



**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: 5225/2022  
 In the matter between:

MBAMDEZELO ENOCH BOBEJAAN	1 <sup>st</sup> Applicant
ANDILE BOBEJAAN	2 <sup>nd</sup> Applicant
and	
MINISTER OF POLICE	1 <sup>st</sup> Respondent
PITSO MICHAEL TSOUNYANE	2 <sup>nd</sup> Respondent

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**CORAM:** MB NEMAVHIDI AJ

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**HEARD ON:** 30 MAY 2024

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**DELIVERED ON:** 04 JULY 2024

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**\*JUDGMENT BY:** MB NEMAVHIDI AJ

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[1] The applicants gave notice to the respondents, the first being the Minister of Police and the second a police officer in service of the South African Police Service (SAPS), of intended legal proceedings. The notice was delivered after the six-month period prescribed by s 3(2)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2003 (the Act). The first respondent is the Minister of Police, herein as nominated first

defendant, in accordance with, and in terms of the provisions of the State Liability Act 20 of 1957, by virtue of his appointment as Minister of the South African Police Service.

[2] On 20 November 2020, the second respondent, while acting within the scope of his employment, drove a police vehicle at the Bronville offramp on the R73 road and collided with a pedestrian on the road surface, alternatively collided with the body of a person lying on the road surface. He failed to secure the scene where the body of the deceased was lying on the road surface in the lane of travel of vehicles using the road. He failed to warn approaching motorists that the body of the deceased was lying on the road surface. He simply left the scene without even informing the emergency services, including the SAPS. The second applicant happened to be driving along the same road on the same day, driving the vehicle of his father, the first applicant. However, as a result of the second respondent's negligence, the body of the deceased was still on the road, unattended; the second applicant had to swerve off the road so as not to collide with the body of the deceased. This, in turn, resulted in the vehicle, as well as the applicants, to sustain damages and bodily injuries.

[3] Summons was served on first and second respondents on 1 November 2022 and 10 November 2022 respectively. The second applicant gave the following explanation for the delay in serving the notice of his intention to institute proceedings against the on the Minister: as a result of this accident, he had suffered emotional and psychological issues as well as physical injuries. He was incapacitated and also had to sit for part of his matric examinations.

[4] On 11 December 2020 he made contact with his attorney of record who informed him that he needed to obtain the docket in order to get the most salient details, such as, *inter alia*, the identity of the second respondent, the police vehicle registration number and the accident report. His attorney informed that the practice was closing for the festive season but the matter would be attended to in the second week of January 2021. Accordingly, a power of attorney was signed in January. His attorney made several requests to SAPS to obtain and peruse the docket, but all attempts to do so were in vain. His attorney moved from his erstwhile employer, Symington de Kok Incorporated, to his own establishment which resulted in the loss or destruction of his file. His attorney completed a Promotion of Access to Information Act (PAIA) application, for which payment was tendered and submitted them to the SAPS. He was told that the matter was being handled by one Mr Khoathela of the Independent Police Investigation Directorate (IPID). He and his attorney both battled to get hold of Mr Khoathela, but to no avail which resulted in his attorney addressing a letter to the

National Office of the Police which eventually resulted in him receiving the docket copy on 23 September 2021. On 22 October 2021 his attorney was finally able to serve a notice in terms of s 3 of the Act on the first respondent.

- [5] The first applicant is of the view that he has great prospects of success in the main action. He also mentions that the NPA has preferred criminal charges against the second respondent in relation to his conduct on 20 November 2020. He contends that respondents will not be unreasonably prejudiced by the late service of notice as he would not have correct details with the possession of a docket copy. The s 3 notice was dispatched within a month after receipt of the docket. He will severely be prejudiced should condonation not be granted. As such, the debt arising out of this cause of action has not prescribed, as it was interrupted by service of summons in November 2022. The respondents oppose the application for condonation.

## **THE APPLICATION OF THE LAW**

[6] It is trite law that a court, in exercising its discretion whether to grant an application for condonation in terms of s 3(4) of the Act, undertakes a three-tiered inquiry as follows:

- (a) The debt must not be extinguished by prescription;
- (b) Good cause exists for the failure of the creditor; and
- (c) The organ of state was not unreasonably prejudiced by the failure.

In *casu*, the cause of action arose on 20 November 2020 and the summons was served on the respondents in November 2021. In relation to good cause the Supreme Court of Appeal said the following:

*'The second requirement is a variant of one well known in cases of procedural non-compliance. See Torwood Properties (Pty) Ltd v South African Reserve Bank 1996 (1) SA 215 (W) at 227I-228F and the cases there cited. "Good cause" looks at all those factors which bear on the fairness of granting the relief as between the parties and as affecting the proper administration of justice. In any given factual complex it may be that only some of many such possible factors become relevant. These may include prospects of success in the proposed action, the reasons for the delay, the sufficiency of the explanation offered, the bona fides of the applicant, and any contribution by other persons or parties to the delay and the applicant's responsibility therefore'.<sup>1</sup>*

It should be noted that consultation with the attorney commenced on 11 December 2020, less

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<sup>1</sup> *Madinda v Minister of Safety and Security, Republic of South Africa* [2008] ZASCA 34; 2008 (4) SA 312 (SCA) para 10.

than a month after the incident. It must also be kept in mind that the festive period was and always is a *dies non*. Despite this, it is clear that the applicants and their attorney actively took measures to obtain docket copies from January 2021 until they were placed in possession in September 2021 after which detailed consultations took place in October to get the matter going as soon as possible, and notice to respondents was finally able to be dispatched on 12 October 2021.

[7] The applicants attorney had to be prudent before embarking on a process which may lead to heavy costs in litigation. It was important to have sufficient details of the accident before a s 3 notice to the Minister. In *Madinda v Minister of Safety and Security*,<sup>2</sup> where the delay was significantly longer than the present case, the Supreme Court of Appeal further held that ‘. . .the refusal of the Commissioner and the State Attorney to accede to the request to forego reliance on s 3(2)(a) of the Act and the respondent’s opposition to file application were not only unwarranted but also unreasonable.’<sup>3</sup> Concerning the purpose of S 3, the SCA expounded it in the following manner:

‘In considering whether condonation was rightly granted it is instructive to bear in mind why notices of the kind contemplated in s 3 of the Act have been insisted on by the legislature. Statutory requirements of notice have long been familiar features of South Africa’s legal landscape. The conventional explanation for demanding prior notification of intention to sue organs of State, is that, ‘with its extensive activities and large staff which tends to shift it needs the opportunity to investigate claims laid against it, to consider them responsibly and to decide, before getting embroiled in litigation at public expense, whether it ought to accept, reject or endeavour to settle them’. From time to time there have been judicial pronouncements about how such provisions restrict the rights of its potential litigants. However, their legitimacy and constitutionality is not in issue.’<sup>4</sup>

[8] In *Mohlomi v Minister of Defence*<sup>5</sup> the Constitutional Court held that:

‘Rules that limit the time during which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigating damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid para 30.

<sup>4</sup> *Minister of Agriculture and Land Affairs v C J Rance (Pty) Ltd* [2010] ZASCA 27; 2010 (4) SA 109 (SCA) para 13.

<sup>5</sup> *Mohlomi v Minister of Defence* [1996] ZACC 20; 1996 (12) BCLR 1559.

whose testimony can still be obtained may have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They thus serve a purpose to which no exception in principle can cogently be taken.<sup>6</sup>

The Court, elsewhere,<sup>7</sup> held that:

'In this Court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that inquiry include:

- (a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice'<sup>8</sup>

[9] Condonation may be refused if the degree of non-compliance is flagrant and substantial, irrespective of the prospects of success, especially where such explanation for flagrant and substantial non-compliance is manifestly inadequate or if there is no explanation at all. In such cases, the prospects of success need not even be considered.<sup>9</sup> In *casu*, the delay in the matter was not occasioned by the conduct of the applicants. The applicants made all reasonable efforts to be placed in possession of the police docket until their attorney addressed a letter to the National Office of the SAPS. After receipt of the police docket the detailed consultation and the s 3 notice to the Minister was dispatched within a reasonable and responsible time.

[10] For all the reasons set out above, the following order is made:

1. Condonation is granted.
2. First respondent shall pay the costs of this application on a Rule 67A scale B.

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<sup>6</sup> Ibid para 11.

<sup>7</sup> *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC).

<sup>8</sup> Ibid para 50.

<sup>9</sup> *Member of the Executive Council for Health, Eastern Cape Province v Y N obo E N* [2023] ZASCA 32 para 14.

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**MB NEMAVHIDI AJ**

**Appearances**

For the Plaintiff:

Instructed by:

Adv MP Modise

Moruri Attorneys Inc

Bloemfontein

For the Fourth Defendant:

Instructed by:

Adv GP Chaka

The State Attorney

Bloemfontein