IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	
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DATE	SIGNATURE

CASE NO: 33971/22

DATE: 9 September 2022

In the matter between:-

DR MARIA JOHANNA NEL Applicant

V

THE SOUTH AFRICAN VETERINARY COUNCIL

Respondent

JUDGMENT

KOOVERJIE J

[1] In essence, this is a review application whereby the applicant seeks a declaratory order declaring that the applicant's removal as a veterinarian from the register of the respondent under registration number D93/344 on 19 November 2004 be declared void, alternatively be reviewed and set aside.

[2] The applicant is a veterinarian and was registered as such with the respondent, the South African Veterinary Council (Council). The respondent is the *custos morum* of the veterinary and para veterinary profession thereby regulating this profession. By virtue of Section 18 of the Veterinary and Para-Veterinary Professions Act No. 19 of 1982 ("the Act"), it was mandatory for the applicant to register with the Council. The applicant has however not indicated the basis of the review, whether it is instituted in terms of the common law or the Promotion of Administrative Justice Act (PAJA).

[3] It was submitted by the respondent that the decision to deregister the applicant constitutes an administrative action, hence the review process in terms of PAJA is applicable. The respondent is considered a functionary of a public body and thereby required to ensure that its decisions are reasonable, rational and lawful.

ISSUES FOR CONSIDERATION

[4] The respondent particularly raised two points *in limine*, namely that the decision which the applicant seeks to review is moot and secondly, since this review application has been instituted way out of time and the fact that condonation has not been pleaded, this application should be dismissed.

[5] On the merits the nub of the applicant's case is that the decision concerning her deregistration was wrong in fact and in law. Amongst the issues for determination are whether there is merit in the legal points raised by the respondent as well as the applicant's substantive case.

BACKGROUND

[6] In order to appreciate the context in which the dispute between the parties arose, the salient facts are briefly summarized.

[7] The applicant was removed from the register of Council for the first time on 19 November 2004. Prior thereto she was registered with Council since June 1993. The applicant alleged that she only became aware of her deregistration on 24 October 2008. She was advised that she was required to pay her fees within a stipulated time period in order to be reregistered. In her papers the applicant illustrated that she had in fact paid her fees for the 2004 year. However due to the administrative oversight of Council, such payment was not noted.

[8] Upon learning of her deregistration in 2008 she applied for her reregistration on 3 February 2009. Council then resolved that the applicant may pursue her profession as a veterinarian provided that she passes the practical portion of the registration exam.

[9] From the chronology presented by the respondent, and which has not been placed in dispute, it appears that the applicant failed to register for the said examination.

[10] At some point later, the applicant applied for authorization to practice under supervision in anticipation of writing the registration exam (as directed by Council). Council authorised her to practice under supervision for a period of 3 years on condition that she passes all the components of the Council's registration exam.

[11] I have further noted from the chronology that between the period 2010 to 2016, the parties were in communication on the issue of her reregistration. The applicant however only makes reference to events until June 2009. It was the respondent who alluded the Council to what transpired between the parties thereafter.

[12] Sometime later, during the period 2019 – 2020, Council became aware that the applicant was in practice as a veterinarian without a registration certificate. On 20 March 2020 the applicant was forewarned that despite her having no authorization to practice, she continued to do so. Upon consulting with her legal representative, she was advised that Council's decision to deregister her was unlawful since she had paid her 2004 year fees. Due to Council's oversight, which caused her deregistration, she instituted the said application.

CONDONATION

[13] It has become evident that there was constant interaction since 2004 until March 2020 between the parties, more specifically pertaining to her reregistration. However the applicant's focus on review is for the setting aside of the 2004 deregistration "decision" and which decision came to her knowledge in 2008.

[14] It cannot be gainsaid that the applicant's review application regarding the said decision is rather late. In exercising my judicial discretion, I have to be satisfied that the proceedings were instituted within a reasonable time and if not, then the applicant is required to demonstrate good cause.

[15] I have noted that the applicant failed to proffer any explanation whatsoever regarding the lateness of this review application. From the reading of the papers, it appears that she may not have been aware that an explanation for condonation was necessary.

[16] All that was stated at paragraph 7.1 in her founding affidavit was:

"On 11 February 2021 I consulted my current attorney of record in order to resolve my dispute with the respondent. Subsequently, my attorney of record directed a letter to the respondent on my instructions which letter is attached hereto as MJN11 and which was delivered to the respondent on 4 March 2021…."

[17] Our authorities have exhaustively over time set out salient principles when considering condonation applications of this nature. More recently the Supreme Court of Appeal in ***Madikizela Mandela v Executors Estate Late Mandela 2018 (4) SA 86 SCA at paragraph 9*** stated:

"It is a long standing rule that courts should have the power as part of the inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party has been guilty of unreasonable delay in initiating the proceedings."

[18] What is reasonable depends on the circumstances. Where the delay is found to be unreasonable the court may condone the delay if the applicant furnishes a

satisfactory explanation for it. The court will also take into account other factors especially if there is any prejudice caused to the other party.

[19] In this instance, no explanation for the delay is set out in the papers. If this is a PAJA review, then Section 7(1) of PAJA requires review proceedings to be instituted without reasonable delay and not later than 180 days after the internal remedies have been exhausted. Once the 180 day limit is reached the delay is then considered to be unreasonable.[1]

[20] For this application to succeed, the applicant was required to set out jurisdictional factors demonstrating good cause, and in particular provide sufficient explanation for the delay.

[21] In argument, counsel for the applicant conceded that the jurisdictional factors for condonation have not been pleaded. The applicant should have been aware that her failure to deal with this issue has compromised her in these papers.[2] However strong the prospects of success may be, the fact that indulgence was not sought from the court, this review application should be refused.

[22] Whether it was the applicant's intention to institute this review in terms of common law (where no statutory period is set out), or in terms of PAJA (where 180 days is stipulated), the ultimate consideration is that this application must be instituted within a reasonable time.

[1] Opposition to Urban Tolling Alliance v Sanral 2013 (4) ALL SA 639 SCA
[2] Lion Match Co. Ltd v Paper Printing Wood and Allied Workers Union 2001 (4) SA 149 SCA at par 158C-E

[23] Although our courts have refrained from formulating exhaustive requirements in defining "good cause", one of the fundamental requirements is that an affidavit explaining the delay must be set out. If there has been a long delay, the party in default is required to satisfy the court that the relief sought should be granted, especially when the applicant is *dominus litis*.[3] In fact, without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial. A party seeking condonation must make out a case entitling it to the court's indulgence.

[24] Generally a court in exercising its discretion will have regard to all relevant factors. This includes furnishing a satisfactory explanation, the absence of prejudice to the other party, consideration of public interest in finalizing administrative decisions.[4]

[25] Our courts have been firm that where an applicant fails to provide a basis for condoning the unreasonable delay or in the events taking place after such application had been lodged, such applicant loses its right to complain.[5]

[26] Even though the condonation dispute was raised in the answering papers, the applicant in her reply to this objection, merely submitted that she will proffer legal argument at the hearing of the matter.

[27] In fact, in the instance of a PAJA review, it is necessary to bring a substantive application for condonation is necessary.

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[3] Van Wyk v Unitas Hospital 2008 (2) SA 472 (Van Wyk matter)
See also Silber v Ozen Wholesales (Pty) Ltd 1954 (2) SA 345A
[4] Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad 1978 (1) SA 13A at 41
[5] Lion Match Co. Ltd v Paper Printing Wood and Allied Workers Union 2001 (4) SA 149 SCA at 158B-E

[28] The Supreme Court of Appeal found that where it appears from the applicant's papers that there had been a delay of more than 180 days, and no application for condonation is made, the opposing party is entitled to raise the point in argument that the court has no power to hear the review. Consequently in this instance, the court would have no power to entertain the review.[6]

[29] In argument counsel for the applicant argued that it is in the interest of justice to hear the review. However, whether the interests of justice justify an indulgence, would depend, once again, on the various jurisdictional factors, which requires at the top of the list, sufficient explanation for the delay.[7]

[30] Even if the applicant had become aware of the Council's decision in 2008 and being aware that her 2004 fees were in fact paid, it was at that stage that the applicant should have challenged the decision.

[31] In respect of the argument that the merits of the matter is a defining factor, I am guided by the proposition that in the ***OUTA*** matter[8] where it was decided that a court was compelled to deal with the delay rule before examining the merits of the review application. Simply put, a court is firstly required to decide the merits of the condonation application.

[32] The court aptly commented in the ***Van Wyk*** matter at paragraph 33:

"… Prospects of success pale into insignificance where, as here, there is an inordinate delay coupled with the absence of a reasonable explanation for the

[6] Mostert N.O. v Registrar of Pension Funds 2018 (2) SA 53 SCA at 61I-J
[7] Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality 2017 (6) SA 360 SCA at 366B-I
[8] Opposition to Urban Tolling Alliance v South African National Roads Agency Ltd 2013 (4) All SA 639 SCA at par 22, 26 and 43

delay… There is now a growing trend for litigants in this court to disregard time limits without seeking condonation ….”

[32] It is not disputed that this application has been instituted at least 13 years later, if one has regard to the fact that the applicant only learnt of her deregistration in 2008. In ***Van Wyk*** at paragraph 31 the court stated:

“A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interests of justice.”

[33] Having considered the papers and the arguments of both parties, I am of the view that this application should be dismissed on the basis that a case for condonation has not been made.

[34] Consequently, I make the following order:

1. this application is dismissed with costs.

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H KOOVERJIE

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the plaintiff:	Adv Z Schoeman
Instructed by:	WN Attorneys Inc
Counsel for the defendant:	Adv LD Isparta
Instructed by:	Ric Martin Incorporated
Date heard:	31 August 2022
Date of Judgment:	9 September 2022