



THE HIGH COURT OF SWAZILAND

IDALINA VAN WYK

Applicant

And

ANDRIES STEPHANUS VAN WYK

Respondent

In Re:

ANDRIES STEPHUNUS VAN WYK

Applicant

And

IDALINA VAN WYK

Respondent

Civil Case No. 1767/98

Coram

For the Applicant

For the Respondent

S.B. MAPHALALA – J

MR. MATSEBULA

MR. MAGAGULA

JUDGMENT

(On condonation of late filing of applicant's answering affidavit)

(11/12/2002)

Before me is an application for condonation for the late filing of applicant's answering affidavit.

The application is opposed by the respondent being represented by *Mr. Magagula* on the grounds that the applicant has not advanced sufficient reasons justifying the late filing of the said affidavit. *Mr. Matsebula* countered this submission by directing the court's attention to paragraph 15 of the applicant's answering affidavit which reads *in extenso* as follows:

"Delay

I apologise for having to file the answering affidavit two days later than the last day on which I should have done so. The reason is that I am a sickly person suffering a series of ailments such as hypertension, stress and nervous breakdown emanating from the long history of abuse and ill-treatment I have been subjected to by my husband prior and after our separation. I have therefore been in and out of hospital both in the country and South Africa for medical attention for the past month or so making it difficult for my attorney to get hold of me to put together this affidavit timeously".

Mr. Matsebula submitted that the above paragraph gives a satisfactory explanation to move the court to grant condonation as sought by the applicant.

The filing of answering affidavit by a respondent is governed by Rule 6 (12) of the High Court Rules which reads in part as follows:


"12 Any person opposing the grant of an order sought in the notice of motion shall:

- a)
- b) Within fourteen days of service on him of the notice of motion, deliver his answering affidavit, if any, together with any relevant documents: and;
- c)"

I have considered the matter carefully and I am satisfied by the reasons advanced by the applicant in paragraph 15 of its answering affidavit and would thus condone the late filing of same.

In the result, I grant the order in terms of prayer (a) as reflected in the counter-application and rule further that the matter is to take its normal course

Costs to be costs in the main application.



S.B. MAPHALALA
JUDGE