

CONSTITUTIONAL COURT OF SOUTH AFRICA

[2008] ZACC 18
Case CCT 47/05

PHINEAS LEKOLWANE

First Applicant

ELIZABETH LEKOLWANE

Second Applicant

versus

MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

Respondent

Decided on : 3 October 2008

JUDGMENT

THE COURT:

[1] The applicants are Mr Phineas Lekolwane and Mrs Elizabeth Lekolwane. Their application for leave to appeal was struck from the roll on 22 August 2006 after their applications for condonation and postponement of the matter were both refused.¹ The applicants now ask for an order reinstating the application for leave to appeal on the court roll.

¹ The reasons for this decision were provided on 23 November 2006. See *Lekolwane and Another v Minister of Justice and Constitutional Development* [2006] ZACC 19; 2007 (3) BCLR 280 (CC).

[2] The applicants are both in a witness protection programme and the appeal they hope to prosecute concerns the interpretation of a regulation that determines payment of an allowance to people in a witness protection programme. They contend for an interpretation which, simply put, is aimed at the applicants being paid more money while in the programme. A single judge and a full Court have rejected the applicants' contentions.

[3] It is not necessary to repeat the reasons for the refusal of the applicants' application for condonation and their application for a postponement. Suffice it to say that the matter had been postponed once before, the first applicant had been warned that that postponement would be the final one, and the Court held that good cause had not been shown for a further postponement.²

[4] The application for leave to appeal may be reinstated only if the applicants show that it is in the interests of justice to do so. Indeed, this Court adverted to the reinstatement of the matter in the reasons referred to earlier:

“Naturally this does not mean that the doors are completely shut to a litigant. A party who wishes to approach the Court afresh will be required to show good cause and give a full explanation as to why their application should be enrolled in view of its history.”³

² Above n 1 at paras 8 and 20.

³ Above n 1 at para 18.

[5] It will accordingly be in the interests of justice to re-enrol the application for leave to appeal if the applicants show good cause and provide a full explanation for their earlier conduct. The affidavit lodged with the application to re-enrol does not supplement the reasons given by the applicants in their application for a postponement on 22 August 2006 and accordingly does not meet the test of good cause for the reasons we gave in our earlier judgment.⁴

[6] Moreover, the reinstatement application was lodged with this Court on 4 June 2008, nearly two years after it had been earlier struck from the roll. No convincing explanation is given for this delay either. The applicants state that after the events of 22 August 2006, they needed to instruct yet a further team of legal representatives and that this again required a new application for legal aid. Why they should have needed to instruct a new team of legal representatives is nowhere explained. The applicants also state that the new application for legal aid was granted on 25 February 2008. No explanation at all is given for the further delay in bringing this application from 25 February to 4 June 2008. It is accordingly impossible to describe the account given by the applicants as a full and satisfactory explanation. Accordingly, the applicants have again failed to give a convincing explanation for their delay in approaching this Court and we are not satisfied that it is in the interests of justice to re-enrol the application.

[7] The application is refused.

⁴ See n 1 at paras 17-20.

Order

- (1) The application is refused.
- (2) There is no order as to costs.

Langa CJ, Moseneke DCJ, Madala J, Mokgoro J, Ngcobo J, O'Regan J, Sachs J, Skweyiya J, Van der Westhuizen J and Yacoob J.