] The Applicant and First Respondent are directors and equal shareholders of GSI. The Applicant believes that the First Respondent is derelict and negligent in the performance of his duties as the director of GSI. The Applicant alleges that the First Respondent:

[9.1] failed to pay value added tax and pay as you earn to the South African Revenue Services;

[9.2] failed to attend sufficiently and timeously to the payment of employees, creditors, suppliers and correspondence attorneys;

[9.3] embarked upon an unauthorised solicitation of work;

[9.4] mismanages, misappropriates, and unlawfully withdraws money from GSI's trust account.

[10] The Applicant and First Respondent engaged in negotiations and or mediation to resolve their disputes, which collapsed. This led the Applicant to request the First Respondent to file his answering affidavit by 21 February 2023.

[11] In February 2023, the First Respondent approached the Tribunal to be granted an extension of time to file his answering affidavit. The First Respondent answering affidavit was subsequently placed before the Tribunal.

[12] In his answering affidavit, the First Respondent disputes most of the allegations preferred against him which are contained in the Applicant's affidavit in support of his removal as director of GSI. The First Respondent raised several points *in limine* in his answering affidavit. Among others, the First Respondent contends that some of the Applicant's allegations are matters over which this Tribunal lacks jurisdiction and fall within the competency of the relevant regulatory bodies.

[13] The First Respondent also preferred serious allegations against the Applicant. He alleges that the Applicant:

[13.1] planned to either exit GSI or concoct a scheme to get rid of the him with a view to remain the sole director of GSI;

[13.2] is arrogant, rude and disrespectful;

[13.3] threatened staff with hearings and dismissals when he did not get his way;

[13.4] imposed his wife as a consultant within the firm on matters that concerned female staff, to the extent of instructing the GSI staff to make tea for his wife;

[13.5] insisted that his email be the sole email that is used when GSI applied for tenders.

[14] At this stage, there is no need to discuss the merits and demerits of the allegations or counter-allegations between the Applicant and the First Respondent. During the hearing, counsel for the First Respondent indicated that he was ready to argue the merits of the matter whereas counsel for the Applicant indicated that he had only prepared to argue the condonation application and would need more time to prepare for the main application.

## **C APPLICATION FOR CONDONATION/ EXTENTION OF TIME**

### ***i) First respondent's Contentions***

[15] The First Respondent's answering affidavit was due twenty business days after the First Respondent was served with the Applicant's main application on 07 November 2023. Between December 2022 and February 2023, the parties were engaged in negotiations and later mediation. For mediation purposes, the parties engaged the services of Advocate Madima SC to assist them to resolve their disputes.

[16] The Applicant submitted a three-page affidavit titled 'affidavit in support of application for condonation'. The First Respondent contends that the reason his answering affidavit was filed late was due to the settlement negotiations between the Applicant and First respondent.

[17] On 20 February 2023, the Applicant decided to terminate mediation process and requested the First Respondent to file his answering affidavit on 21 February 2023.

[18] The Applicant is requesting the Tribunal to grant him an extension to file his answering affidavit by 9 March 2023, which is ten days calculated from 24 February 2023. It must be noted that the application for condonation/extension of time was heard on 02 April 2023.

[19] During the hearing, the following submission were made on behalf of the First Respondent.

[19.1] While the heading of the affidavit in support of the main application suggests that the application is for condonation, this affidavit expressly states in its body that it is an application for an extension of time. The First Respondent demonstrated in the application form that this application is about the extension of time by ticking this option on the relevant form as opposed to the condonation option, which is also provided on that form;

[19.2] The application for extension of time was necessitated by the fact that the Applicant on 20 February 2023 terminated the mediation and indicated that he will be pursuing the main application in this Tribunal. Further that the Applicant informed the First Respondent that when the 'mediation' commenced on 06 February 2023, the First Respondent's answering affidavit was due on 7 February 2023. At that time, there was only one day left for the First Respondent to file his answering affidavit. On the date the negotiations collapsed, the First Respondent was left with only one day to file his answering affidavit, which affidavit the Applicant insisted should be filed on 21 February 2023;

- [19.3] The answering affidavit was filed on 08 March 2023. This means that what is now sought is a posthumous extension of time. Based on this development, the application could then be considered as an application for condonation for the late filing of the First Respondent's answering affidavit.
- [19.4] The *dies* for the filing of the First Respondent's answering affidavit only started running from 20 February 2023 based on the implied lifting of the suspension of the *dies*;
- [19.5] The application for condonation/ extension of time should have not been opposed. The First Respondent would suffer prejudice if the Applicant was to be allowed to proceed on an unopposed basis in the main application and be granted a default judgment;
- [19.6] The First Respondent would be removed from the office of director of the GSI due to allegations which among others, relate to issues that are regulated in terms of the Legal Practice Act 28 of 2014. The Applicant is also implicated in some of these allegations by virtue of being a director of GSI;
- [19.7] The Tribunal should decide whether to grant an extension of time or to condone the late filing of the First Respondent's answering affidavit;
- [20] In response to the First Respondent's affidavit in support of the condonation/ extension of time application, the Applicant filed a seventeen-pages answering affidavit where he raised several points *in limine*. The First Respondent did not file a replying affidavit to respond to these points *in limine* but his counsel dealt with some of the issues orally during argument.

**ii) Applicant's contentions**

[21] The first point *in limine* raised by the Applicant is that the First Respondent failed to file his answering affidavit on time. Further that the First Respondent's answering affidavit ought to have been filed on 21 February 2023 but was only filed on 28 February 2023. This answering affidavit was back dated to 21 February 2023 to mislead and create an impression that it was filed within the required period:

[21.1] The rules of this Tribunal provide for both the application for condonation and application for an extension of time. This clearly illustrates that these applications are two different procedures. An extension of time may be applied for when a party is still within the timelines required for the filing of the required document but experiences some challenges that necessitate the period to be extended;

[21.2] If such a party fails to file the required document within the required period, such a party can make an application for the late filing of the document to be condoned. The application for condonation is usually made in the affidavit sought to be condoned;

[21.3] The First Respondent failed to submit the application for extension before 21 February 2023. The First Respondent ought to have brought an application for condonation, which he has failed to do, despite the subject of his affidavit being 'affidavit in support of application for condonation'.

[22] The Applicant's second *point of limine* relates to the filing of First Respondent's condonation application. The Applicant contends that this application was filed without the mandatory Form CTR 147, which renders the application to be



fatally defective. The form that the First Respondent filed relates to the extension of time and not condonation. Further that:

- [22.1] In his answering affidavit in support of condonation, the First Respondent failed to advance reasons for condonation and to attach the answering affidavit sought to be condoned;
- [22.2] In his condonation application, the First Respondent failed to disclose its answer to the Applicant's complaint which creates doubt whether the First Respondent has a credible answer to that complaint, or this condonation application is meant to delay the finalisation of the main application;
- [22.3] The affidavit in support of the condonation application does not deal with condonation but its contents make a case for the extension of time for the filing of the First Respondent's answering affidavit;
- [22.4] The First Respondent responded to the Applicant's withdrawal from the mediation with an email where he committed to file his answering affidavit by 03 March 2023, which he failed to do;
- [22.5] The First Respondent's application, whether it is for condonation or extension of time, is deficient and or defective. It does not meet the requirements of both condonation and or extension of time as envisaged in Regulation 147 of the Companies Regulations, 2011 and stands to be dismissed;
- [23] Between 23 and 29 January 2023, after the termination of services by the GSI accountants, the First Respondent and Applicant engaged in a process to appoint new accounts for GSI. However, the First Respondent failed to

cooperate leading to GSI to remain non-compliant with its tax obligations and also record the non-compliance status on the CSD database. This led to the Applicant to lodge an urgent application against the First Respondent at the High Court to provide interim accountants with the SARS logins details to assist the Second Respondent to be compliant with their SARS obligations.

[24] On 6 February 2023, the parties agreed to subject themselves to mediation. This was the day before the last day the First Respondent was supposed to file his answering affidavit to the main application. The First Respondent frustrated the mediation process and refused to act as he is reasonably expected to act as the director of GSI leading to the Second Respondent to suffer reputational damage. The Applicant withdrew from the mediation on 20 February 2023.

[25] At the hearing, the following submissions were made on behalf of the Applicant:

[25.1] There is a clear distinction between an application for condonation and application for extension of time. These two applications cannot be taken to be the same. It is important for the First Respondent to indicate which application the Tribunal is invited to entertain, is it to condone late filing of the documents or to extend the time within which his answering affidavit should be filed?

[25.2] Due to the First Respondent's failure to file his answering affidavit on time, the Applicant applied for a default judgment against the First Respondent because there was effectively no answer to its complaint before this Tribunal;

[25.3] While the Tribunal ought not to be overly strict with compliance with its rules in the same way the court of law would be, the Tribunal must record its displeasure with the First Respondent for the way in which it

approached the Tribunal and the procedure it adopted. The First Respondent's conduct has not been exemplary in that he failed to make an election in respect of the two separate procedures. These procedures must comply with different requirements and cannot be treated as one and the same thing.

[25.4] As such, it is not clear whether the Tribunal is requested to deal with an application for condonation or that of extending the period of filing the answering affidavit.

## **C THE LAW AND ANALYSIS**

### ***i) Overview***

[26] In the main application, the Applicant completed form CRT 142 issued in terms of sections 180 to 184 of the Companies Act. By completing this form, the Applicant was effectively requesting this Tribunal to adjudicate the dispute as opposed to engage in an arbitration, which is an alternative dispute resolution process. This is because these provisions specifically deal with the adjudication hearings before the tribunal.

[27] Regulation 143(1) of the Companies Regulations, 2011, provides that:

*'[w]ithin 20 business days after being served with a Complaint Referral, or an application, that has been filed with the tribunal, a respondent who wishes to oppose the complaint or application must – (a) serve a copy of an Answer on the initiating party; (b) file the Answer with proof of service'.*

[28] Form CRT 142 also informs every Respondent named in the application that they have a right to file their answer to the application within twenty business days after being served with the application. In this matter, the First Respondent was served with the application on 7 November 2022 and failed to deliver his answering affidavit within the prescribed twenty business days. Unfortunately, the First Respondent's three-page supporting affidavit does not provide a clear account of what prevented him from filing his answering affidavit between 08 November 2022 and 5 December 2022, which represent the prescribed twenty business days.

[29] The First Respondent merely says that upon receiving the application he was approached by GSI's accountant who suggested that the Applicant and the First Respondent should explore possible settlement negotiations. While an impression is created that this suggestion was accepted, details of steps taken to engage in such negotiations are not provided. It is not clear what transpired between 08 November 2022 and 05 February 2023, a day before formal mediation proceedings commenced between the parties. It is clear however, that mediation was terminated on 20 February 2023. It is then that the First Respondent saw it fit to approach this Tribunal to request to be allowed to file his answering affidavit.

***ii) The nature of the application***

[30] Regulation 147 of the Companies Regulations, 2011 provides that:

*'A party to any matter may apply to the Tribunal to condone late filing of a document, or to request an extension or reduction of the time for filing a document, by filing a request in form CTR 147'.*

- [31] This regulation clearly provides three separate applications, condonation, extension of time and reduction of time. The usage of the coordinating conjunction 'or' as opposed to 'and' clearly indicates that these procedures cannot be applied for at the same time. One procedure must be applied for at a time, or at the very least, these procedures should be applied for in the alternative.
- [32] In these proceedings, there is confusion as to what exactly the First Respondent applied for. On the one hand, the First Respondent on the CTR 147 form, which is also issued in terms of adjudication provisions of the Companies Act referred to above, indicated that he is applying to be granted an extension of time for the filing of his answering affidavit. There are two other different options on the form, condonation for the late filing of the document sought to be filed and the reduction of the time within which the document should be filed. By choosing any of these options, a clear indication is sent to this Tribunal's officials as to what the application is about. On the strength of this document, the Tribunal appears to be faced with the application for the extension of time.
- [33] On the other hand, the First Respondent inserted condonation as the subject matter of the affidavit in support of his application. This gives the impression that this application is for this Tribunal to condone the late filing of the First Respondent's answering affidavit. However, the body of the First Respondent's affidavit makes a case for an extension of time to file the answering affidavit.
- [34] The way in which this application was crafted is regrettable. It is not a model of clarity and leads to unnecessary confusion. It also led to unnecessary arguments regarding the nature of the application being advanced at the hearing. It is important that those who approach this Tribunal, particularly when legally represented, to avoid unnecessary confusion as to what relief they seek from the tribunal.

[35] It cannot be disputed that an application for condonation and that for an extension of time to file legal documents are different from each other. Any party that approaches this Tribunal is presented with a choice on the prescribed form and must choose and sustain only the procedure that such a party wish this Tribunal to entertain.

**iii) Condonation**

[36] Condonation is generally applied for upon failure to timeously serve and file the relevant document. In this matter, the First Respondent's answering affidavit was supposed to have been file on or before 05 December 2022. The filing of this answering affidavit on any day after this date effectively rendered the delivery of this document late. This necessitated the First Respondent to approach this Tribunal to be allowed to file his answering affidavit late.

[37] It is trite that the party seeking condonation must file an affidavit where such a party satisfactorily explains the circumstances that led to the delay. In *Turnover Trading 191 (Proprietary) Limited v Moshela and Others*, the court held that '*[t]he explanation must be sufficiently full, detailed, accurate and should be a reasonable explanation covering the entire period of the delay*'.<sup>1</sup> The First Respondent's affidavit in support of his application and arguments advanced on his behalf do not provide an explanation that covers the entire period of the delay.

[38] The Constitutional Court in *Grootboom v National Prosecuting Authority and Another*,<sup>2</sup> held that:

*'[i]t is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show*

---

<sup>1</sup> (77405/2018) [2020] ZAGPPHC 240 (2 June 2020) para 65.

<sup>2</sup> 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) para 23

*sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default'.*

[39] Thus, when assessing the First Respondent's application generally and his explanation for the delay in particular, this Tribunal should carefully assess whether his explanation is reasonable enough to excuse the default. The totality of the facts provided to this Tribunal must be evaluated. While it is not clear when exactly settlement negotiations commenced, there is no dispute that both the First Respondent and Applicant were involved in some form of negotiations which ultimately led to the decision to subject themselves to mediation.

[40] The extent to which these negotiations may have had an impact on the First Respondent not filing his answering affidavit, despite the poor affidavit submitted in support of his application, cannot be ignored. It goes without saying that it is the responsibility of the First Respondent to adequately place factors that led to the delays before this Tribunal. However, given the seriousness of the allegations preferred by the Applicant against the First Respondent and the fact that the First Respondent's answering affidavit has already been filed, it will not be in the interest of justice to be overly formalistic in this matter.

[41] The Constitutional Court in *Van Wyk v Unitas Hospital and Another*, held that the standard for considering an application for condonation is the interests of justice.<sup>3</sup> Further that:

*'[w]hether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are*

---

<sup>3</sup> 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) (6 December 2007) para 20.

*not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay ... and the prospects of success*.<sup>4</sup>

[42] The First Respondent has attributed the delays to the negotiations that commenced after receipt of the main application papers. While the Applicant has contended that the First Respondent has generally failed to satisfy the test for condonation, the Applicant did not dispute in any material way, that negotiations commenced after the First Respondent was served with the application. This is an important issue that cannot be ignored. There is no indication from 05 December 2023 which is the date on which the prescribed twenty business days expired that the Applicant insisted that the First Respondent should file his answering affidavit. This observation supports the First Respondent's contention that after receipt of the application, the parties were engaged in negotiations which led to the delays in filing his answering affidavit. There is no reason to doubt this contention.

[43] It is important to note however, that during the hearing of this application, First Respondent's counsel argued that this is not an application for condonation but that which seeks to obtain this Tribunal's permission to extend the time within which the answering affidavit should be filed.

**iv) Extension of time**

[44] An application for an extension of time to file the answering affidavit would have been competent any time before 05 December 2022. In other words, such an application should have been brought when it became clear to the First Respondent that he was going to experience challenges in serving and filing his answering affidavit within the prescribed twenty business days. An

---

<sup>4</sup> *Van Wyk v Unitas Hospital and Another* 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC) (6 December 2007) para 20.



extension to file a document such as an answering affidavit can be granted on good cause shown. In *Energy Beverages LLC v Herbal Living (Pty) Ltd and Another*:

*'[a] decision on whether or not to grant an extension on the basis of good cause involves a discretion which must be exercised in the light of the merits of the matter as a whole. The ultimate standard to be considered is whether allowing the extension would be in the interests of justice'.<sup>5</sup>*

[45] The fact that the prescribed twenty business days lapsed on 05 December 2023 made it unnecessary for the First Respondent to bring an application to be granted an extension to file his answering affidavit. The First Respondent should have indicated in the prescribed form and his affidavit that this application was for condonation for the late filing of his answering affidavit.

[46] Despite challenges with the framing of this application, and the fact that an application for condonation is different to that aimed at extending the period of filing the required document, the First Respondent's is not without a remedy. At the heart of the First Respondent's application is for his answering affidavit to be admitted by this Tribunal. There is no need to use technicalities to reject the First Respondent's answering affidavit which has been submitted to the Tribunal before the main application is heard. To do so would result in an injustice of great proportions. The Applicant has placed his version before this Tribunal. The First Respondent should also be allowed to do so given the seriousness of the allegations against him.

---

<sup>5</sup> (47692/2021) [2022] ZAGPPHC 458 (27 June 2022) para 19.

v) **Technicalities**

- [47] This application was brought after the collapse of the mediation process between the Applicant and First Respondent. It was brought after the prescribed twenty business days had expired with the First Respondent having received the main application on 7 November 2022. It is not clear what led to the applicant to formulate a view that the First Respondent's answering affidavit was due on 7 February 2023, and that at the time the mediation officially commenced on 6 February 2023, the First Respondent was left with only one day to file his answering affidavit.
- [48] When mediation collapsed on 20 February 2023, the Applicant held the First Respondent down to the day that was outstanding on the applicant's calculation of the *dies* before the mediation collapsed. The Applicant insisted that the First Respondent file his answering affidavit on 21 February 2023, a day after the mediation collapsed. This led the First Respondent to file an application to be granted an extension to file his answering affidavit by 9 March 2023.
- [49] The First Respondent's answering affidavit was filed on 8 March 2023. Having regard to the length and details of the Applicant's affidavit in support of the main application, this can hardly be regarded as an unreasonable delay given the fact that the Applicant instructed the First Respondent on 20 February 2023 to file his answering affidavit on 21 February 2023. The Applicant seems to be inviting the Tribunal to adopt an unnecessarily rigid approach without illustrating the prejudice that he will suffer if the First Respondent's answering affidavit was to be allowed having regard to the gravity of the allegations preferred against the First Respondent.
- [50] The Appellate Division (as it then was) in *Trans-Africa Insurance Co Ltd v Maluleka*, held that:

*'... technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits'.<sup>6</sup>*

[51] The First Respondent has already placed his answering affidavit before the Tribunal and has provided reasons why the affidavit was submitted late. These reasons are accepted by the Applicant. The Applicant in paragraph 4 of the his affidavit that was filed in response to the First Respondent's application for condonation/ extension of time, states that:

*'[h]aving been served with the referral and engaged in settlement negotiations and discussions have failed, the First Respondent was required to serve and file his answering affidavit on 21 of February 2023'.*

[52] This is a clear demonstration that the parties were not only engaged in a failed mediation, but had discussions and negotiations even before they agreed to subject themselves to mediation. This corroborates the First Respondent's contention that after being served with the main application, the parties engaged in negotiations which delayed the filing of his answering affidavit. Obviously, an argument can be made that the First Respondent ought to have prepared his answering affidavit in case the negotiations failed. However, such an argument loses sight of the requirement to negotiate in good faith with the aim to resolve the issues that are subject to the dispute. The First Respondent cannot be punished for focusing on the negotiations. There is nothing submitted before this Tribunal that negates the fact that such negotiations played a role in the late filing of the First Respondent's answering affidavit.

[53] It is important to emphasise that the procedure prescribed for the adjudication of disputes by the Tribunal must be followed. However, this does not mean that the Tribunal must be rigid and overly formalistic when performing its adjudicative functions. Where procedures and rules have been prescribed, they

---

<sup>6</sup> [1956 \(2\) SA 273](#) (A) 278F-G.

should not be treated as ends in themselves to be observed for their own sake.<sup>7</sup>  
In *Szedlacsek v Szedlacsek and Others*, it was held that:

*'[i]t is trite that Rules are there for the Court, not the Court for the Rules and this Court must zealously guard against its rules being abused, particularly by the making of unnecessary procedurally related applications which are not truly required in order for justice to be done or for the speedy resolution of litigation but which appear to be designed merely to inflate costs to the advantage of the practitioner's pocket'.<sup>8</sup>*

[54] While the Applicant did not bring any application that can be described as intended to abuse the processes of this Tribunal, the decision to oppose the First Respondent's application based on technical points despite the First Respondent placing his answering affidavit before this Tribunal has unnecessarily delayed the finalisation of the main application. Despite its obvious flaws, it is in the interest of justice for the First Respondent's answering affidavit to be allowed by this Tribunal for the matter to be properly ventilated and finalised.<sup>9</sup>

## **E CONCLUSION**

[55] I am convinced that strict adherence to the prescribed time limits within which the First Respondent ought to have filed his answering affidavit would give rise to substantial injustice which this Tribunal is duty bound to prevent.<sup>10</sup> The issues that the Applicant raised in the main application must be properly tested. This Tribunal cannot ignore the First Respondent's answering affidavit which has

---

<sup>7</sup> See *Federated Trust Ltd v Botha* 1978 (3) SA 645 (A) 654C-F, where it was held that '[w]here one or other of the parties has failed to comply with requirements of the rules or an order made in terms thereof and prejudice has thereby been caused to the opponent, it should be the Court's endeavour to remedy such prejudice in a manner appropriate to the circumstances, always bearing in mind the objects for which the rules were designed'.

<sup>8</sup> 2000 (4) SA 147 (E) 149G-H

<sup>9</sup> *Pangbourne Properties Ltd v Pulse Moving CC and Another* 2013 (3) SA 140 (GSJ) para 19.

<sup>10</sup> *Hart and Another v Nelson* 2000 (4) SA 368 (ECD) Horn AJ (as he then was) stated as follows at 374G-375F:

been placed before it based on some or other technicality. The First Respondent has provided reasons why his answering affidavit has been placed before this Tribunal late. Despite the unfortunate way in which the application was made, the totality of the facts before the Tribunal points to the fact that this affidavit should be allowed.

[56] Generally, even with the courts, judges are required not to take technical approaches when dealing with affidavits that are submitted outside prescribed periods but before the hearings.<sup>11</sup> There is no justification for this Tribunal to disallow the First Respondent's answering affidavit based on the technical points raised by the Applicant.

[57] The First Respondent requested the Tribunal to grant him an extension to file his answering affidavit by 9 March 2023. This application was heard on 2 April 2023. The answering affidavit was submitted to the Tribunal on 08 March 2023. Given the fact that the First Respondent has already served and filed his answering affidavit, it would not be proper to make an order granting an extension to serve and file this affidavit. An appropriate order would be to condone late service and filing of the First Respondent's answering affidavit.

## **F ORDER**

[58] I therefore make the following order:

[58.1] The late filing of the First Respondent's answering affidavit is condoned and will be considered by this Tribunal when adjudicating the main application.

---

<sup>11</sup> See *Ferreiras (Pty) Ltd v Naidoo and Another* 2022 (1) SA 201 (GJ) (11 December 2017) para 18 and *Pangbourne Properties Ltd v Pulse Moving CC and Another* 2013 (3) SA 140 (GSJ) para 14.

[58.2] The Registrar of this Tribunal is directed to serve this order on all the parties.

[58.3] Costs occasioned by this application will be costs in the cause.

---

Professor Marumoagae