

**IN THE HIGH COURT OF LESOTHO**  
**(COMMERCIAL DIVISION)**

**HELD AT MASERU**

**CCA/0025/2022**

**In the matter between:**

**THABANG QATHATSI**

**APPLICANT**

**AND**

**COMMISSIONER GENERAL RSL (Nee LRA)**

**1<sup>st</sup> RESPONDENT**

**REVENUE SERVICES LESOTHO**

**2<sup>ND</sup> RESPONDENT**

**THE PRESIDENT – REVENUE APPEALS**

**TRIBUNAL**

**3<sup>RD</sup> RESPONDENT**

**Neutral Citation:** Thabang Qathatsi v Commissioner General RSL & 3 Others  
[2023] LSHC 139 Comm. (14 SEPTEMBER 2023)

**CORAM: MOKHESI J**  
**HEARD: 13 JUNE 2023**  
**DELIVERED: 14 SEPTEMBER 2023**

**SUMMARY**

*Civil Practice: Application for condonation for lodging an appeal – After an inordinate delay the court refused to grant condonation, the main consideration being finality to litigation.*

**ANNOTATIONS**

**Legislation:**

Revenue Appeals Tribunal Act No. 2 of 2005

Cases:

**South Africa**

**Uitenhage Transitional Local Council v South African Revenue Service [2003]**

**4 ALL SA 37 (SCA)**

**Van Wyk v Unitas Hospital and Another 2008 (2) SA 472 (CC)**

## **JUDGMENT**

### **[1] Introduction**

This is an application for condonation for late filing of appeal. The long-running legal battle between the applicant and the 1<sup>st</sup> respondent is once again before this court in a different shape and form. This time the applicant approached this court seeking the following reliefs:

*“1. Condoning the late delay in filing the appeal herein against the appeal herein against the judgment of the Revenue Appeals Tribunal dated the 25<sup>th</sup> April, 2013.*

*2. The Appellant be granted leave to pursue his appeal herein already filed.*

*3. Costs of suit in the event of unsuccessful opposition.*

*4. Granting the Applicant/Appellant further and/or alternative relief.”*

### **[2] Background Facts**

An assessment was raised by the 1<sup>st</sup> respondent in respect of the applicant's Pay As You Earn (PAYE) for the financial year 2010/2011. The 2<sup>nd</sup> respondent, following negotiations, paid certain money as over-deduction of PAYE. There were still some sticking issues which the parties could not agree on, prompting the applicant to file an objection challenging an

assessment of the 1<sup>st</sup> respondent on overpayment of PAYE. The challenge was lodged in the Revenue Appeal Tribunal (RAT) in RAT/01/2011. Judgment was delivered on 25 April 2013. Consequent to being unsuccessful, before RAT, the applicant instituted review proceedings before the High Court in CIV/APN/329/2014. One of the preliminary points raised by the 1<sup>st</sup> respondent was that the applicant ought to have lodged appeal against the judgment of RAT, not review. The point in *limine* was dismissed and on the merits the applicant was successful. The 1<sup>st</sup> respondent successfully appealed this judgment in C of A (CIV) 57/2015. The decision was rendered on 29 April 2016.

- [3] Following the decision of the Court of Appeal, the applicant filed a fresh matter before RAT seeking the re-hearing of the appeal against the assessment made by the 1<sup>st</sup> respondent. That application was heard on 03 November 2016, and judgment was delivered on 27 February 2017. The application was dismissed on the basis of *res judicata* and the principle of *functus officio*. Relentless in his efforts, the applicant appealed this judgment to the High Court in CCA/A/0001/2017. The appeal was dismissed for lack of grounds of appeal filed of record. It was dismissed on 05 August 2019. Again, dissatisfied with the decision of the High Court, the applicant appealed that judgment to the Court of Appeal in C of A (CIV) No.

6/2021, and it was heard on April 2021. Judgment was delivered on the 14 May 2021 striking the appeal off the roll for lack of the certificate of leave to appeal. This time the applicant personally conducted his appeal. The applicant subsequently sought to obtain leave to appeal before Sakoane CJ and on 23 August 2021, the newly appointed applicant's counsel requested postponement of the matter in order to familiarise himself with the files pertaining to it. In December 2021 the applicant withdrew all pending matters against the 1<sup>st</sup> respondent. But in the latest twist of things the applicant decided to approach this court on appeal against the initial judgment of RAT (RAT/01/2011).

[4] **Respective Parties' Cases**

The applicant contends that the fact that he inordinately delayed lodging the appeal does not mean that he lost the desire to have the above RAT judgment set aside. He pursued the matter several times up to the Court of Appeal. He says he has the prospects of success for the following reasons:

*“I aver that I have prospects of success in the appeal on the grounds that the Honourable President of Tribunal fail (sic) to appreciate application of the law; she failed to merge her written judgment with the calculations made by the same member of the panel of the Tribunal.*

*The Honourable Court, I aver, shall have a determinable matter before it with the appeal herein.”*

[5] The application is opposed by the 1<sup>st</sup> respondent. Mrs ‘Mathabo Mokoko deposed to an opposing affidavit on behalf of the 1<sup>st</sup> respondent. She contends that the appeal will only serve to delay finality to the matter after the applicant had explored all the avenues within the time allowed. She contends that the appeal will serve further to annoy the respondents. She urged upon this court not to accede to the applicant’s reliefs.

[6] **Issues for determination**

(i) Whether condonation should be granted?

[7] **The Law and Discussion**

Appeals from the decisions of the Revenue Appeals Tribunal are governed by the provisions of Section 19 of the Revenue Appeals Tribunal Act No. 2 of 2005 which provides that:

*“(1) A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal may, within 30 days (or within such further period as the President may on good cause shown allow) after the date of the notice referred to in section 17(5) note an appeal with the Registrar or the Tribunal and the party so appealing shall serve a copy*

*of notice of appeal on the other party to the proceedings before the Tribunal.*

*(2) An appeal to the High Court may be made on questions of law or fact, and the notice of appeal shall clearly state the grounds of appeal.*

*(3) A party who is entitled to appeal but, without good cause being shown, fails to file notice of appeal within the time allowed by subsection (1), shall be deemed to have abandoned his or her right of appeal against such decision.*

*(4) In a case where application for rehearing is filed under section 17(6), the period under subsection (1) shall be 30 days after the notice of the Tribunal's decision to deny the application for re-hearing is served (or, if the application is granted, 30 days after notice of the Tribunal's decision after rehearing)."*

- [8] It is trite that condonation involves indulgence of the court. A good cause must be shown by the applicant entitling him to the court's indulgence. Condonation is not had for mere asking. An applicant must give a detailed account of the effect and causes of his delay justifying the court to afford him its indulgence. This approach was aptly set out in **Uitenhage Transitional Local Council v South African Revenue Service [2003] 4 ALL SA 37 (SCA) (5 September 2003)** at para. 6:

*“[6] One would have hoped that the many admonitions concerning what is required of an applicant in a condonation application would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this court: condonation is not to be had for the asking; a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the court to understand clearly the reasons and to assess the responsibility. It must be obvious that if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.*

*[7] The appellant’s affidavit consists of a number of generalized causes without any attempt to relate them to the time-frame of its default or to enlighten the court as to the materiality and effectiveness of any steps taken by the appellant’s representatives to achieve compliance with the Rules at the earliest reasonable opportunity.”*

[9] If I accept that the applicant was fervently pursuing his case until 14 May 2021 when his appeal was struck off an account of lack of the certificate of leave to appeal, there is no explanation for the gap of more than two months until he appeared before Sakoane CJ on 23 August 2021 to seek leave. At that time the matter was postponed to an unspecified date to allow his newly appointed counsel to familiarize himself with the voluminous files from the RAT throughout all the courts. After this postponement, in August 2021, in when lodging the current application, he avers that *“after numerous consultations with my now counsel of record, which of course came after a*



*while as he was busy studying the whole matter. We ultimately came to agree that all the pending matter inclusive of the application for leave to (sic) must be withdrawn as the (sic) should not have been filed in the first place, and I could not appreciate that approach at all.”*

[10] From the above excerpt the applicant does not tell the court how long it took his newly appointed counsel to study the files and why. He merely makes a bald statement that “after numerous consultations” and “after a while as he was busy studying” the files he advised him to withdraw all the pending matters and to re-apply to the RAT in terms of Section 24 (2) of the Revenue Appeals Act, 2005.

[11] He avers that as he could not agree with counsel’s approach, he terminated his mandate. He terminated that mandate (in mid-December 2021). He says after terminating counsel’s *mandate* “*I then had to find mean (sic) of instructing my counsel to institute the advised correct approach being to appeal the first judgment of the Tribunal.*” Again, the applicant does not divulge the time-specifics of when he instructed his current counsel. There was a delay of ten months before the applicant could lodge the current application. This is an inordinate delay and coupled with absence of reasonable explanation for it, this court cannot exercise its discretion to

condone it. The applicant seems, though not clearly, to blame the bad advice he received from his erstwhile legal representatives for the course he previously chose. In my view, the applicant cannot be allowed to detach himself from the course which he greenlighted and pursued with vigour from his previous lawyers, now that the outcome turned out to be unpalatable. He made his bed and his must now lie on it.

[12] It should be recalled that the applicant is seeking to appeal a decision which was rendered on 25 April 2013. Even if I were to ignore this last part and focus on the ten-month hiatus from litigation, I do consider it an inordinate delay. In **Van Wyk v Unitas Hospital and Another 2008 (2) SA 472 (CC)** a delay of eleven months was considered inordinate. Importantly, in that case, the Court spelled out an important principle which is at play here: it is the principle of finality to litigation. A delay of ten months had induced a reasonable belief in the mind of the respondent that the applicant would no longer be pursuing any litigation against it. This principle was stated at paragraph [31] of the judgment as follows:

*“[31] ... An inordinate delay induces a reasonable belief that the order had become unassailable. This is a belief that the hospital entertained and it was reasonable to do so. It waited for some time before I took steps to recover its costs. A litigant is entitled to have closure on litigation. The principle of finality in litigants is intended to allow*

*parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interests of justice.”*

In the light to this inordinate delay I find it not necessary to consider the prospects of success.

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

- (i) The application to condone the late filing of appeal is dismissed with costs.

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**MOKHESI J**

**For the Applicant:**

**Adv. T. Potsane instructed by K.J Nthontho  
Attorneys**

**For the Respondent:**

**Adv. R. Ntema**