

**NOT REPORTABLE**

CASE NO: SA 90/2020

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**ALBERTUS JACOBUS ANDREWS  
ELVIRA FRIDOLIN ANDREWS**

**First Appellant  
Second Appellant**

and

**STANDARD BANK NAMIBIA LIMITED**

**Respondent**

CASE NO: SA 94/2020

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**EUGENE CARLO HARTUNG  
LEVANA HARTUNG**

**First Appellant  
Second Appellant**

and

**STANDARD BANK NAMIBIA LIMITED**

**Respondent**

CASE NO: SA 98/2020

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**FIRST STEP INVESTMENT  
FRITZ CHARLES JACOBS**

**First Appellant  
Second Appellant**

and

**FIRST NATIONAL BANK OF NAMIBIA LIMITED**

**Respondent**

CASE NO: SA 47/2021

**IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

**STEPHER INVESTMENTS CC  
FRANS KARL FREYGANG  
ROSEMARIE BERTHA FREYGANG**

**First Appellant  
Second Appellant  
Third Appellant**

and

**DEVELOPMENT BANK OF NAMIBIA LTD**

**Respondent**

**Coram:** SMUTS JA, HOFF JA and FRANK AJA

**Heard:** 5 October 2021

**Delivered:** 15 October 2021

**Summary:** The appellants (all self-actors) in these matters filed notices of appeal directed against judgments obtained against them in respect of loan amounts, each secured by a mortgage bond, where, subject to one exception, orders have been given declaring the immovable property secured by the respective bonds to be executable. The exception is case no. SA 47/2021, where an application to declare the immovable property in question executable is pending at the time the notice of appeal and condonation application were filed and when the matter was heard.

The notices of appeal in all these matters were filed outside of the time period as prescribed by the Supreme Court Rules (the rules). In each matter, the parties also filed applications for condonation for the late filing of their appeal records and security for costs. Reinstatement of the appeals was not sought. Despite these applications, none of the parties filed their appeal records or filed security thereafter.

This court finds as follows:

*Held that*, the rules of this court are clear in their requirement the the notice of appeal must be lodged within 21 days of the judgment or order appealed against. Thereafter, a record is to be lodged within the stipulated time of three months from the date of judgment or order appealed against in matters of this nature.

*Held that*, if an appellant fails to lodge the record within this stipulated period, the suspension of any judgment or order of the court appealed from is considered lifted and the appeal is deemed to have been withdrawn.

*Held that*, the condonation applications filed in these matters have failed to apply for reinstatement and the appeals should be struck from the roll for that reason alone.

*Held further that*, the condonation applications do not contain any explanation for the non-compliance with the rules in failing to note the appeal, lodge the record or provide security within the required time periods, except for stating that the appellants (appellants) are lay litigants which does not remotely constitute an adequate and acceptable explanation for the serial non-compliance with rules exhibited in all of these applications. Indeed it amounts to no explanation being given. The matter of *Worku v Equity Aviation Services (Namibia) (Pty) Ltd (In Liquidation) & others* 2014 (1) NR 234 (SC) refers.

The appellants lodged their notices of appeal considerable periods after the stipulated time, varying from years out of time to months out of time in other cases. These appeals were in all instances filed after steps to execute the judgment were taken, strongly suggesting that the sole purpose in doing so is to delay the execution process, thus amounting to an abuse of process. Further, the failure by the appellants to lodge their appeal records (and security for costs) within the required time, amounted to each of the appeals having lapsed. Consequently, the condonation applications are dismissed and the appeals are struck from the roll.

In conclusion, the court cautioned the public against acting upon the advice given by unqualified persons pretending to have legal expertise. This resulted in false hopes and expectations on the part of the appellants as well as considerable liability for further legal costs.

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### APPEAL JUDGMENT

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SMUTS JA (HOFF JA and FRANK AJA concurring):

[1] We have before us four matters set down together because they raise similar questions of law and fact. In each of the four matters, there is an application for condonation for the late filing of the notice of appeal in each instance as well as for

condonation for the late filing of the appeal record and security for costs. The notices of motion and supporting affidavits are cast in strikingly similar terms raising the same grounds with adjustments in each case to reflect the dates of service of the summons, date of judgment and date of the purported notice of appeal. It emerged during the hearing that they were prepared by a certain Mr Afrikaner who styles himself as a paralegal and certain of the appellants confirmed that they acted on his advice.

[2] Each of the notices of appeal would appear to be directed against judgments obtained against the appellants in respect of loan amounts, each secured by a mortgage bond, and, with one exception, where orders have been given declaring the immoveable property secured by the respective bonds to be executable. In the exception, an application to declare the immovable property executable is said to be forthcoming at the time the notice of appeal and condonation application were filed. None of the records in any of these appeals has been lodged, despite the varying degrees of delay. This court is accordingly limited to the very scant details provided by the appellants and to the additional matter in two of the matters where answering affidavits have been filed by the judgment creditors, cited as respondents.

[3] In all of these matters, the appellants have appeared in person and three of the four respondents are represented by counsel.

[4] The affidavits in support of the condonation applications each state:

(a) that the appellants are lay litigants without knowledge of legal proceedings;

- (b) the date of service of the summons upon them and recording that they did not file a notice to defend;
- (c) that an amicable solution was sought after service of the summons;
- (d) a date of the sale in execution, except in one instance where it is stated that an application to declare the property executable is under way;
- (e) that an order is sought that the judgment obtained against them was without a proper mandate in as much as there was no power of attorney and authorising resolution on the High Court file with reference to *Christian t/a Hope Financial Services v Namibia Financial Institutions Supervisory Authority* (SCR 1/2008 and SA 32/2016) in support of such submission;
- (f) when the appellants' notice of appeal was lodged.

[5] The notices of appeal are, save for references to the date(s) of judgment(s) which are personalised, cast in similar terms. The first three grounds are identical in each notice and read:

- '1. Condoning non-compliance with the Rules of this Honourable Court;
2. That the judgment is an infringement of the Appellants/Defendants constitutional right to fair trial in terms of Article 12 of the Constitution;
3. That the judgment is an infringement in terms of (The International Bill of Human Rights) Universal Declaration of Human Rights "no one shall be arbitrarily deprived of his/her property, everyone has the right to own property" in terms of Article 17 of the said declaration.'

[6] In the fourth ground of the appeal, reference is made to the date upon which the respective appellants became aware of the granting of the court order. Paragraph 5 in each instance states that the respective appellants approached the plaintiffs (respondents in these matters) with a view to settle the outstanding debt

and, where applicable, refers to further payments made. Paragraph 6 acknowledges the need to file a notice of appeal within 21 days under rule 7 of the rules of this court.

[7] Paragraph 7 refers to the firm of legal practitioners acting for the respective plaintiff/judgment creditor (respondent) and proceeds to contend that the firm in question lacks authority to institute and prosecute the proceedings on behalf of that respondent in the High Court and also contends that where the respondent is an artificial person or 'Proprietary Limited or Company', that there is 'no evidence in the Court file that the above-named legal practitioners were duly authorised when they instituted the proceedings in the High Court to represent the Respondent herein or without a proper mandate'. Reference is again made to *Christian t/a Hope Financial Services v Namibia Financial Institutions Supervisory Authority*, Case Number: SCR 1/2008 and SA 32/2016. Paragraph 8 of the notice of appeal then follows, stating:

'Whilst lawyers must act with honesty, integrity and candour and not mislead the court or abuse the court's processes, we have it on good authority, the unprofessional, untoward and unethical conduct of the Plaintiffs legal practitioner as noted or stated later.'

[8] The further paragraphs of the notice of appeal attach, where applicable, the relevant writ and court order.

[9] These averments feature in each of these cases, save for case no. SA 47/2021 where the application to declare the immovable property is said to be in the process and not yet finalised.

[10] I turn now to the individual cases and the specific dates and further specific facts raised in opposing affidavits.

Case No. SA 90/2020

[11] In case no. SA 90/2020, judgment by default was granted on 24 March 2020. On 1 October 2020, the appellants in this matter lodged their notice of appeal together with their condonation application. Despite the passage of more than a year, no record or security have been filed.

[12] The respondent cited in these proceedings filed an opposing affidavit to the condonation application. On 10 August 2021, the registrar informed the parties in this matter of the set down date (5 October 2021).

[13] In the respondent's answering affidavit, the point is taken that the appeal against the default judgment is perempted. Reference is made to email correspondence in which the appellants sought terms to effect payments in respect of their loan indebtedness. Certain payments are said to have been made pursuant to the correspondence. The respondent denies the absence of authority contended for in the notice of appeal. The mandate of the practitioners in question is confirmed under oath. The respondent also refers to unexplained delays on the part of the appellants and reference is made to the email correspondence from which it is apparent that the appellants were already aware of the default judgment on 28 March 2019 when they received notice of a sale in execution. The condonation application dated 1 October 2020 was only launched on 15 October 2020. The allegations in the respondent's answering affidavit are unchallenged as no replying affidavit was filed by the appellants.

[14] Mr Andrews, the first appellant, addressed the court on his own behalf and also on behalf of the second appellant. He indicated that they had tried to make an offer to the respondent and accepted that their primary residence would need to be sold. He confirmed that they had acted on the advice of Mr Afrikaner in filing their notices and condonation application.

[15] Counsel for the respondent argued that there was material non-compliance with the rules and no explanation provided in support of the condonation application. He sought orders striking the matter from the roll and refusal of the condonation application.

[16] Different counsel had prepared heads of argument on behalf of the respondent in which reference is made to *Kisilipile v First National Bank Limited*<sup>1</sup> in which this court held that in an enquiry to declare immovable property executable where the property is the home of a person, judicial oversight is required to ascertain whether foreclosure can be avoided, having regard to viable alternatives. Erstwhile counsel for the respondent in his heads contended that the High Court did not conduct the enquiry contemplated by rule 108 of the High Court rules before declaring the property executable on the solitary ground that the order was granted in chambers. Respondent's previous counsel proceeded to concede that the appeal against paragraph 3 of the High Court's order should succeed and that condonation and reinstatement of the appeal be confined to this order.

[17] Counsel who appeared for the respondent in the hearing understandably and correctly did not pursue this approach. The earlier concession would appear to be based upon a misreading of the import of *Kisilipile* and an earlier judgment of this

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<sup>1</sup> SA 65/2019 [2021] NASC (25 August 2021).



court in *Standard Bank Namibia Ltd v Shipila and others*<sup>2</sup> and the role of judicial oversight required in order to ascertain whether foreclosure can be avoided, as contemplated by rule 108 of the High Court rules. As was stated in *Kisilipile*:

- '18. In Namibia, judicial oversight takes the following form when it comes to declaring a primary home specially executable. If a property is a primary home, the court must be satisfied that there are no less drastic alternatives to a sale in execution. The judgment debtor bears the evidential burden. He or she should preferably lay the relevant information before court on affidavit especially if assisted by a legal practitioner, either in resisting default judgment or summary judgment. The failure to do so however does not relieve the court of its obligation to inquire into the availability of less drastic alternatives. If the debtor is legally unrepresented his or her attention must be drawn to the protection granted under rule 108
  
19. The debtor must be invited to present alternatives that the court should consider to avoid a sale in execution but bearing in mind that the credit giver has a right to satisfaction of the bargain. The alternatives must be viable in that it must not amount to defeating the commercial interest of the creditor by in effect amounting to non-payment and stringing the creditor along until someday the debtor has the means to pay the debt. Should the circumstances justify, the court must stand the matter down or postpone to a date suitable to itself and the parties to conduct the inquiry. A failure to conduct the inquiry is a reversible misdirection. If the debtor is legally unrepresented at the summary judgment proceedings, it behoves counsel for the creditor to draw the court's attention to the need for the inquiry in terms of rule 108.'

[18] In *Kisilipile*, the judgment creditor had proceeded with an application for summary judgment when the proceedings were defended. The High Court, when granting summary judgment, also granted an order declaring the immovable property executable but did so without explaining to the appellant and his wife as to the nature of information and evidence needed to avert a sale in execution. This

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<sup>2</sup> 2018 (3) NR 849 (SC).

court found that to be a misdirection. The appellant and his wife in *Kisilipile* would have been in attendance when the summary judgment application was heard and the provisions of rule 108 should have thus been pointed out to them.

[19] Unlike that matter, there is no evidence that the appellants in this matter were in attendance. Furthermore, the appeal in *Kisilipile* had lapsed and the appellants in *Kisilipile* were slovenly in prosecuting their appeal. This court found that had it not been for developments during the hearing of the appeal, (where it was stated that one of the appellants had taken up employment with a commercial bank which was prepared to take over the bond), the condonation application would have been dismissed without a consideration of prospects of success. Respondent's previous counsel unfortunately thus also did not have regard to the facts of *Kisilipile*. As is stressed below, the prosecution of this appeal is so slovenly and the explanation proffered so flagrantly unacceptable that condonation would in any event be refused. Furthermore, the appeal in this matter (as well as all the others before us) has lapsed and reinstatement has not been sought.

[20] It is accordingly clear that *Kisilipile* and *Shipala* find no application in this matter. Erstwhile counsel's concession is based purely on the fact that the order was granted in chambers. There is no evidence that the appellants were present and that their rights were not explained. There is no evidence as to any alternatives put to the High Court. As is stated in *Kisilipile*, the burden is upon the appellants to place material before the court concerning alternatives to a sale in execution. Where parties fail to oppose and furthermore fail to attend those proceedings, there is no material before the High Court concerning viable alternatives. Earlier counsel's concession is, on the material before this court, thus misplaced and is not binding

upon the respondent. This is quite apart from failing to discern the plainly distinguishable factual features of *Kisilipile* from this case.

Case No. SA 98/2020

[21] In this matter judgment by default was granted on 7 December 2017 and an order declaring immovable property executable was granted on 22 May 2020. The appellants allege that they first became aware of both judgments 'during October 2020, as notice of the sale in execution (was published) in the local newspapers', scheduled for 19 November 2020.

[22] A notice of appeal was filed on 18 November 2020, on the very eve of the scheduled sale in execution and, as the second appellant explained in court, an hour before the sale was due to take place. It is not alleged to be a primary property of the second appellant (the property being held in a close corporation being the first appellant). The property is in any event located in a suburb of Swakopmund and the second appellant's service address is a street address in a suburb of Windhoek.

[23] The respondent in this matter has filed an opposing affidavit to the application for condonation. The point is taken that, apart from the statement (made in all the applications), the appellants are lay litigants, no explanation whatever is provided for the extensive delays in filing the application for condonation. It was also pointed out that the sale in execution had gone ahead as there was no appeal pending, given the failure on the part of the appellants to comply with the rules of this court. This was conveyed in an email to a lay person styled as a paralegal purporting to act on behalf of the appellants in correspondence with the

respondent's legal practitioners. The opposing affidavit states that the respondent's practitioners were properly mandated throughout the proceedings. No replying affidavit was filed taking issue with the facts set out in the opposing affidavit.

[24] In heads of argument filed on behalf of the respondent, it was pointed out that the property in question was on 20 April 2021 transferred to the purchaser (at the sale in execution). It was also pointed out that the original writ and rule 108 application was served on the second appellant personally on 14 January 2020, in direct contrast to his protestations to the contrary made under oath of ignorance of the proceedings. It was also pointed out that the sale of execution was advertised in the Government Gazette on 6 November 2020 and in local newspapers on 10 and 11 November 2020 and not in October 2020 as alleged.

[25] It was contended by the respondent that the version of the second appellant was grievously unsatisfactory, compounded by creating a false impression concerning lack of knowledge of the default judgment and that the explanation was glaring, flagrant and inexplicable. It was also argued that the notice of appeal is defective and that there would be no prospects of success and that the notice of appeal and application for condonation amounted to an attempt to delay execution.

[26] The second appellant who attended the proceedings acknowledged that the house had been sold but said he had been advised by the paralegal (Mr Afrikaner) that his notice of appeal filed immediately prior to the sale would suspend execution of the judgment. It was explained to him that the advice given to him (as well as to the other appellants) was clearly wrong. The rules of this court make it clear that if an appellant fails to lodge the appeal record within three months of the judgment or

order appealed against, the suspension of any order of the court appealed from is considered lifted.<sup>3</sup> The second appellant also referred to the hardship facing judgment debtors when financial institutions foreclose on security over their houses and he urged this court to exercise judicial oversight over that process. The second appellant was referred to the provisions of rule 108 of the High Court rules which makes specific provision for such oversight to be exercised by the High Court.

Case No. SA 94/2020

[27] In this matter, the appellants merely state that the combined summons was served on them 'during 2020'. They state that judgment by default was granted against them on 11 May 2020 and that they first became aware of it on 19 October 2020 when they saw an advertisement in local newspapers advertising the sale in execution on 4 November 2020. Their notice of appeal and condonation application were signed on 28 October 2020 in Tsumeb and served on the respondent on 29 October 2020 and filed in this court on 2 November 2020. There is no allegation that the secured immovable property situated in Rehoboth is their primary home although they confirmed this at the hearing and said they had taken up work on a farm in Tsumeb district after losing employment. Despite the passage of more than 11 months, since filing their notice of appeal and condonation application, no record or security has been lodged.

Case No. SA 47/2021

[28] In this matter, default judgment in the sum of N\$3 360 610,96 was granted on 24 March 2021 against the appellants. The order does not include one declaring any immovable property executable. The appellants allege that they became aware of the court order on 28 May 2021 ('when peruse (*sic*) the e-justice record' on that

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<sup>3</sup> Rule 9(4).

date). They confirm that the combined summons was served on them but state that they did not defend the action because they 'are not legally trained'.

[29] The notice of appeal and condonation application dated 31 May 2021 were only lodged at this court on 8 June 2021. In support of the condonation application, the second appellant states that the respondent is in the process of applying for an order under rule 108 so as to attach the appellants' 'prime property' (presumably intending to state primary). The appellants failed to lodge a record in accordance with the rules and have not done so to date. Nor has security been filed by them to date.

[30] The respondent did not file an opposing affidavit. Heads of argument were however timeously filed on its behalf, pointing out that the record has not been filed and contending that neither of the requisites for good cause for condonation had been met. It is also pointed out that the appellants' notice of appeal failed to raise any intelligible and appealable questions of law, even in the absence of a record.

[31] At the hearing, the second appellant sought a postponement of the matter. He confirmed that an application to declare the property executable had not as yet proceeded and that he was negotiating with the respondent and had made a substantial payment. It was pointed out to him that these may be relevant aspects to place before the High Court in the forthcoming application to declare the property executable.

### Appellants' submissions

[32] In three of these matters, written submissions were filed by the appellants in question. On 21 September 2021, the appellants in case No SA 47/2021 filed written submissions, two weeks late and not accompanied by any condonation for their late filing. In cases SA 98/2020 and SA 91/2020, the respective appellants filed written submissions on 30 September 2021 – a mere two court days before the date of hearing, thus also in conflict with the rules. All of these written submissions were not accompanied by any condonation application, seeking to condone the conflict with the rules.

[33] These written submissions raise the same issues in identical matter. In each there is repeated reference made to a provisional sequestration order issued. No statement is made concerning which person or entity was sequestered or the relevance of sequestration to these proceedings although there is in each a reference to 'winding up proceedings' against the appellants in question. The repeated reference to insolvency proceedings is incomprehensible and without any evidential basis and entirely without any relevance to the issues raised in the notices of appeal. At the hearing, one of the appellants explained that they were advised by the self-styled paralegal, Mr Afrikaner, that sequestration or winding up is a prerequisite to execute against a close corporation. Like all his other advice, this is entirely wrong and without any foundation. There is simply no requirement of this nature.

[34] The appellants' submissions also seek to attach evidence which is not before this court in the form of correspondence or bank statements. This is not permissible

and will be disregarded. The correspondence or other material in any event does not however assist the appellants in their appeals against the judgment by default granted against them. On the contrary, the correspondence in case SA 47/2021 would indicate that any appeal against that judgment is preempted by acknowledging that the loan provided to them by the respondent is in arrears as offers are made to repay the loaned amount in instalments. There can thus be no prospects of success in the appeal in case SA 47/2021 even without a record of proceedings. The other materials attached to the other submissions also do not assist the appellants in question.

[35] In the submissions, the point is also taken that there was no power of attorney or resolution on the High Court file to authorise the (respondents') legal practitioners to act for their respective clients. Again, the approach of the paralegal is fundamentally flawed. This point fails to take into account that the High Court rules promulgated in 2014<sup>4</sup> no longer require this.

#### Appellants' failure to comply with the rules of this court

[36] The rules of this court are clear in requiring that a notice of appeal must be lodged within 21 days of the judgment or order appealed against.<sup>5</sup> Thereafter a record is to be lodged within the stipulated time of three months of the date of judgment or order appealed against.<sup>6</sup> If an appellant fails to lodge the record within this stipulated period, the suspension of any judgment or order of the court appealed from is considered lifted and the appeal is deemed to have been withdrawn.<sup>7</sup> The rules moreover set requirements for the record itself which must be

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<sup>4</sup> Rules of the High Court of Namibia: High Court Act, 1990, GN 4, GG No 5392, 17 January 2014.

<sup>5</sup> Rule 7(1).

<sup>6</sup> Rule 8(2).

<sup>7</sup> Rule 9(4) read with rule 9(1)(b) and (c).



complied with.<sup>8</sup> These requirements are not further referred to because the appellants in each of these matters failed to lodge any record at all. Furthermore rule 14 requires that an appellant must, before lodging copies of the record, enter into good and sufficient security.

[37] In each of these matters, the appellants lodged their notices of appeal considerable periods after the stipulated time, varying from years out of time to months out of time in other cases. And they were in all instances filed after steps to execute the judgment were taken, strongly suggesting that the sole purpose in doing so is to delay the execution process, thus amounting to an abuse of process.

[38] In each of these matters, the appellants have failed to lodge a record within the three months period from the date of the judgment appealed against. This failure is compounded by the further unexplained failure to lodge a record after filing their respective condonation applications. And in each of these matters, the appellants have failed to lodge security as required and likewise persist in that failure. In three of these matters where written submissions were filed, these were all hopelessly out of time and without any application for condonation.

[39] As a consequence of the failure to lodge the record within the required time, each of the appeals in these four matters has lapsed. The jurisprudence of this court requires that when an appeal is deemed to have been withdrawn or lapsed, an appellant must not only lodge a condonation application but also apply for reinstatement of the appeal.<sup>9</sup> Furthermore, the further failure to lodge heads of

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<sup>8</sup> Rule 9.

<sup>9</sup> *Worku v Equity Aviation Services (Namibia) (Pty) Ltd (In Liquidation) and others* 2014 (1) NR 234 (SC) at para 11; *Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia* 2014 (1) NR 166 (SC); *Namib Plains Farming and Tourism CC v Valencia Uranium (Pty) Ltd & others* 2011 (2) NR 469 (SC) paras 19-25.

argument within the required time means that each of the appeals has lapsed for this reason as well.<sup>10</sup>

[40] In each of the condonation applications filed in these four matters, the respective appellants have failed to apply for reinstatement. This is fatal to each matter. For this reason alone, none of the four appeals is properly before court and should be struck from the roll.

[41] The applications for condonation are however beset with further flaws. Not one of them contains any explanation whatsoever for not complying with the rules in failing to note the appeal, lodge the record or provide security within the required time periods, except for stating that the appellants are lay litigants. That does not remotely constitute an adequate and acceptable explanation for the serial non-compliance with rules exhibited in all of these matters. Indeed it amounts to no explanation being given.<sup>11</sup> As was stressed by this court in *Worku*,<sup>12</sup> where a lay litigant implored this court to overlook his procedural non-compliances:

'However, we cannot overlook the rules which are designed to control the procedures of the Court. Although a court should be understanding of the difficulties that lay litigants experience and seek to assist them where possible, a court may not forget that court rules are adopted in order to ensure the fair and expeditious resolution of disputes in the interest of all litigants and the administration of justice generally. Accordingly, a court may not condone non-compliance with the rules even by lay litigants where non-compliance with the rules would render the proceedings unfair or unduly prolonged.'

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<sup>10</sup> Rule 17(2).

<sup>11</sup> *Sun Square Hotel (Pty) Ltd v Southern Sun Africa & another* 2020 (1) NR 19 (SC) para 22.

<sup>12</sup> Para 17.

[42] It would render the proceedings grievously unfair and prejudicial to the respondents to overlook the material non-compliances in these instances, particularly where no explanation is tendered apart from being a lay litigant which amounts to no explanation given.

[43] The breaches of the rules (with regard to the filing of the notice of appeal, the record and security) in each of these matters are material and have been persisted with, given the continuing failure to file the record and enter security. No explanation is provided for their persistent breach of the rules. Nor is any indication given in any of the matters as to when a record would be filed. Quite how the appellants contemplate that their appeals can conceivably be heard and considered in the absence of a court record is not explained. It is also not possible to properly consider the second component of the test for condonation, namely prospects of success of the appeals in question, in the absence of a court record. The first component of the two-pronged nature of the test for condonation is that an appellant for condonation is required to provide a reasonable and acceptable explanation for non-compliance with the rules. In this instance there is material non-compliance with three different rules and in two instances where non-compliance is being persisted in each matter.

[44] This court has made it clear that there are times when an unacceptable explanation is so glaring or flagrant that applications for condonation may be dismissed without a consideration of the prospects of success on appeal.<sup>13</sup> The condonation applications in each of these four matters fall squarely within this category. The breaches in question are material. The explanations proffered in each case are so glaringly or flagrantly unacceptable, that they amount to no explanation.

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<sup>13</sup> *Arangies t/a Auto Tech v Quick Build* 2014 (1) NR 187 (SC); see also *Kisilipile* para 34.

[45] In the case of noting of the appeals, notices were in all instances only filed when execution loomed large and after a considerable delay in each instance. The failure to file records has been persisted with in each matter, as has been the failure to enter security.

[46] These condonation applications fall to be dismissed on the basis of the flagrantly inadequate explanations, without the need to consider the prospects of success of the respective appeals. Where the applications for condonation are opposed, costs are awarded and includes the costs of instructing legal practitioners where they have been engaged. Where they are unopposed, no order is made as to costs.

[47] In conclusion, a word of caution must be given to the public about seeking and acting upon the advice of unqualified persons professing knowledge about the law, such as occurred in each of these matters. In every single respect, the advice given by the self-styled paralegal to the appellants was palpably bad and entirely wrong. The advice concerning notices of appeal and the consequences of filing one was wrong. So too the advice about condonation and the rules of this court in every respect. The advice about the prerequisite of first winding up a close corporation before execution would be permissible is also completely baseless, as is the advice about the need for power of attorney to institute proceedings in the High Court.

[48] It soon became apparent to us that the incorrect advice (in its manifold components) not only served to create false hope for judgment debtors facing the enormity of foreclosure on their immovable property. But it also had the further severely adverse consequence of being liable for further legal costs incurred by the respondents as a result of the hopelessly wrong advice given and acted upon.

[49] In the result, the following orders are made in each of these matters:

In case SA 90/2020

1. The appellants' application is dismissed with costs, including the costs of one instructing and one instructed legal practitioner.
2. The appeal is struck from the roll.

In case SA 94/2020

1. The appellants' application is dismissed.
2. The appeal is struck from the roll.

In case SA 98/2020

1. The appellants' application is dismissed with costs, including the costs of one instructing and one instructed legal practitioner.
2. The appeal is struck from the roll.

In case SA 47/2021

1. The appellants' application is dismissed with costs, including the costs of one instructing and one instructed legal practitioner.
2. The appeal is struck from the roll.

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**SMUTS JA**

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**HOFF JA**

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**FRANK AJA**

## APPEARANCES:

**In case SA 90/2020**

APPELLANTS:

In person

RESPONDENT:

E Nekwaya

Instructed by ENS Africa Namibia,  
Windhoek**In case SA 94/2020**

APPELLANTS:

In person

RESPONDENTS:

No appearance

**In case SA 98/2020**

APPELLANTS:

In person

RESPONDENT:

S J Jacobs

Instructed by Fischer, Quarmby &  
Pfeiffer, Windhoek**In case SA 47/2021**

APPELLANTS:

In person

RESPONDENT:

W Boesak

Instructed by ENS Africa Namibia,  
Windhoek