

PROFESSIONAL DILIGENCE AND PROCEDURAL COMPLIANCE: LESSONS FOR LEGAL PRACTITIONERS FROM LEBRA DEVELOPMENT V BESTER



The Supreme Court of Appeal delivered an important judgment in *Lebra Development (Pty) Ltd and Others v Bester and Others* [2026] ZASCA 125 on 29 September 2026. The case illustrates the consequences of failing to comply with procedural requirements and of relying on an incorrect interpretation of the relationship between the Uniform Rules of Court and a Practice Directive.

The judgment also deals with the issue of the professional responsibilities of legal practitioners and to what extent clients can be protected from the consequences of their legal practitioner's negligence or failure to comply with procedural requirements.

Background

The dispute arose from proceedings instituted by Ben Coetzee Bester and others against Lebra Development (Pty) Ltd and other parties under section 163 of the Companies Act 71 of 2008. The applicants alleged oppressive and unfairly prejudicial conduct in the affairs of the company.

On 24 March 2022, the High Court granted an order substantially in favour of the applicants. The judgment provided for an independent forensic audit of the company's financial affairs and a valuation of its issued share capital. The

relief sought concerning the purchase of the applicants' shareholding was postponed *sine die*.

The respondents sought leave to appeal, which was granted on 3 June 2022. A notice of appeal was filed timeously on 1 July 2022. However, the appellants failed to apply to the Registrar for a hearing date within the prescribed period.

Rule 49(6)(a) of the Uniform Rules of Court requires an appellant to apply in writing to the Registrar for a hearing date within 60 days after delivery of the notice of appeal. If neither party makes the required application within the prescribed period, the appeal is deemed to have lapsed.

The appellants also failed to comply with Rule 49(7)(a), which requires an appellant to apply for an appeal date at the same time as it files the record. The appeal subsequently lapsed on 26 September 2022. Although the Registrar uploaded a note on CaseLines requesting the outstanding documents, the documents were not submitted or filed. The respondents' attorneys later raised concerns about the failure to progress the matter and the appellants still did not take the necessary steps timeously.

It was only after the respondents sought an order

for the costs occasioned by the lapsed appeal in June 2023 that the appellants applied for condonation and reinstatement.

The appellant's explanation for the non-compliance was that the appellants' former attorney believed that an April 2018 practice directive governing civil appeals had superseded the relevant provisions of the Uniform Rules of Court. On that interpretation, he believed that the appeal could not be set down until the heads of argument had been filed.

The SCA rejected the appeal against the refusal of condonation and reinstatement. It found that the explanation for the delay was inadequate, that the failure to comply with the rules was serious, and that the High Court had not materially misdirected itself in refusing the application.

Lessons for legal practitioners

One of the most significant lessons from this case is the importance of remaining informed about the court rules and practice directives. Failure to comply may compromise a client's rights irrespective of the merits of the underlying dispute.

The judgment further demonstrates that a legal practitioner cannot simply assume that a practice directive overrides a rule of court. The practical lesson is clear, where a legal practitioner encounters an apparent inconsistency between a court rule and a practice directive, the appropriate response is to investigate and resolve the uncertainty promptly.

A legal practitioner is entrusted with the protection and advancement of a client's legal interests. The failure in this case was not simply that the attorney adopted an incorrect interpretation of a practice directive. The more serious concern was the failure to take the necessary steps to advance the appeal timeously.

The attorney did not apply for a hearing date within the prescribed period. He did not adequately respond to the Registrar's request for outstanding documents, nor did he act appropriately after the respondents' attorneys raised the issue. The

application for reinstatement was brought only after the respondents sought costs.

A particularly important aspect of the judgment concerns the consequences of a legal practitioner's negligence for the client. The general approach of the courts is that an innocent litigant should not lightly be deprived of an opportunity to have a dispute determined on its merits because of the errors of their legal representative. However, this principle does not provide an automatic defence against the consequences of procedural default. The SCA relied on the principle recognised in *Saloojee and Another, NNO v Minister of Community Development* 1965 (2) SA 135 (A), there comes a point beyond which a litigant cannot escape the consequences of their attorney's lack of diligence.

The Court emphasised that the question whether an attorney's error constitutes good cause for condonation depends on all the circumstances. Relevant considerations include the reasonableness of the attorney's conduct, the litigant's involvement in the litigation and the steps taken once the procedural default becomes apparent.

The judgment therefore cautions against assuming that a client's lack of personal responsibility for a procedural failure will necessarily secure condonation. The court must consider the complete factual context, including the seriousness and duration of the default and the conduct of both the legal representative and the litigant.

For practitioners, the implications are significant. A failure to comply with procedural rules may jeopardise a client's appeal, expose the client to adverse costs orders and undermine the client's confidence in the legal services rendered.

The duty to protect a client's interests consequently requires practitioners to take reasonable steps to prevent procedural defaults and to act immediately when a potential default is identified.

Conclusion

This case is a timely reminder that procedural compliance is an integral part of competent legal representation. The duty owed to a client includes not only advising on the merits of a case but also taking the necessary steps to preserve the client's procedural rights.

The judgment demonstrates that an incorrect interpretation of a practice directive, coupled with prolonged inaction and an inadequate explanation for non-compliance, can have serious consequences.

In conclusion, clause 3.13 of the Legal Practice Council Code of Conduct requires legal practitioners to “remain reasonably abreast of legal developments, applicable laws and regulations, legal theory and the common law, and legal practice in the fields in which they

practise”. This provision reinforces the professional duties discussed above and underscores the importance of continuous legal education, ongoing professional development and compliance with the ethical and professional standards governing legal practice. Legal practitioners must therefore remain committed to keeping their knowledge and skills up to date to ensure that they discharge their professional responsibilities competently and uphold the standards expected of the profession.

Legal practitioners must remain alert to developments in court rules and practice directives, verify the requirements applicable to each matter and ensure that litigation is progressed within the prescribed timeframes. Where uncertainty arises, it must be addressed promptly and responsibly.

Issued by: Professional Affairs Department

Senior Manager: Ncumisa Siya Sotenjwa

Legal Officer/Researcher: Nonkululeko Sibambato