IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case NO: 15017/2017

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: No

REVISED:

17 May 2023

Signature: _____ Date: _____

In the matter between:

CHAUKE TINYIKO JOSEPH	**1ST PLAINTIFF**
RAOLANE TEBATSO EUGINE	**2ND PLAINTIFF**
MOFOMME SOLOMON TSHEGOFATSO	**3RD PLAINTIFF**
MASEKOAMENG JOHANNES LESETJA	**4TH PLAINTIFF**
MATHOTHO HEDGES HOPANE	**5TH PLAINTIFF**
KEKANA MAKGOBA CHARLIE	**6TH PLAINTIFF**
MANYAMALALA KAYA BETHEL	**7TH PLAINTIFF**
MAILA KGABO ISAAC	**8TH PLAINTIFF**
MASHOAKWA DYROSE MANAKA	**9TH PLAINTIFF**

MOKOBODI KOENA STANFORD **10TH PLAINTIFF**

And

MINISTER OF POLICE **1ST DEFENDANT**

INDEPENDENT POLICE INVESTIGATIVE **2ND DEFENDANT**

NATIONAL PROSECUTING AUTHORITY **3RD DEFENDANT**

NEUTRAL CITATION: *Chauke Tinyiko Joseph & Others vs Minister of Police* (Case Number: 15017/2017) [2023] ZAGPJHC 488 (17 May 2023)

Delivered: This judgment is delivered electronically by being emailed to the parties' legal representatives and uploaded to the caselines. The judgment is deemed to be delivered on 17 May 2023

JUDGMENT

Molahlehi J

[1] This is an application for leave to appeal against both the order and the judgment providing the reasons for the order dated 13 April 2022 and 29 August 2022, respectively. In terms of the order, this court dismissed the applicant's application for condonation for the late issuing of the notice in terms of section 3 (1) of the Institution of Legal Proceedings Against Certain Organs of the State Act 40 of 2000 (the Act).

[2] The first, second and fifth respondents oppose this application.

[3] In opposing the application, the first and third respondents have raised two points *in limine*. The first complaint is that the applicants failed to comply with the time frame within which they had to file their written submission, as prescribed by the directive issued by the court on 15 March 2023.

[4] In the circumstances of this case, it would not serve the interest of justice to deny the applicants the opportunity to ventilate their complaint against the judgment

simply because they failed to file their written submission on time. This matter involves the fundamental rights of the applicants, a factor that weighs in favour of ignoring the non-complience with the directive.

[5] The second point raised by the first and second respondents is that the time for serving the notice in terms of section 3 (1) of the Act on the first respondent is unsustainable because it is raised for the first time in this application. The related sup-point to this is the contention of the applicants that the first respondent did not, in its plea, raise the issue of noncompliance with the Act.

[6] The point raised by the respondents is highly technical and thus places form over substance. From the reading of the judgment, the court did not distinguish between the delay in serving the notice on the first respondent and the other respondents. Thus, it would not serve the interest of justice to have the applicants unsuited for the relief they seek simply because they did not raise this point in their plea.

[7] In opposition to the application, the second respondent raised a point *in limine* concerning the late filing of this application. The time frames for applying for leave to appeal are governed by rule 49 (1) (b) of the Uniform Rules of the High Court (the Rules), which provides as follows:

> "49 Civil Appeals from the High Court
>
> (b) When leave to appeal is required and it has not been requested at the time the judgment or order, application for such leave shall be made and the grounds that they of shall be furnished within fifteen days after the date of the order appealed against; provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days after such later date: provided further that the court may upon good cause extend the aforementioned periods of fifteen days."

[8] The preliminary point raised by the second respondent, which is based on calculating the fifteen days when the leave to appeal ought to have been filed to be from 15 April 2023, is incorrect. The fifteen days for this leave to appeal has to be

determined from 29 August 2022, when the reasons for the order were made. This is a later period envisaged in rule 49 of the Rules. As it appears from the record, the full reasons for the order was made on 29 August 2022. The application for leave to appeal was filed on 19 September 2022. Having regard to the number of court days between 29 August 2022 and 19 September 2022, there is no doubt that the applicants filed their leave to appeal within the period envisaged in rule 49 of the Rules. Thus the respondents' point *in limine* stands to fail.

[9] I now turn to dealing with the grounds of leave to appeal. The main ground of appeal upon which this application turns is whether the section 3 notice issued by the applicants was served on the first respondent timeously. Therefore condonation by the applicants was not required. The applicants contend that the notice was served timeously on the first respondent, and therefore there was no need to file an application for condonation as far as the section 3 notice on the first respondent was concerned.

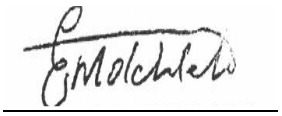
[10] The criminal trial of the plaintiffs conclude on 9 September 2023 and the section 3 notice was served on the first respondent on 20 February 2017.

[11] The test for determining whether leave to appeal should be granted is governed by section 17 of the Superior Courts Act which sets out the test to apply when considering an application for leave to appeal. This test is well known and need no repeat in this judgment.

[12] In my view, the circumstances in this mater accords with those envisaged in section 17 of the Superior Courts Act and therefore the applicants deserve the relief they are seeking in this application. Put in another way the applicants have convinced this court that there are prospects of success on appeal which are realistic.

Order

[13] In the circumstances leave to appeal to the full bench of this Division is granted with costs to be in the appeal.



E MOLAHLEHI J

Judge of the High Court Gauteng Local Division, Johannesburg

Representations:

For the Plaintiffs: Adv J Vilakazi

Instructed by: Mangxola Attorneys

For the first and third defendants: Adv. Z.R Nxumalo

Instructed by: The State Attorney

For the second defendant: Adv T. Mlambo

Instructed by: The State Attorney

Judgment delivered: 17 May 2023.