

APPEAL RULING

C | B | E

COUNCIL
FOR THE BUILT
ENVIRONMENT

**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR THE BUILT
ENVIRONMENT
HELD AT CBE OFFICES**

In the matter between:

NTOKOZO, MAGUBANE

Applicant

and

**SOUTH AFRICAN COUNCIL FOR THE
PROJECT AND CONSTRUCTION
MANAGEMENT PROFESSIONS (SACPCMP)**

Respondent

JUDGMENT BY:

MOGALE, J L

DELIVERED ON:

04 NOVEMBER 2024

This order is handed down electronically by e-mail to the Council For The Built Environment [CBE] for purposes of disseminating to the parties. The date and time for the handing down of the order is deemed to be Monday 04TH November 2024 at 10H00.

SUMMARY

Application for leave to appeal – test to be applied – Appeal Committee for the Council Built Environment [C B E].

ORDER

The following order is made:

- i) Leave to appeal is granted to the Appeal Committee.
- ii) The cost of the appeal serves as a deterrent fee and should the appeal be upheld, the fee will be paid back to the appellant.

JUDGMENT

APPLICATION FOR LEAVE TO APPEAL

JL MOGALE

Introduction

[1] On 13TH June 2023 the Appellant attended an interview to be considered as a Professional Construction Project Manager [PrCPM] and the panel handed down its judgment in which the appellant applied for leave to appeal and it was recommended that the appellant be given an opportunity to appeal. The council also made use of a moderator to accommodate the appellant considering it was the third interview by the appellant.

[2] The applicant now applies for leave to appeal against the judgement. This application is opposed by the respondent. The judgment against which leave to appeal is sought, is detailed and I do not intent to rehash the reasoning and findings.

Point in limine

Condonation

[3] The respondent opposed the application for leave to appeal, amongst other reasons, on the basis that the appellant was advised that he has 90 days from date of the outcome (judgement) to appeal to Council for the Built Environment (CBE). The appellant's application is out of time as set out in **Section 21** of the Act and that he did not apply for condonation detailing reasons for the late filing of the appeal.

3.1 The appellant failed to prosecute his appeal timeously and has failed an application for condonation for the late filing of the appeal except to say that the application was eventuated by personal challenges out of his control and he substantiated that with a letter from the St Mary's Hospital dated 19TH June 2023 as a justification thereof.

3.2 *"It is trite that condonation cannot be held for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show 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."*

3.3 *In Mulaudzi v Old Mutual Life Assurance company (SA) Limited*, Ponnar JA re-affirmed the factors to be considered in respect of an application for condonation stated in *Melane v Santam Insurance Co. LTD*:

"Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation thereof, the importance of the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice."

[4] The main reason advanced by the appellant for the lateness in prosecuting the appeal is predicated on a lack of knowledge and/or not being informed by the council of the significance of adhering to the periods thereof.

[5] The alleged application for condonation is opposed by the respondent. The appellant's explanation is not accepted and/or no sufficient cause has been shown for condonation. Condonation for the late filing of the appeal is accordingly rejected.

[6] On this basis, I agree with the submissions made by the respondent that the judgment is not appealable.

Grounds of appeal

[7] The application for leave to appeal is sought on the following grounds (this is my own summary and I do not include all the grounds of appeal due to the voluminous and repetitive nature thereof as several are duplicated and repeated):

7.1 That the panel committee did not take into account that the plaintiff, on his own version, that the germane be evaluated and/or adjudicated with the relevant professional with exposure and/or experience in the field of project management primarily representing a client's department.

7.2 The council erred in not considering the applicant's nature of employment and the PMBOK guide not taken into consideration as point of reference.

[8] The applicant applies for leave to appeal to the Appeal Committee. This is on the following basis:

8.1 That he be interviewed on the scope in line of the PMBOK and/or also consideration be given to his previous interviews, as stepping stone to achieve the PrCPM.

[9] The appeal committee must now decide if leave to appeal should be granted on such basis and/or put differently, does the appeal committee have the powers to deviate from the rule and/or regulations of The South African Council for the Project Construction Management Professions [**SACPCMP**].

Submissions

[10] Both parties were provided an opportunity to make closing arguments, and the appellant alluded that his 2023 Doctors letter be considered and/or went further to put a blame to the council for not making him aware of the 90 day period. Further that his

knowledge of PMBOK guide and/or scope of work be considered for purpose of assessment.

[11] Mr Masilo [obo The Respondent] lambasted the appellant vigorously, saying the appellant went for three different interviews which decisions thereof were not in favour of the appellant. The council went further to engage a moderator to accommodate the appellant but all parties outcomes are clear that the appellant is not a suitable candidate to be bestowed with the responsibilities of being a Professional Construction Project Manager (PrCPM).

11.1 The CBE on its own cannot alter laws to accommodate the appellant, instead it can only remit the matter back to council for another considerate. The question is did the appellant meet the threshold and the answer is negative as he (appellant) admitted on his version that he cannot pass the test hence requesting the council to consider his understanding of the application of the PMBOK.

11.2 The appellant failed to outline how the council has failed him in any manner.

Legal position

[12] The test to be applied in an application for leave to appeal is set out in **section 17(1)(a)** of the **Superior Court Act 10 of 2013** which provides that:

*“(1) Leave to appeal **may only be given** where the judge or judges concerned are of the opinion that-*

*(a)(i) the appeal **would have a reasonable prospect of success**; or*

*(ii) there is some **other compelling reason** why the appeal should be heard, including conflicting judgments on the matter under consideration;” (own emphasis)*

[13] The application is on the ground that the appeal has a reasonable prospect of success as it deals with a novel point in law as set out in paragraph [6] above.

[14] The Supreme Court of Appeal set out the application for a test to grant leave to appeal in **Cook v Morrisson and Another 2019 (5) SA 51** (SCA) as follows:

[15] In **MEC for Health, Eastern Cape v Mkhita 2016 JDR 2214** (SCA) the Supreme Court of Appeal emphasised the application for the test for leave to appeal and found as follows in paragraphs [16] to [18]:

*[16] Once again it is necessary to say that **leave to appeal**, especially to this court, **must not be granted unless there truly is a reasonable prospect of success**. **Section 17(1)(a)** of the **Superior Courts Act 10 of 2013** makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the **appeal would have a reasonable prospect of success**; or there is some other compelling reason why it should be heard.*

*[17] An application for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. **A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.***

*[18] In this case the requirements of 17(1)(a) of the **Superior Courts Act** were simply not met.*

[16] The above legal principles emphasise that the requirement for a successful leave to appeal is more than a mere possibility that another judge (committee) might come to a different conclusion. The test is whether there is a reasonable prospect of success that another committee (judge) would come to a different conclusion.

[17] The workload in the council is ever increasing and the appeal committee that considers any application for leave to appeal, and specifically an appeal to the Appeal Committee has a duty to ensure that unmerited appeals do not become part of the

workload of the Appeal Committee. Appeals without merits should simply not be granted leave to appeal.

[18] Having due cognisance of the above, I hold the view that this appeal deals with a novel legal question that has not yet been determined. Legal certainty is necessary on the legal position as set out in paragraph [6] above.

[19] In the premise, I find that the application for leave to appeal does not deserve to be successful and that leave to appeal to the Appeal Committee is therefore not granted.

[20] The standard rule in an application for leave to appeal is that the cost of the appeal is to be cost in the cause, unless the applicant does not proceed with the appeal in which case the cost is to be paid by the applicant.

[21] I find no reason to deviate from the abovementioned standard principle.

Order:

[22] In the result, the following order is made:

- i) Condonation for late noting is dismissed.
- ii) The appeal against the outcome and mainly consideration of the PMBOK Guide understanding and application is dismissed.
- iii) The order of the 3RD Interview panel is confirmed. There is no order as to costs.
- iv) The appellant if he wishes may continue to follow the direction as issued by the SACPCMP interview committee in the 3RD interview.


J L MOGALE
CHAIRPERSON OF THE APPEAL COMMITTEE
COUNCIL FOR THE BUILT ENVIRONMENT

PREVEN NAIKER
PROFESSIONAL CONSTRUCTION PROJECT MANAGER [PrCPM]
PROFESSIONAL SENIOR ARCH TECH

TRACEY MYERS
SENIOR PROPERTY VALUER

DATE OF HEARING: **29TH OCTOBER 2024**

DATE OF JUDGMENT: **04TH NOVEMBER 2024**

APPEARANCES:

FOR APPLICANT:

Mr. NTOKOZO MAGUBANE
APPEARED IN PERSON

FOR RESPONDENT:

C/o

INSTRUCTED BY:

Mr. PHILLIP MASILO
CHEADLE THOMPSON & HAYSOM Inc
THE SOUTH AFRICAN COUNCIL FOR THE
PROJECT AND CONSTRUCTION
MANAGEMENT PROFESSION (SACPCMP)