

Dispute Resolution

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In this issue

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Non-compliance with court orders:
When is late too late?



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**DISPUTE RESOLUTION
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Non-compliance with court orders: When is late too late?

In Economic Freedom Fighters and Others v The Chairperson of The Powers and Privileges Committee N.O and Others (23230/2023) [2024] Zawchc 16 (30 January 2024) the court had to determine whether to condone non-compliance with a court order that would lead to a delay in finalising a matter of national importance.

The applicants were members of the Economic Freedom Fighters (EFF) who represent the EFF as elected representatives in the National Assembly. They faced contempt of Parliament charges following an incident during the State of the Nation Address (SONA) in 2023. These events led to the referral of the members of the EFF to the Parliamentary Powers and Privileges Committee. Upon considering the matter, the applicants were found guilty, and the finding and sanction recommended were confirmed by the National Assembly on 5 December 2023.

The National Assembly's decision included, *inter alia*, an order directing the EFF and its members to apologise in person in the house to the President, the speaker and the people of South Africa, and suspension of the members from Parliament without remuneration for a period of 30 days.

On 20 December 2023, the applicants launched an urgent application in which they sought for the investigative procedures and determinations of the Parliamentary Powers and Privileges Committee to be declared unlawful and unconstitutional.

Upon serving the papers on the State Attorney, the applicants required the respondents to file their opposing affidavit by no later than 8 January 2024, with the date of hearing set for 18 January 2024.

Issues before court

The court had to determine whether to condone the non-compliance with the court order by the applicants.

The applicants filed their replying affidavit in the proceedings just six days late, because of alleged unforeseen personal circumstances in their team and seeking condonation.

Though the respondents did not oppose the application for condonation, they argued strongly that the court strike the matter due to applicants' conduct.

Bearing in mind that this application was brought during recess, with only two judges on duty, it was stated that the judiciary has an obligation to perform its duties and functions for all the parties involved in litigation to have a fair hearing. Thus, an applicant who applies for a date in a matter that they foresee will be opposed, must ensure that the timelines they set are not only reasonable in the particular circumstances, but that it can be accommodated on the court roll and that the matter will be ripe for hearing on the date chosen. This is particularly so when the applicant sets the timetable.

The court therefore held that the applicants in this matter had an obligation to ensure that the matter was ripe for hearing. No reasons were given for their midnight filing of

DISPUTE RESOLUTION
ALERTNon-compliance
with court orders:
When is late
too late?

CONTINUED



heads of argument on the Friday preceding the Monday hearing, which left no time for the respondents to file their heads of argument. The applicants were warned of the effect of filing heads of argument late and the requirement to apply for condonation for the non-compliance with a court order.

Judge Erasmus quoted the Constitutional Court in *Pheko v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC); 2016 (6) BCLR (CC): “the rule of law, a fundamental value of the Constitution, requires that the dignity of the courts be upheld. This is crucial as the capacity of courts to carry out their functions depends on it”.

Though the majority granted the condonation for the late filing of the applicants’ replying affidavit, the matter was struck off the roll. The applicants were ordered to pay the respondents’ costs, including the costs of two counsel.

Conclusion

The court highlighted that the respondents were prejudiced by the conduct of the applicants but, more importantly, the court was also prejudiced, despite its best efforts (which included disadvantaging other litigants in an attempt to accommodate the matter).

In our view, the court was clearly displeased with the EFF – which had brought an application in recess and had set a timetable as the *dominus litis*, and then chose to disregard it.

The court further highlighted that allowing litigants to ignore court orders that they have agreed to without proper explanation, brings the administration of justice into disrepute.

This ruling does not condone any lack of diligence in complying with court orders. Rather, it emphasises the courts’ obligation to prioritise the interests of justice, as established in the *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013) case, while also striving to enhance access to justice by exercising some leniency when appropriate.

It remains imperative that a party who is *dominus litis* in any matter has an obligation to ensure that the matter is ripe for hearing.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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