IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN

Reportable

Case No.: 743/2009

In the matter between:

Danie Martinus Maart	Applicant
and	
The Minister of Defence	First Respondent
Chief of the South African Army	Second Respondent
Colonel Louis Cornelius Hoffman	Third Respondent

CORAM	**D M DAVIS J**
JUDGMENT BY	**DAVIS J**
FOR THE APPLICANT	**MR R BODART**
INSTRUCTED BY	**LEGAL AID**
FOR THE FIRST RESPONDENT	**ADV S POSWA-LEROTHOL1**
INSTRUCTED BY	**STATE ATTORNEY**
DATE OF HEARINGS	02 **SEPTEMBER** 2010
DATE OF JUDGMENT	02 **SEPTEMBER** 2010

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(WESTERN CAPE HIGH COURT, CAPE TOWN)

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In the matter between:

DANIE MARTHINUS MAART Applicant

and

THE MINISTER OF DEFENCE 1st Respondent

CHIEF OF THE SOUTH AFRICAN ARMY 2nd Respondent

COLONEL LOUIS CORNELIUS HOFFMAN N.O. 3rd Respondent

JUDGMENT

DAVIS, J:

The applicant has come to court to seek relief against the first and second respondents, the relief being couched as follows:

1. Condoning the applicant's non-compliance for the time period in which to bring this application and to extend the time period of the common law delay rule, as well as the 180 days referred to in section 7(1) of PAJA of the date of the institution of these proceedings.

2. Reviewing, setting aside and correcting (on a date to be determined by the Registrar) in terms of uniform Rule 53, alternatively declaring invalid with no force and effect the 1989 decision of the second respondent who discharged

the applicant from the SADF, as well as the 2006 decision of the first respondent to endorse the 1989 decision to discharge applicant.

3. Declaring that first respondent's failure to prescribe proceedings in terms of section 61(2) of the Defence Act 2002. to specify the processing of grievances and the train of command of individuals within the South African National Defence Force may address individual grievances being consistent, section 34, 35(3)(c) (indistinct) of the Constitution.

4. Directing the first respondent to present to this Court within a time period to be determined by this Court, a plan on how the first respondent intends to rectify the failure to comply with his constitutional obligations set out above.

The facts of this case are, to say the least, somewhat unusual. Applicant is 53 years old. He obtained a Standard 9 from Mostert High School in Oudtshoorn in 1974 and he joined the South African Defence Force (SADF) in January 2005. He underwent basic training at Eerste River and Bloemfontein and thereafter was transferred to the infantry school in Grahamstown where he worked as a storeman from 1976 to 1979. In December 1979 he was transferred to the infantry school in Oudtshoorn. It appears from the papers that he worked for the SADF from January 1975 to 30 November 1988 and again from 1 December 1988 to 31 July 1989.

During 1988 a board of inquiry (66/88) was convened to investigate surpluses and shortages and the incorrect recording thereof at various warehouses at the infantry school in Oudtshoorn, including the warehouse where applicant had been stationed. The Board came to the conclusion that stock inconsistencies had occurred at the various warehouses. For this reason it made the following recommendations:

> "Dit sal derhalwe nie raadsaam wees slegs sekere persone uit te sonder teen wie dissipliner opgetree behoort te word nie en behoort a lie persone wat nie die kapitale SAW voorraad voorskrifte streng nagevolg het nie, vir, onder andere 19(5), aangekla en so

meer verhoor te word. Die aanbeveling is van toepassing op die volgende persone, Sers D M Maart... Dit behoort egter in gedagte gehou te word dat die beheer en leiding wat bogenoemde lede vanaf die kapitale KM ontvang het ten opsigte van voorraad en voorraadsprosedure nie na wense was nie... Aangesien die surplus en tekorte van hoe ontvang is, word aanbeveel dat 'n voorlopige ondersoek deur die stafhoof... bele word en dat kommandant Labuschagne deur 'n algemene krygsraad verhoor word indien nodig."

On 29 July 1989 applicant was informed that he had been discharged from the SADF and that he was required to leave the infantry school as at 31 July 1989. No reasons were initially given for this discharge. On 3 March 1993 he received the following explanation:

> "Die oortredings wat hierop gevolg het, het aanleiding gegee tot sersant Maart se ontslag. ETV, kapitale AR (iv) - 21 (2)(f)(iii)."

This reference refers to an administrative discharge in terms of section 12(1)(f) of the Defence Act, 44 of 1957. Soon after he was informed about this discharge on 29 July 1989, applicant invoked certain internal procedures of the SADF in terms of section 144 of the Defence Act, in order to obtain clarity about the manner in which he had been discharged. Section 134(1) provides:

> "Any person subject to this code, who is aggrieved by an act or omission of any other person subject to this code, may complain in writing. (3) If the general officer commanding of the South African Defence is unable to address the wrong or otherwise dissatisfy the complainant, he shall, if requested by the complainant to do so, transmit the complaint to the State President, whose decision shall be

final."

According to applicant, other than recourse to these internal remedies, pursuant to section 134 of the Defence Act, his parlous financial position did not allow him to explore any other avenue in order to seek redress for what he considered to be a wrongful dismissal.

However, in 2003 the General Officer Commanding of the SADF convened a ministerial inquiry in terms of section 136 of the Defence Act, to investigate the circumstances that led to the discharge of the applicant. The outcome of this inquiry was that the applicant had been unfairly discharged and there was a warning attached to the documentation that the SADF could be faced with "a massive claim" as a result of an unfair dismissal.

Recommendations followed from this particular inquiry, including:

> "The then new officer commanding, Colonel Stroebel (now retired as Brig GEN) dismissed Sgt D M Maart without any authority on 30 July 1989. Sgt D M Maart was subsequently placed in the reserve forces on 1 August 1989. The person who can be held liable for these circumstances, can in all probability be identified as the then commander (Lieutenant Colonel F Lerm), who it appears had a personal grudge against Sgt Maart and for that reasons was somehow determined to throw Sgt D M Maart out of the then SA Army. The end result of this is that the entire Department of Defence (DOD) was faced with a possibility of a massive claim for unlawful dismissal and other liabilities."

Shortly after the 2003 board had made its recommendations, it appears from the

evidence that a further inquiry was initiated, again to investigate the circumstances relating to applicant's dismissal (board of inquiry 27.02.2004). Here the board concluded that the 2003 board had lacked the ability to deal with the matter and it concluded, on a conspectus of the evidence which was available to it, that applicant had been properly discharged:

> "It can safely be assumed that Mr D M Maart was discharged due to multiple convictions. The discharge of the member was based on administrative process and place and time of discharge in terms of general regulations... which was in effect at the time."

A further recommendation followed:

> "Due to the fact that prescription has taken place and no court has the jurisdiction to hear the matter, combined with the fact that the administrative discharge appears to be properly authorised in any event, the matter should be considered as final."

In February 2007 the applicant received a letter dated 18 December 2006 from Mr Ratsomo, the head of ministerial services. Mr Ratsomo informed applicant that based on the findings and recommendations of the 2004 board, the decision was made that the 1989 discharge had been properly decided. The letter then concludes

> "According to the evidence presented to this board of inquiry, Sergeant Maart's service was terminated in accordance with all the rules and regulations applicable at the time."

So much for the chronology of events. The critical issue, before the merits of the

case can be truly investigated, and this was certainly prefigured in the relief sought by applicant, as well as the very comprehensive and careful submissions of Mr Bodart. who appeared on behalf of the applicant, was the question of delay. A major obstacle to the relief sought is the length of time taken to prosecute this application and the various issues which relate to a dismissal of more than 21 years ago. In the founding affidavit, the following explanations provided by the applicant as to the extraordinary delays which had been occasioned in this case.

It is, therefore, necessary to reproduce applicant's version in some detail:

"During 1990 (I cannot remember the exact date) I requested James Swiegelaar of the Labour Party in Oudtshoorn to assist me to lodge a complaint. He wrote a letter on my behalf to Colonel J J Claasen at the Castle in Cape Town. I never received a copy of this letter nor any feedback from the SADF In 1993 I approached a member of parliament, Mr S Simmons, to assist me. He wrote a letter to the SADF at the Castle. On 3 March 1993. Colonel Claasen replied. In his letter he stated the following:

> "Na 'n reeks oortreding is sersant Maart op 4 Junie 1985 meegedeel dat verdere oortredings wat deur horn begaan sou word, sy voortgesette indienshouding in gedrag sou bring. Die oortreding wat hierop volg het aanleiding gegee tot sersant Maart se ontslag...".

I submit that the allegations contained in this letter from Colonel Claasen made no sense whatsoever, apart one charge which was brought against me during (I think) 1985, relating to mind the stock losses from my store at the infantry school (and for which I was fined and paid R100.00), I had a clean record for the period January 1975 (the date I started my training at the SADF) to 30 November 1988, which is the date when I voluntarily resigned from the SADF... During 1993 I approached Attorneys Visagie Vos for legal advice, but due to the fact that I did not have money to pay for their services, they were not able to assist me. My monthly income at the time was about R2 600,00 and I was unable to pay for legal representation. It was only during 2000 when I met Clifton Murphy at Ubunthu Office in Oudtshoorn that I was again able to get assistance to take the matter further. Mr Murphy wrote a letter on my behalf to the Ministerial Defence. On 21 October 2002, Lieutenant Colonel N

M Mdayi replied. He stated the following:

"The matter is receiving attention and the outcome of the investigation will be conveyed to you in due course". During 2002 I also asked Mr Murphy to lodge a complaint on my behalf against the SADF through the Public Protector and to request them to investigate the matter. The Public Protector replied on 13 June. 14 August 2002 a certain Mr A T Lose advised me that the matter was referred to the National Office of the Public Protector for further investigation. On 19 February 2003 I received a letter from Colonel A R Pretorius. In this letter was stated that the SADF "requests extension on the target till 31 March 2003... investigation not complete yet". On 3 July 2003 I received a letter from Colonel L Magxwalisa, in which he informed me that:

"The matter has not yet been finalised. As soon as answer is available, you will be advised accordingly... Please accept our apologies in this regard." On 29 July 2003 I received another letter with a similar message:

> "This serves to confirm receipt of your fax... Our office is attending to the matter. Your office will be informed in due course on developments of the matter." On 17 December 2003, Mr Murphy wrote a follow up letter on my behalf to the Department of Defence and requested a progress report relating to the investigation to my dismissal. On 11 March 2004, Mr Murphy had a telephone conversation with Colonel Pega, the Ministerial Defence and followed this up with a letter that same day. On 12 November 2004, Mr Murphy write again to the

Public Protector in an attempt to get assistance, however, to no avail. On 15 December 2005, I approached Attorneys Coetzee en Van der Bergh in Oudtshoorn for help. I did not have the financial means to instruct him to litigate, but I hoped he would be able to speed up the matter by getting clarity regarding my dismissal and the outcome of the board of inquiry. Mr Van der Bergh wrote a letter to Colonel Bega. On 31 January 2005, Colonel Bega replied (indistinct) once again that the investigation was ongoing and "sodra Yi antwoord beskikbaar is, sal u verwittig word". On 13 April 2005 my attorney received another letter from Colonel J Pega to advise that the investigation was ongoing. On 21 June and 21

July 2005, my attorney wrote yet again to Colonel Pega to enquire whether any progress was made. On 28 July 2005, Colonel Z (sic) Pega replied with another standard letter, stating that "u navraag nog nie gefinaliseer nie". On 26 October 2005, T Ratsomo for the Ministerial Defence wrote a letter and his letter stated again that the investigation was as yet not completed and a reply would be forthcoming once the investigation was final. On 30 January 2006. Mr Van der Bergh wrote a letter to the Minister of

Defence... On 6 February 2006, Colonel Z Bega replied, he stated that "u navraag nog nie gefinaliseer is nie aangesien daar Vi tans "n interne ondersoek aan die gang is". Mr Van der Bergh wrote a final letter on 20 February 2006 and Colonel Z Bega replied thereto on 22 February 2006, once again stating that the investigation was not yet final... On 12 April, 16 April, 26^{,n}, 28^{,h}, 30^{lh}, 16 October, 23 November, Colonel Bega wrote follow up letters with similar contents. On 18 December 2006, Mr T Ratsomo of the Ministerial Defence wrote a letter to me stating:

> "We have been informed that the claim of Mr C Murphy that Sergeant Maart was victimised and unlawfully dismissed by his former supervisor, Lieutenant Colonial (then kommandant) J W Lerm, was referred to the S A Army Infantry Formation 2003 on the grounds that this alleged instance occurred at the infantry school and the infantry school currently resorts under the command of the general office commander of the S A Arm Infantry Formation... His claim that he was dismissed by his former supervisor... and who allegedly victimised him is not true, as the chief of the S A Army was the only person who could authorise any termination of service of the time. We have also discovered that neither Sergeant Maart or any of his fellow Coloured colleagues ever lodged a complaint of racism or victimisation in relation to Lieutenant Colonel (kommandant) Lerm." I applied for legal aid at the Cape Town Justice Centre. The merits of my (indistinct) investigated and legal aid was granted in terms of the legal aid guide. On 26 June 2008, my attorney, Mr R Bodart, wrote a letter to the head of ministerial services."

It is apparent from this detailed affidavit, which forms part of the founding papers, that applicant has provided no explanation for the delay in instituting any form of

proceedings against the alleged unfair dismissal between 1990 to 1993, again from 1993 to 2000. from 2000 to 2002 and then from December 2006 to June 2008. Insofar as the latter is concerned, it is possible that in that interim period, there was an application for legal aid, but other than this act, in the latter period from some 18 months, no action appears to have been taken, notwithstanding the flurry of letters that were generated in the period immediately preceding 2006.

These are hugely significant and unexplained delays. The question that, therefore, arises as to whether the applicable law would justify a condonation so as to ensure this Court could proceed to deal with the merits of the application. I turn, therefore, to deal with the law on delay.

The Law on Delay

At common law. a review to set aside or correct is in effect a discretionary remedy that may be refused if the applicant delays excessively in prosecuting the application. See Wolqroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad 1978(1) SA 13 (A) at 41E-F. Finality is clearly an issue which underlines the Court's concerns with delay, in that delay may cause prejudice to a respondent. In addition it can also undermine the public interest in ensuring certainty of legal proceedings.

The matter has received recent attention in an important case for the purposes of this dispute, Gqwetha v Transkei Development Corporation Ltd & Others 2006(2) SA 603 (SCA) and in particular the majority judgment of Nugent. JA. In his judgment, Nugent, JA approves of the dictum of Miller. JA in Wolgroeiers (supra) at 41E-F:

> "It is desirable and important that finality should be arrived at within a reasonable time in relation to the judicial and administrative decisions or acts. It can be contrary to the administration of justice in the public interest to allow such decisions or acts to be set aside after an unreasonably long period of time has elapsed *interest reipublicae ut sit finis litium...* Considerations of this kind undoubtedly constitute part of the underlying reasons for the existence of

this rule."

Nugent. JA continues:

> "Underlying that latter aspect of rationale is the inherent potential for prejudice, both to the efficient functioning of the public body and to those who rely upon its decisions, if the validity of its decisions remains uncertain. It is for that reason in particular that proof of actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration, that might even be decisive where the delay has been relatively slight... Whether there has been undue delay entails a factual inquiry for which a value judgment is called for, in the light of all the relevant circumstances, including any explanations offered for the delay... The material factors to be taken into account in making that value judgment - bearing in mind the rationale for the rule - is the nature of the challenged decision. Not all decisions have the same potential for prejudice to result from their being set aside. The challenged decision in the present case was a decision to dismiss the appellant for complicity in financial irregularities. A decision of that kind will necessarily have immediate consequences for the ordinary administration of the organisation and for other employees who will be called upon to perform the functions of the dismissed employee or even to replace her Moreover personal decisions that are susceptible for review, are no doubt made by any large organisation on a regular and ongoing basis and some measure of prompt certainty as to the validity is required. The very nature of such decisions speaks of the potential of prejudice, if they are to be capable of being set aside on review after a lapse of any considerable time."

Rule 53 does not stipulate a period within which review

proceedings must be brought. It has been established, of course, as is evidenced from the *dicta* which I have cited, that the application must be brought within a reasonable period. Where the delay is found to be unreasonable, the Court may decide to condone it, if the applicant can provide a satisfactory explanation therefore. See in this regard Hoexter. Administrative Law in South Africa at 476.

There is a case which appears to "buck the trend", being a judgment of Plasket, J in Ntame v MEC for Social Development Eastern Cape And Two Similar Cases 2005(6) SA 248 (E). In that case, applicants sought orders reviewing administrative action by the Department of Social Development in the Province of the Eastern Cape. In one application the so-called Ntame case, applicant had been in receipt of a disability grant for 11 years until it was stopped in December 1996 without notice. In June 1999 it was reinstated and she was given an amount of R1 100.00 as back pay. She applied for an order setting aside the suspension of her grant and an order directing the respondent to pay the R13 460 that was owed to her. In the other matters, the so-called Mnvaka cases, applicant applied in June 1997 for a maintenance grant in respect of her two children. By the time the maintenance grant were phased out in April 2001, she had still not received a response to her application. Ms Mnvaka applied for an order directing the respondent's failure to consider the application be declared unlawful. There was, of course, a question as to whether there had been an unreasonable delay in bringing these proceedings.

It is this point which is relevant to the present dispute. Plasket. J dealt with the question of delay with great care in paras 13ff of the judgment. He noted that:

> "Ms Ntame had stated in her founding affidavit that she is an unsophisticated person with little formal education. She is also poor. In order to qualify for the disability grant that she received since the mid 1980's, she must suffer from a disability that renders her unable to work. She is, not surprisingly, too poor to pay for the services of an attorney. When her disability grant was stopped, she was given no

explanation, nor was she advised of her right to appeal in turn against the decision. A sense of helplessness, frustration and powerlessness in the face of an unhelpful bureaucracy can easy be imagined. She first became aware of her right when she approached a non-governmental organisation, the Centre for Human Rights, Community Advice & Development.

> This organisation assisted her by engaging the services of her current attorneys, who had agreed to represent her on a contingency basis... They wrote a letter of demand to respondent dated 19 October 2004 in which the respondent was given ten days in which to meet the demand. No response of any sort was received. The founding affidavit was signed on 8 November 2004, the notice of motion was signed 10 November 2004 and the papers were issued on the same date." paras 14-20.

The learned judge concluded at para 24 that:

> "[t]he delays as set out were....unreasonably long, even though, once the applicants was placed in contact with attorneys who could advise them and represent them, the steps that followed were taken with reasonable haste."

However, Plasket, J exercised his discretion to condone the unreasonable delays for a series of reasons:

1. Section 34 of the Republic of South African Constitution Act 108 of 1996 ("Constitution") guarantees a right of access to courts. Section 39(2) of the Constitution enjoins the court in either interpreting legislation or developing the common law or customary law to "promote the spirit, objects of the Bill of Right". Section 34 represents that

spirit and accordingly, to the learned judge to refuse to condone would constitute to deny her access to courts.

2 Section 1(c) of the Constitution "entrenches the rule of law - and its principle of legality - as a founding value of our constitutional order" Thus, courts have to be careful to allow as "few invalid exercises of the public power as possible to slip through the judicial net." At para 25.

3. The applicants sought to enforce a fundamental right of access to social assistance as enshrined in section 27(1)(c) of the Constitution. Further they were "drawn from the very poorest within our society and have the least chance of vindicating their rights through the legal process." (para 25)

According, emphasising that the applicants were unsophisticated people with little formal education and living in considerable poverty which hampered their access to court, a more lenient approach was, therefore, required. Accordingly the lengthy delays were condoned.

Before concluding this excursus into the law of delay, it is important to note that our law has changed in this regard, as a result of the Promotion of Administrative Justice Act ('PAJA") in that PAJA now requires review proceedings to be instituted without unreasonable delay, and not later than 180 days after domestic or internal remedies had been exhausted. (See section 7(1)(a) of PAJA.) Where there are no such remedies, the period of 180 days begins to run from the date on which the applicant was informed of the administrative action, became aware of the action and the reasons for it, or might reasonably be expected to become aware of the action and the reasons. Section 7(1)(b).

Section 9 of PAJA makes provision for an extension of the period by agreement, or an application by the person concerned and thus extension may be granted where

the interest of justice so require. See in particular Scenematic 14 (Ptv) Ltd v Minister of Environmental Affairs & Tourism 2004(4) BCLR 430 (C) and further authorities as cited by Hoexter at 478.
Evaluation:

In this case the delay was even longer than in the cases dealt with by Plasket, J. Unfortunately in the Ntame case supra, the facts are not set out with sufficient clarity to be helpful to other courts, that is the exact length of the delays which necessitated the application of condonation. Nonetheless it can certainly be confidently concluded that the delays as I have set them out, far exceeded anything which confronted the court in Ntame. Secondly, applicant, unlike the applicants in the Ntame case, was not illiterate and was not incapable of generating his own correspondence. That he lived in circumstances of relatively scarce means, does not necessarily classify him as living in a standard of poverty, which clearly confronted Plasket. J in Ntame.

Thirdly, even after applying for legal aid, there is an unexplained further delay. I am not certain of the length thereof, because it was never explained. But the founding affidavit provides no explanation to the Court as to why between December 2006 and 26 June 2008. no action appears to be taken to expedite the process.

Fourthly, as Nugent, JA said in Ggwetha's case, this case concerns dismissal, and thus necessitates a speedy resolution.

What the learned judge of appeal had in mind and which is clearly exemplified in these papers, is that to determine the fairness of a dismissal, some 21 years after the dismissal took place, where witnesses are not available, where some may have died, where memories are hazy and where there is a lack of clarity as to precisely what happened as is evidenced from the two boards of inquiry to which I have made reference, buttresses the approach which was adopted by the majority of the Supreme Court of Appeal in Gqwetha. I should add that in that case, delay was of a far shorter order of magnitude; that is less than a calendar year

Fifthly, the Court in Gqwetha emphasised that, during this period, there was no explanation for the delay. In the present case much of the reason for the delay remains unexplained. There are two significant periods, between 1990 and 1993 and 1993 and 2000 in which there is no explanation provided as to why the applicant generated any further correspondence, if any. Mr Bodart referred me, in an attempt to illustrate that Courts can be more generous with regard to condonation applications, to the decision of Bothma v Els and Others 2010(1) SACR 184 (CC). In this case there had been a 37 year delay in the institution of a private prosecution for a crime of rape. As Sachs, J said in his judgment, at para 65 to 66:

"Mrs Bothma submits that the nature of the offence inexplicably linked with the reason for the delay. She avers that she internalised the shame of the events, feeling guilty, betrayed and powerless and fearing stigmatisation should she confide in anyone. She suppressed the memory of the rape due to these feelings, her schoolwork suffered and she became withdrawn, and the sense of 'inner badness' persisted into her adult life, where she endured three failed marriages and was unable to find success in her business ventures. She adds that it was only after she received counselling during the time spent in prison, that she came to grips with, and accepted the common thread underlying all the disasters in her adult life, namely the treatment she had endured while still a child at the hands of Mr Els. It was then for the first time that she developed meaningful knowledge of the wrong that had been done to her. Without pronouncing on the veracity of her charges, it will be noted that there also exist strong public policy reasons for allowing the nature of a crime to weigh heavily in favour of allowing these charges to be aired in court. Adults who take advantage of their position of authority over children to commit sexual depredations against them shall not be permitted to reinforce these sense of entitlement by overlaying it with a sense of impunity. On the contrary, the knowledge that one day the secret will out, acts as a major deterrent against sexual abuse of other similarly vulnerable children."

Manifestly, the present dispute is a different order of case. In the case of Bothma. as is evidenced in the *dicta* which I have cited, there were deeply sourced psychological reasons as to why a prosecution could not have been brought at an earlier stage. The present case is incomparable and is far more approximate to that of Gqwetha, supra.

I have leave aside the function of a board of inquiry, that is whether it had the power to reinstate and further, its exact function, in the context of this dispute. The fact is that the initial decision to dismiss applicant was taken in 1989. For at least ten years and possibly more, applicant has not explained why no action was taken by him,

the reason for these delays and why, at the very least, he did not seek to pursue any of the internal remedies or generate any further correspondence Mr Bodart contended that the boards of inquiry acted as an interruption of the delay, in the sense that they evidenced some recognition by respondents, that the matter is still live; hence the further inquiries in 2003 and 2004

I shall assume in favour of applicant so that I am prepared to condone a decade of unexplained delay, far more than even in the case which vexed Plasket. J in Ntame. The question would still arise as to why there was a further extensive delay, way beyond the prescribed limits in terms of PAJA, after the two boards of inquiry had concluded their business. Given the nature of this dispute, the fact that it concerns a dismissal even a condonation of the earlier delays would be insufficient to justify ultimate condonation: a court would have to condone the further delay. In the context of the nature of this dispute and the vast length between the time of the alleged misconduct against applicant and any remedy that could possibly be granted, there can be no justification to classify any of the further delays as reasonable, disregard the prejudice which respondents would encounter, if condonation were granted, or ignore the potential opening of the floodgates of delayed litigation manifestly against the public interest.

Given the conclusion to which I have arrived, there is no basis on which to investigate the merits of the case, because the delays cannot, on the law as I have outlined, be condoned.

I do not, however, consider that this is a case in which a cost order would be appropriate, given the very nature thereof.

Accordingly the application is dismissed.

DAVIS, J