



Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

In the matter between:

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| 1. | NOKUZOLA NGOMANA | CASE NO: 23036/09 |
| 2. | ZOLANI VIVIAN MAJALAMBA | CASE NO: 23037/09 |
| 3. | NONTOMBISE NTSHOLO | CASE NO: 23039/09 |
| 4. | NOKUZOLA SYLVIA MBALI | CASE NO: 23040/09 |
| 5. | FRANCIS TSALISWA MAMKELI | CASE NO: 23045/09 |
| 6. | KUTALA MTHAMBEKA | CASE NO: 23048/09 |
| 7. | XOLISWA ZENANI | CASE NO: 24310/09 |

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| 8. | VELEKA ZWENANI | CASE NO: 24336/09 |
| 9. | MONICA NTOMBENTSHA | |
| | BENTELE | CASE NO: 24337/09 |
| 10. | LUBABALO CHINTSO | CASE NO: 24338/09 |
| 11. | NOZIPHO REGINA PAMLA | CASE NO: 24339/09 |
| 12. | NOMSEBENZI ELINA TENJWAYO | CASE NO: 24340/09 |
| 13. | ZAMA PLAATYI | CASE NO: 23041/09 |
| 14. | TEBELLO RICHARD SIDLAYIYA | CASE NO: 24342/09 |
| 15. | NXOLO ALICE SABANE | CASE NO: 24343/09 |
| 16. | NOMANEJI MTHINE | CASE NO: 24344/09 |
| 17. | NTOMBOXOLO NAKE | CASE NO: 24345/09 |
| 18. | BULELANI SAMSON NTYAMBA | CASE NO: 24351/09 |
| 19. | BULELWA MATISO | CASE NO: 24352/09 |
| 20. | PATRIC THOBANI GWILI | CASE NO: 24403/09 |

21. NOLWAZI MAVIS TYO

CASE NO: 24404/09

Applicants

and

THE CHIEF EXECUTIVE OFFICER OF THE

SOUTH AFRICAN SOCIAL SECURITY AGENCY

Respondent

JUDGMENT DELIVERED: 13 SEPTEMBER 2010

BINNS-WARD J:

Introduction

1]Twenty one applications involving relief sought against the Chief Executive Officer of the South African Security Agency ('the Agency') were allocated for hearing together before me. The applicants were all represented by a single firm of attorneys. In all but two of the applications the relief sought is an order directing that the respondent consider and determine the applicant's

application for social assistance and advise the applicant's attorney in writing of such determination within 15 days. In the other two applications, the relief sought is for an order compelling the respondent to furnish full written reasons for the refusal of those applicants' applications for social assistance. In some of the cases constitutional damages are claimed on the basis recognised in *MEC, Department of Welfare, Eastern Cape v Kate* 2006 (4) SA 478 (SCA) ([2006] 2 All SA 455).

2]The applications were heard together because they are believed to be the first of this nature brought before this court. Fifteen of them had first come before me on a single day during the last week of the December-January court recess and the other six had been set down for hearing on a single day during the following week. It is evident from the experience in certain of the High Courts elsewhere in the country that inefficiencies in the administration of social assistance have the potential to give rise to what Wallis J, in analogous circumstances, described as 'a cottage industry' for agents and attorneys.¹ The resultant litigation clogs

¹ See *Sibiya v Director-General: Home Affairs and Others, and 55 Related Cases* 2009 (5) SA 145 (KZP) at para. [63]. Having regard to the huge number of social grants under administration (the 2007 South African Institute of Race Relations annual survey gave the number as nearly 11 million persons - *Cele v South African Social Security Agency and 22 Related Cases* 2009 (5) SA 105 (KZP) at para. [26] – and the number of 13 million was reported in the press shortly before the hearing of this application in February-March 2010), the extent of inefficiency in the Agency's offices does not need to be particularly marked to give rise, potentially, to a great number of litigious complaints.

the court rolls and leads to very substantial costs being incurred (unnecessarily, more often than not) by the Agency; no doubt to the detriment of the State's ability to better fulfil its relevant obligations in terms of s 27 of the Constitution to provide access to social security.

3]The volume of social assistance application related cases in the KwaZulu-Natal and Eastern Cape High Courts has resulted in the institution in both those jurisdictions of a special practice regime directed at facilitating the resolution, without resort to litigation, of the issues that typically give rise to applications like those now before this court.² The extent of the problem and its peculiar characteristics are discussed at length and with helpful insight in *Cele v South African Social Security Agency and 22 Related Cases* 2009 (5) SA 105 (KZP); 2008 (7) BCLR 734.³ It would be a supererogation to rehearse them. Suffice it to say that as a result

² See Eastern Cape Rule of Practice 21 (published in Van Loggerenberg and Farlam, *Erasmus, Superior Court Practice* D4-8C-D [Service 34, 2009]) and KwaZulu-Natal Practice Directive 30 (Erasmus, *Superior Court Practice* D9-14-15). The large number of unreported judgments of the North West High Court in regard to this type of application that are available on the internet suggests that in that jurisdiction too social assistance grants are fertile ground for litigation. In *Van Wyk v CEO of the South African Social Security Agency and Another* (1606/2007) [2009] ZANWHC 7 (5 March 2009) (<http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZANWHC/2009/7.html>) at para. [29], Sibeko AJ made reference to the 'large number' of such applications before that court, which, he observed 'invariably involve the same teams of legal representatives'.

³ See *Vumazonke v MEC for Social Development, Eastern Cape, and Three Similar Cases* 2005 (6) SA 225 (SE) for an insight into the effect on the Eastern Cape High Court court rolls of the administration by the provincial department in the Eastern Cape of social grants under the dispensation that obtained under the Social Assistance Act 59 of 1992. See also *MEC, Department of Welfare, Eastern Cape v Kate* supra, at para.s [6]-[7].

of our consideration of that judgment it was directed by the Acting Judge President that the current matters should be argued together with a view to providing the court with a basis to seek to avert at the outset the occurrence in this jurisdiction of the problems that have beset the courts elsewhere in the country in like cases. It is appropriate to draw on the experience of those courts in devising appropriate remedial measures.⁴ A consideration of these made it apparent that the assistance of the State Attorney's office would need to be invoked. The applications were therefore postponed for hearing on appropriate directions. I express my gratitude for the constructive approach by counsel in response to these directions; and in particular to the State Attorney's office in Cape Town, which agreed to undertake a fundamentally important role in terms of the draft practice note that the respondent's counsel put in for consideration by the Judge President and other judges of this Court.

4]In the course of such consideration, because of concerns by the judges of this court as to whether it lies within the power of the

⁴ The generally beneficial results of the introduction of the practice regime introduced in KwaZulu-Natal after the judgment in *Cele*, supra, were recorded in a judgment by Wallis J on 28 May 2009 in an application for a review of the practice directives. See *Cele and Others v South African Social Security Agency* (7940/07) [2009] ZAKZDHC 16 (28 May 2009), which may be accessed at <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAKZDHC/2009/16.html>.

court to lay down, or regulate pre-litigation procedures, it has been decided not to publish a practice note as initially contemplated. It is, however, accepted that it would be beneficial for all concerned, including the court, if the Department, the Agency and the State Attorney were nevertheless to proceed voluntarily with the implementation of the scheme proposed in the draft practice note, as they obviously may. The aforementioned organs of state are therefore requested to proceed forthwith, in accordance with their indicated intention at the hearing, with the institution in the Western Cape of a system based broadly on the KZN High Court practice note. A consideration of the current matters and of historical experience in other High Court jurisdictions suggests that the institution of such a scheme would largely eliminate the need for litigation in cases such as this. To assist in that object I shall set out below, for information, the basis upon which such scheme is intended to operate. The content is drawn from the draft practice note put in by the respondent's counsel, but with some changes to the suggested timelines to meet certain of the concerns expressed by the applicants' counsel.

5]The scheme will operate as follows:

- (a) Before the institution of any proceedings against the Minister of Social Development and/or the South African Social Security Agency in which orders are sought for the consideration and determination by the Minister and/or the Agency of any appeal, or any application for a social assistance grant under the Social Assistance Act, or for the furnishing of reasons for any determination of any such appeal or application, or in any matter arising from the withdrawal or discontinuance of a social grant, the legal representative of the claimant is advised to address a letter of demand complying with the requirements set out in paragraph (b), below, by registered post:

1. in matters in which the Minister would be cited as the respondent, to-

The Minister of Social Development

Private Bag X9001

Pretoria

0001

Attention: The Independent Tribunal

2. in matters in which the Agency, or any of its executive officers would be cited as the respondent, to-

The Regional Executive Manager

South African Social Security Agency

Private Bag X9189

Cape Town

8000

Attention: Ms S. Lioma

or by receipted hand delivery to -

The Regional Executive Manager

South African Social Security Agency

20th Floor

Golden Acre Building

Adderley Street

Cape Town

Attention: Ms S. Lioma

- b) The letter of demand should provide the following information:

- (i) the full names and identity number of the applicant, and in matters in which the social grant in issue is in respect of a person other than the applicant (for example, in the case of a child support grant) also the name and identity number (if applicable) of such other person together with a succinct description of the basis upon which the applicant is acting on behalf of such other person.
 - (ii) The type of social grant that had been applied for, or is in issue.
 - (iii) A succinct statement of the nature of the complaint giving rise to the letter of demand and the relief that is sought.
 - (iv) Particulars of the administrative centre where the application for the social grant was lodged and of the date upon which the application was lodged, supported, if possible, by a copy of the receipt issued by the Agency in respect of the lodgement of the application issued to the applicant in terms of **Regulation 8(3)(b)** of the Regulations in GN R418, or, failing that, supported by such other information as will enable the State Attorney to identify the application in the records of the Agency; alternatively, in matters in which the complaint pertains to an appeal that has been lodged in terms of the Social Assistance Act, a copy of the notice of appeal should be enclosed and full particulars furnished as to how, when and where the appeal was lodged.
 - (v) Full particulars of the name, postal address, telefax number, telephone number and email address of the attorney representing the applicant.
- c) The aforementioned letter of demand should be accompanied by a written authority by the applicant confirming that information concerning the applicant or the application for a social grant or appeal, as the case might be, may be released to the attorney concerned.
- d) The Minister, or the Agency, as the case might be, will endeavour to furnish a reasoned response to the letter of demand within 20 working days of the postage of the aforementioned letter of demand, or, if it that is not possible, furnish a response stating its requirement for further time (not exceeding 10 working days beyond the expiry of the aforementioned period of 20 days) within which to furnish a reasoned reply to the letter of demand.
- e) In the event of there being no response, alternatively a response considered

by the applicant to be so unsatisfactory as to give rise to a need for litigation, one month's written notice of the intention to litigate should be given by registered post, or by hand delivery to the office of the State Attorney, Cape Town, before process commencing proceedings is submitted by or on behalf of the applicant to the Registrar of the High Court to be issued. The notice of intention to litigate should set forth the nature of the relief to be sought in the intended litigation and should be accompanied by a copy of the letter of demand referred to in paragraph (a), above. In the event that the Minister, or the Agency has responded to the letter of demand, a copy of such response should also be attached to the notice of intention to litigate given to the State Attorney.

- f) On receipt of a notice of intention to litigate as provided in paragraph (d), the State Attorney will record the particulars thereof in a register and allocate a reference number to the matter, and advise the claimant's legal representative thereof. The State Attorney shall thereafter, in liaison with the Agency or the Independent Tribunal, as the case might be, endeavour to dispose of the complaint within the period of one month referred to in paragraph (d) so as, if possible, to avoid or limit the ambit of litigious proceedings.

6]The scheme is intended primarily to operate in matters in which the aggrieved applicants for social assistance are legally represented; although, of course, it would be beneficial for unrepresented claimants also to make use of it. I am authorised by the Judge President and the other judges of this court to make it known that in matters amenable to the scheme an unreasonable failure by legally represented claimants to avail of its provisions before the institution of litigation will be taken into account in the determination of costs.

7]In terms of the KZN practice note the State Attorney in that jurisdiction was directed to report to the Judge President on the operation of the system introduced there in terms of the practice note. It will clearly be of assistance if the judges of this court were to be similarly apprised of the effects, beneficial or otherwise, of the implementation and operation of the aforementioned scheme in this jurisdiction. The State Attorney is therefore requested to submit written reports to the Judge President in that regard at such intervals as she deems useful and expedient.

8]It is necessary that the existence of the scheme to be put into effect, as described above, be drawn to the attention of interested parties. With that objective in mind, I shall issue a direction at the conclusion of this judgment that notice of this judgment, together with a copy of the text of paragraphs Error: Reference source not found - hereof, shall be circulated by the Registrar to the Cape Bar Council, the Law Society of the Cape of Good Hope, the Independent Advocates Association of South Africa and the National Forum of Advocates. The Registrar will also be directed to similarly inform the Minister and the Cape Town regional office of the Agency in writing at the addresses given in paragraph (a)(i) and (ii), above. The State Attorney is furthermore requested to

draw the information to the attention of the attorneys of record for the claimants in all proceedings in matters currently pending of the nature described in paragraph (a) in which process has been served on the office of the State Attorney.

The applicable statutory framework

9]Before turning to deal with the applications individually, it is convenient to outline the applicable statutory framework. The Agency is a public entity established in terms of s 2 of the South African Social Security Agency Act 9 of 2004. The principal function of the Agency is to administer social assistance in terms of Chapter 3 of the Social Assistance Act 13 of 2004. The term 'social assistance' relates to the provision of a variety of social grants, as described in Chapter 2 of the Social Assistance Act; for example, child support grants, disability grants and older person's grants. In terms of s 14(1) of the Social Assistance Act, any person who wishes to apply for social assistance must do so 'in the prescribed manner'.

10]The Agency is required on receipt of such an application to

conduct an investigation into its merits and if it is satisfied that the applicant qualifies for social assistance it must render the relevant assistance.⁵ Section 14(3)(b) of the Social Assistance Act provides that if the applicant does not qualify for social assistance the Agency must, in writing, at the applicant's address or other point of contact stated in the application, inform the applicant (i) that he or she does not qualify for social assistance in terms of this Act; (ii) of the reasons why he or she does not qualify; and (iii) of his or her right of appeal in terms of s 18 of the Act, with details of how the applicant may exercise that right.

11]The administration of the Social Assistance Act thus far has occurred under three successively applicable sets of regulations. In terms of the transitional arrangements provided in terms of s 33(2) and (3) of the Act, the regulations in place in respect of the administration of the repealed 1992 Act were deemed to have been made under the corresponding provisions of the 2004 Act. The relevant regulations were those set out in GNR 417 of 1998, published in Government Gazette 18771, dated 31 March 1998. Those regulations thus applied with effect from the commencement of the 2004 Act on 1 April 2006.

⁵ Section 14(2) and 14(3)(a) of the Social Assistance Act.

12]A set of regulations which appeared to repeal the 1998 regulations was published, purportedly in terms of s 32 of the 2004 Social Assistance Act, in GNR 162 in Government Gazette 27316 of 22 February 2005. A so-called 'clarification', published in Government Notice R1280 in Government Gazette 29471 on 11 December 2006, explained that the regulations published in February 2005 were not in force and had been published only for public comment. The clarification notice was published to address the apparent perception that the 2005 regulations were in force. On 11 April 2008, the Minister of Social Development withdrew the clarification notice and announced that the regulations published in GNR 162 of 22 February 2005 'are in force'.

13]The February 2005 regulations were then repealed in terms of regulation 38 of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in respect of Eligibility for Social Assistance. The repeal was published in GNR 898 of 22 August 2008 published in Government Gazette 31356 of that date, and was of immediate effect.

14]Counsel were agreed, correctly so in my judgment, that the

effect of the foregoing was that the 1998 regulations applied until 10 April 2008; the 2005 regulations applied from 11 April to 21 August 2008; and the 2008 regulations have applied since 22 August 2008.

15]Only one of the applicants in the matters before me submitted the relevant application for social assistance during the period that the 1998 regulations were in effect. Four of the applicants' applications for social assistance were submitted during the short time that the 2005 regulations applied; and the remaining sixteen applicants' applications were submitted after the August 2008 regulations had come into effect.

Identification of legal issues common to many of the applications

16]It is appropriate at the outset also to address certain issues which arise in, or are common to, a number of the applications. These issues are (i) the nature of communication by the Agency to applicants for social assistance; in particular whether the duty to inform such applicants of the outcome of their applications is

fulfilled only if the Agency is able to prove that the applicant actually received the relevant notification, whether under s 14(3)(b) of the Social Assistance Act, or regulation 13 of the August 2008 regulations; (ii) whether applications of the nature currently before the court are subject to the provisions of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'), and therefore subject to the time limits prescribed in terms of s 7(1) of PAJA for the institution of review proceedings; (iii) the applicability of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 to the claims for constitutional damages; and (iv) whether written notice informing applicants who have applied unsuccessfully for disability grants that their application has been unsuccessful because it was not supported by the required medical report provides sufficient in the way of reasons for the decision to comply with the requirements of s 14(3)(b)(ii) of the Social Assistance Act read with the applicable regulations.

The ambit of the Agency's duty to inform an applicant for a social grant of the outcome of the application

17]Section 14(3)(b) of the Social Assistance Act provides:

If the applicant does not qualify for social assistance in terms of this Act, the Agency must in writing at the applicant's address or other point of contact stated in the application, inform the applicant-

- (i) that he or she does not qualify for social assistance in terms of this Act;
- (ii) [of] the reasons why he or she does not qualify; and
- iii) of his or her right of appeal contemplated in section 18 and of the mechanism and procedure to invoke that right.

(Underlining provided for emphasis.)

18]Regulation 13 of the August 2008 regulations goes as follows, insofar as currently relevant:

13 Notification of Outcome

- (1) The Agency must, within three months of the date of the application for a social grant notify the applicant of the approval or rejection of the application for the social grant.
- (2) A notification contemplated in subregulation (1) must be delivered to the applicant by-
 - (a) hand, against signature by the applicant, or at the address furnished by the applicant at the time of application; or
 - (b) pre-paid registered post to the address furnished by the applicant at the time of the application.
- (3)
- (4) Upon refusal of a social grant application, the Agency must inform the applicant in writing of such refusal and of-
 - (a) the reasons for such refusal; and
 - (b) the applicant's right to appeal the decision and the mechanism and procedure to lodge an appeal.⁶

⁶ The 2005 regulations provided (in sub-reg. 12(2)) insofar as relevant: 'The Agency must, upon refusal of a grant application, or within a reasonable period thereafter, inform the

(Underlining provided for emphasis.)

19]The applicants' counsel relied heavily on the judgment of Pistor AJ in the North West High Court in the matter *Mokaimang David Senatle v The Chief Executive Officer of the South African Social Security Agency*, (case number 1471/08, 30 April 2009),⁷ in which a distinction was drawn between the import of the word 'inform' and that of the word 'notify', to argue that where the requirement is that the applicant be 'informed' the onus is on the Agency to prove that the relevant information has actually been imparted to the applicant and that it is not sufficient for it to prove that the information was sent by post to the applicant. The Social Assistance Act itself expressly requires an applicant to be 'informed' of the result of an application for social assistance only in the event of the Agency concluding that the applicant does not qualify for social assistance in terms of the Act.

20]As apparent from the provisions, quoted above, the Act and the 2008 regulations do not deal consistently with what must be done by the Agency after an application for social assistance has been determined. The regulations provide that the applicant must be

applicant of such refusal in writing and in the language of preference of the applicant, and give reasons for such refusal'.

⁷ The judgment may be accessed on the SAFLII website at <http://www.saflii.org/za/cases/ZANWHC/2009/11.pdf>.

notified of the outcome of the application and provides in sub-regulation 13(2) how that is to be done. Sub-regulation 13(4) prescribes what the notification to an unsuccessful applicant must contain by way of information. In this regard it should be noted that the only applicant that, in law, can be unsuccessful is one who does not qualify for social assistance. This follows because the Agency is under an obligation to render social assistance to everyone who qualifies for it. Can it be that the legislation contemplates two notices, or letters to the unsuccessful applicant; one *notifying* him/her of the result and the other *informing* him/her of the matters prescribed in terms of s 14(3)(b) of the Act and sub-regulation 13(4) of the 2008 regulations? That seems inherently improbable. Does the use of the word ‘inform’ denote something essentially different from ‘notify’, as held by the North West High Court in relation to the 1998 and the 2005 regulations? The answer must be sought in the contextual construction of the Act and regulations. It is trite that it is generally futile to define the meaning of words in a statutory or contractual document in isolation from their employment in the particular context.

21]In *Senatle*, the learned acting judge expressed the view that ‘it is well settled in our law that when the term “inform” is used in any

statutory provision, it implies that the person who has the duty to inform has to ensure that the person who has to be informed receives⁸ the relevant information. Until the required information has been received by the person who is supposed to receive same, that person has not been “informed” and the person who has the duty to inform, has not discharged such duty’. The *dicta* of Cloete J (as he then was) in *Marques v Unibank Ltd* 2001 (1) SA 145 (W) at 156J and of C J Claassen J in *Van Niekerk and Another v Favel and Another* 2006 (4) SA 548 (W) at 563-4 were cited in support of this view.

22]It is evident, however, if the judgment in *Marques* is read as whole, that Cloete J did not purport to offer a generally applicable definition of the word ‘inform’ in all legislation. In *Van Niekerk*, C J Claassen J merely agreed with Cloete J’s construction of s 19 of the Alienation of Land Act, 1981. The exercise of interpretation undertaken by both judges took into account, in the usual manner, the context in which the word was used, including the wider context of the relevant legislative history and the indications of legislative intent that could be inferred from certain amendments. Indeed, as appears from those judgments, it was acknowledged

⁸ Underlining in the original.

that the words 'notify' and 'inform' can be synonymous.

23]As far as I could determine, the word 'inform' is used 15 times in the Social Assistance Act. In many instances the statute expressly enjoins the Agency to inform the party concerned, in writing, by registered mail. In s 16(7)(b) of the Act, for example, the Agency is enjoined to inform the beneficiary 'in writing by registered mail at the last known address of that beneficiary in the Republic'. See also s 20(2) of the Act. In these instances it appears to me that the Agency's duty would be discharged by posting the notice by registered mail to the beneficiary at the given address. It would not be necessary to prove that the beneficiary had actually received it. The imposition of the duty to do the informing by means of registered mail is because the legislature is aware that the chances of registered post going astray are markedly less than in the case of ordinary mail. The legislature must also be taken to have been conscious of s 7 of the Interpretation Act 33 of 1957 when it formulated the requirement that the applicants be informed by registered post. Section 7 of the Interpretation Act provides:

Where any law authorizes or requires any document to be served by post, whether

the expression 'serve', or 'give', or 'send', or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a registered letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

24]The provisions of s 14(3)(b) of the Social Assistance Act are less onerous than those other provisions of the Act to which I have drawn attention, in which notice in writing by registered post is the prescribed means of discharging the duty to inform. Section 14(3)(b) merely prescribes that the unsuccessful applicant must be informed in writing, which would suggest that notification by ordinary post to the addressee at the given address or contact point would suffice. It is the provisions of regulation 13 of the 2008 regulations that direct that the written notice may be given by hand, against the recipient's signature, or by registered post. I accept that the regulation was competently made because it appears to me that the prescription contained therein was made pursuant to the Minister's power, in terms of s 32 of the Act, to make regulations, amongst other matters, providing for 'uniform norms and standards for service delivery' and 'any other matter which it is necessary to prescribe for the proper administration or implementation of [the] Act'. Furthermore, because I cannot conceive that the applicable administrative regime in terms of the

Act read with the regulations requires two notices in respect of the outcome of applications for social assistance, I also accept that in the case of an unsuccessful application the notification required in terms of sub-regulation 13(1) read with sub-regulation 13(2) must contain the information required by s 14(3)(b) of the Act and sub-regulation 13(4).

25]In the result I hold that the Agency will be held to have discharged the duties placed upon it in terms of s 14 of the Social Assistance Act and regulation 13 of the 2008 regulations upon proof by it that it has posted the relevant notification to the applicant by registered mail to the given address, or, if applicable, hand delivered it in the manner provided in sub-regulation 13(2)(a). Where notification is effected by registered post in the manner permitted, it is not incumbent on the Agency to prove actual receipt by the applicant of the written notification.

26]In *Senatle*, supra, Pistor AJ held, however, with reference to the provisions of regulation 12(4) of the 2005 regulations, that the presumptions in s 7 of the Interpretation Act did not act to assist the Agency's discharge of its duty to inform applicants for social

assistance. Regulation 12(4) of the 2005 regulations stated that 'whenever the Agency informs an Applicant of the outcome of an application, the Agency must ensure that the Applicant fully understands the decision of the Agency, the reasons thereof and the procedures to be followed thereafter'. Pistor AJ inferred from the imposition of a duty on the Agency to ensure that the applicant understood the various matters described in the sub-regulation that the Agency was thereby burdened with an onus to prove actual communication with the applicant.⁹ I consider that it is necessary to consider s 7 of the Interpretation Act (quoted above¹⁰) to determine whether this is really so. I do not agree that the provision of the 2005 regulations evinces a 'contrary intention' within the meaning of s 7 of the Interpretation Act¹¹ serving to displace the presumption created by that provision, as the learned acting judge must be taken to have implied.

27]In my view the obligation imposed in terms of regulation 12(4) of the 2005 regulations was no more than an iteration of the duty of the Agency to ensure that its notice informing an applicant of the outcome of an application was formulated so as to, in a readily

⁹ See *Senatle* at para. 11.11 – 11.17.

¹⁰ See para. .

¹¹ Compare s 1 of the Interpretation Act where the concept of 'contrary intention' is also referred to in a relevant sense.

comprehensible form, advise the applicant of the decision of the Agency, the reasons therefor and the procedures available by way of possible response by the applicant to the decision.¹² In related vein I should also state that I am not persuaded by the argument advanced by the applicants' counsel that there was no authorisation, as contemplated by s 7 of the Interpretation Act, of the giving of notice by post of the outcome of applications for social assistance before the introduction of the 2008 regulations. The wording of s 7 of the Interpretation Act makes it clear that the statutory authorisation of notice by post does not have to be express for the presumptions created by the section to apply. Section 7 enjoins a consideration of the language used in the statute and a determination whether that language, contextually construed, authorises or requires any document to be transmitted by post. In my view, s 14(3)(b) of the Social Assistance Act, by authorising notice in writing to be given to the address provided by the applicant in his/her application, impliedly mandates the posting of the notice to such address.¹³

12 Cf. the statement that Jones J is reported to have made (albeit in the context of deciding a matter to which the 1998 regulations applied) in *Nomasami Kulati v MEC for Social Development, Eastern Cape* (28 March 2005) unreported judgment in SECLD case no. 512/04 at para. 4 (quoted in *Sikutshwa v MEC for Social Development, Eastern Cape and Others* 2009 (3) SA 47 (TkHC) at para. [28]): 'I do not think that there is any dispute that the Director-General's duty to inform the applicant in writing means that the writing must effectively bring the decision to the applicant's attention in clear and intelligible terms.'

13 The position was indeed different under the 1998 regulations and the 1992 Act, which was the regime applicable to the matter decided by Jones J in *Kulati*, supra. The *dictum* of Jones J at para. 4 of *Kulati*, relied upon by the applicants' counsel, to the effect that s 7 of the Interpretation Act was not applicable because notification by post was not authorised by the

28]Section 14(1) of the Social Assistance Act and the regulations made to give effect thereto, by prescribing the manner in which applications for social assistance are to be made, support the conclusion reached by me in the preceding paragraphs. The applicable regulations are set out in Chapter 2 of the 2008 regulations. In summary they provide that the applicant or his/her 'procurator' have to present themselves in person at an office of the Agency or other designated place to complete the relevant application form in writing in the presence of a designated officer. It follows from regulation 13, quoted above,¹⁴ which is one of the regulations in Chapter 2 of the 2008 regulations, that the applicant or procurator is required to furnish an address at the time of the application. The evident purpose of the furnishing of this address is to enable the Agency to communicate with the applicant in writing by post or by physical delivery at the furnished address. Various provisions in the Act and in the regulations that provide for communications with applicants and beneficiaries at their 'last known address' or 'address ...stated in the application' are also indications that there is a duty on applicants to keep the Agency

statute is therefore distinguishable. The 1992 Act did not contain a provision equivalent to that found in s 14(3) of the 2004 Act; and although paragraph 25 of the Schedule to the 1998 regulations prescribed that the Director General had to inform an applicant for social assistance in writing of the outcome of the application, there was no provision entitling the Director-General to direct the notice in writing to an address furnished for such purpose by the applicant.

14 At para. .

advised of their whereabouts and that the Agency's duty is fulfilled by communication in writing by registered post to the given address. The deeming provisions of s 7 of the Interpretation Act connote that the risk of non-receipt of such communications is on the applicant, or beneficiary, as the case might be.

The applicability of PAJA

29]It was common ground between the parties that the granting or refusal of applications for social assistance constitutes administrative action. Counsel for the applicants however resisted the correctness of the suggestion made by me during argument that the applications therefore fell properly to be brought in terms of s 6 of PAJA. Cf. *Cele* supra at para.s [47]-[49]. The argument was that the applicants in all but two of the 21 cases sought mandatory interdicts compelling the respondent to disclose the outcome of their applications for social assistance and certain relief ancillary thereto, whereas in the other two matters the applicants sought a mandamus compelling the respondent to furnish full written reasons for the decision of the Agency to refuse their applications for social assistance. Ms *Zwiegelaar*, who

appeared for the applicants (together with Mr *Wilkin*), argued that the applicants were not seeking a review of the respondent's failure to consider their applications and notify them of the outcome within three months as required by the legislation, or of the alleged failure of the respondent to furnish two of the applicants with adequate reasons for the refusal of their applications. Ms *Zwiegelaar* also submitted that the SCA had held in *Kate's* case (*supra*) that PAJA was not applicable.

30]In my view there is no merit in the applicants' counsel's attempt to distinguish the current applications in a manner that would place them beyond the purview of PAJA. There is no disguising that the relief sought, however formulated, is directed at the achievement by the applicants of their right to administrative justice in terms of s 33 of the Constitution. PAJA is the legislation enacted in fulfilment of the obligation placed on the legislature in terms of s 33(3) of the Constitution to give effect to the rights afforded in terms of s 33(1) and (2) thereof.¹⁵ The bases provided for judicial review in terms of s 6 of PAJA, read with the wide range of the non-exclusively identified remedies described in s 8 of the statute, make it evident that the term 'judicial review' as it is used in PAJA

¹⁵ See the long title of and the preamble to PAJA.

is much wider than the import of that expression in respect of administrative action under the common law. Judicial review under PAJA is not limited to the review and setting aside or correction of decisions. The remedies described in s 8 include mandatory relief, whether by orders directing the administrator to act in a manner required by the court, or to give reasons for a decision. In exceptional cases an order for the payment of compensation can be made on judicial review under PAJA.

31]The reliance by the applicants' counsel on *Kate's* case in this respect was misplaced. The issue in *Kate's* case was the existence of a right of an applicant for social assistance to claim constitutional damages in a situation in which such applicant's rights had been infringed by the delayed processing of the application in breach of the applicant's right to administrative justice. It was common cause between the parties in that matter that PAJA did not apply. PAJA had in fact only come into operation 'long after the material events' in *Kate's* case had occurred.¹⁶ It is now established that PAJA does not have retrospective effect.¹⁷

¹⁶ See the judgment in *Kate* at para. [21].

¹⁷ Cf. *Tao Ying Metal Industry (Pty) Ltd v Pooe NO and Others* 2007 (5) SA 146 (SCA) at para. [124].

32]In *Kate's* case the principal relief sought was in any event directed at obtaining compensation in respect of the consequences of the respondent's failure to determine the applicant's application for social assistance within a reasonable time, whereas in the current applications the principal relief sought is directed at the implementation of the administrative process. In *Kate's* case the administrative process had run its course and nothing about it was being impugned in the proceedings on any of the grounds set out in s 6(2) of PAJA. By contrast, the claims for constitutional damages in some of the current applications are incidental to the principal relief sought by way of judicial review as contemplated by PAJA. Assuming for present purposes that PAJA is not applicable to claims for constitutional damages, save where such damages are sought incidental to the judicial review of administrative action, the SCA judgment in *Kate's* case does not afford any authority for the contention that an application for declaratory or mandatory relief in connection with administrative action, as defined in PAJA, and based on any of the grounds set out in s 6(2) of the statute, does not have to be brought under the aegis of that Act.

33]The applicants' counsel's concern about the application of PAJA to the current applications was focussed on the possibly

exclusionary effect of the time limits referred to in s 7(1) of the Act.¹⁸ The 180 day outer time limit prescribed in terms of s 7(1) of PAJA does not, however, appear to me to be applicable to applications for review based on the ground of review in terms of s 6(2)(g) of the statute; viz. on the grounds of the administrator's failure to take a decision. The 180 day limit falls to be calculated with reference to the considerations in paragraphs (a) and (b) of s 7(1) of PAJA, neither of which will be present in the ordinary case in which the complaint is that no decision had been made. Thus, in respect of judicial review applications founded on s 6(2)(g) of PAJA, the requirement will ordinarily be simply that such applications must be brought within a reasonable time. What constitutes a reasonable time is a question of fact to be determined with regard to the circumstances of the given case.

The applicability of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 ('the Legal Proceedings Act')

¹⁸ Section 7(1) of PAJA provides:

'7(1) Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

- (a) subject to subsection (2)(c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2)(a) have been concluded; or
- (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.'

34]Section 14 of the South African Social Security Agency Act provides:

- (a) Any legal proceedings against the Agency must be instituted in accordance with the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002).
- (b) The Agency is, for purposes of paragraph (a), deemed to be an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the above Act.¹⁹

35]The question of the applicability of the Legal Proceedings Act arises in some of the current matters because the claims for constitutional damages were not preceded by any notice as required in terms of s 3 of the Legal Proceedings Act. Whether such notice was in fact required depends on whether a claim for the payment of constitutional damages is properly characterised as a claim for payment of 'a debt' as defined in the Act. In terms of s 1(1)(iii) of the Legal Proceedings Act:

“debt” means any debt arising from any cause of action -

- (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any-
 - (i) act performed under or in terms of any law; or
 - (ii) omission to do anything which should have been done under or in terms of any law; and

¹⁹ Paragraph (c) of the relevant definition defines an 'organ of state' as 'any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in section 142 of the Constitution'.

- (b) for which an organ of state is liable for payment of damages,
whether such debt became due before or after the fixed date

36]I find myself in respectful agreement with the interpretational analysis by Wallis AJ (as he then was) at paragraph [44] of the judgment in *Cele*, supra.²⁰ At paragraphs [45] and [46] of the judgment, Wallis AJ expressed the opinion, albeit *obiter*, that the Legal Proceedings Act does apply to claims for the payment of constitutional damages arising out of non-compliance by the Agency with its obligations under the Act. I am also in agreement with that conclusion; it seems to me to be four square in line with the plain wording of s 14 of the South African Social Security Agency Act, read with the definition of ‘debt’ in the Legal Proceedings Act. The result is that any claim against the Agency for constitutional damages of the nature acknowledged in *Kate*, supra, is subject to compliance with the formalities prescribed in terms of s 3 of the Legal Proceedings Act; or failing that, and if the respondent relies on the claimant’s failure to give notice as required in terms of s 3(1) and (2), the granting of condonation for non-compliance as contemplated in terms of s 3(4) of the Act.

20 As pointed out by Wallis J, his construction of the effect of s 14 of the South African Social Security Agency Act was consistent with that of Ndlovu J in an earlier unreported judgment delivered in *Shandu v MEC for Social Welfare and Population Development*, KZN [\[2007\] JOL 19237](#) (N)

37]In the current matters the respondent took what might fairly be termed a shot-gun range of objections to the applications. While the answering affidavits did not refer in terms to the Legal Proceedings Act, the deponent did complain in general terms about the applicants' failure to comply with the 'guidelines' provided in Wallis AJ's judgment in *Cele*, supra. In *Cele*, the learned judge concluded his *obiter* remarks on the application of the Legal Proceedings Act to claims for constitutional damages in the context of matters of this nature by stating '...it is unnecessary for me to express a final conclusion on this question. I mention it, however, as it will need to be considered if these, or similar, claims are pursued without such notice having been given.'²¹

38]In the current matters I am prepared to assume in the applicants' favour that the widely cast and non-specifically framed objections by the respondent to the applications did not include a reliance on the failure of the applicants to give notice in terms of the Legal Proceedings Act. Certainly, it is desirable, in my view, that, if an organ of state wishes to raise such an objection, it should do so with specificity. Apart from any other consideration a specifically raised objection will alert the claimant in such matters

²¹ *Cele*, supra, at para. [46].

to the need to give consideration to an application for condonation.²²

39]The award of constitutional damages is, however, discretionary. The purpose of constitutional damages is not primarily to compensate for financial prejudice or patrimonial loss; it is rather a means by which the courts may seek by surrogate relief to give expression to the fulfilment or realisation of a claimant's abrogated constitutional rights by way of an award in monetary compensation – in other words to afford 'appropriate relief' within the meaning of s 38 of the Constitution. As stated in *Kate*, supra, at para. [25], 'Whether relief in that form is appropriate in a particular case must necessarily be determined casuistically, with due regard to, among other things, the nature and relative importance of the rights that are in issue, the alternative remedies that might be available to assert and vindicate them, and the consequences of the breach for the claimant concerned.'

40]There is no doubt that for the applicants in the current matters the rights entailed are of great importance. The means

²² It is now clear that the rather obtuse language of s 3(4)(c) of the Legal Proceedings Act does not exclude application for condonation in terms of s 3(4)(a) after the institution of the principal proceedings: see *Minister of Safety & Security v De Witt* 2009 (1) SA 457 (SCA).

qualifications for social assistance connote that it is only the poor who are eligible to receive it. Any unwarranted delay in the provision of such assistance in cases in which an entitlement to it is established will therefore undoubtedly have an acutely felt detrimental effect on the person requiring such assistance.

41]When it comes to the question of alternative remedies, consideration must be given to the extent to which the applicants might have obtained administrative redress without resort to litigation. In this regard, the descriptions by the applicants who are claiming constitutional damages of their attempts to pursue their claims at the offices of the Agency were notably lacking in corroborative detail and expressed in such general terms as to be beyond a meaningful response by the respondent.

42]A further factor to be taken into account in this respect is that what Nugent JA referred to in *Kate* as the word-processor spewn allegations²³ that characterised all of the applications were often demonstrably inaccurate and unreliable. I have also taken into account that the letters of demand that preceded the institution of proceedings were inappropriately addressed to a Khayelitsha

23 See *Kate*, supra, at para.s [6] and [21].

address, rather than to the respondent at the Agency's national or regional headquarters, which would, one suspects, have been more effective; and which would have been required if there had been compliance with the Legal Proceedings Act.²⁴ Had the applicants been acting without representation in this regard, I should probably have taken a different view on this aspect. In the circumstances that actually obtain, I cannot overlook that the formal demands made as a precursor to litigation were thus addressed on the applicant's behalf by a remunerated agent with an apparent interest in conducting profitable business in what, as previously mentioned, is something that in other jurisdictions has grown into something of a cottage industry.

43] Another matter that has weighed with me in considering the constitutional damages claims is that the endemic disregard for the claimants' constitutional rights that characterised the administration of the social assistance system by certain provincial administrations under the previous legislation, and which gave rise to justifiable expressions of outrage and the award of constitutional damages in numerous matters, including *Kate*, is not established on the papers in the current matters.

²⁴ See s 4 of the Legal Proceedings Act.

Sufficiency of reasons for refusal of applications for disability grants

44]As mentioned earlier, one of the issues common to a number of the applications before the court is whether written notice informing applicants who had applied unsuccessfully for disability grants that their application had been unsuccessful because it was not supported by the required medical report provided sufficient in the way of reasons for the refusal to comply with the requirements of s 14(3)(b)(ii) of the Social Assistance Act.

45]Some of the relevant provisions in the Act and the regulations have been set out in paragraphs and of this judgment. It is necessary also to have regard to the requirements with which any application for a disability grant must comply.

46]In the 2005 regulations, regulation 3(1)(b) provided, insofar as is relevant, that a person was eligible for a disability grant if ‘the disability is confirmed by a valid medical report of a medical officer and the report specifies whether the disability is permanent or temporary...’. In terms of regulation 10(2) of the 2005 regulations,

an application for a disability grant had to be accompanied, amongst other things, by a report from a medical officer.

47]Regulation 3 of the 2008 regulations essentially reiterates the requirements of regulation 3(1)(b) of the 2005 regulations. Regulation 11(2)(b) of the 2008 regulations essentially repeats the requirements of regulation 10(2) of the 2005 regulations.

48]When these requirements, whether under the 2005 or the 2008 regulations, are considered together it is evident that an application for a disability grant that was accompanied by a medical report (or 'assessment' as it is referred to in the 2005 regulations) that did not confirm the existence of a disability was bound to be unsuccessful. Such an application would fail to establish the applicant's eligibility for the grant. The remedy of an applicant who took issue with the medical report furnished by a medical officer would be to seek to obtain an improved report, or to otherwise seek to impugn the report that had been furnished; it would not be to challenge or query the Agency's refusal to approve a grant application that self-evidently did not satisfy the eligibility requirements.

49]In my judgment therefore, a notification to an applicant who had submitted an application for a disability grant that was not supported by a medical report confirming the disability, or was accompanied by a medical report negating the existence of a disability, which gave as a reason for the refusal of the application that it was not supported by the content of the submitted medical report would comply adequately with the requirement of s 14(3)(b) (ii) of the Social Assistance Act. It is not required of the Agency to interrogate a medical report submitted by the applicant that does not support the application. It is the duty of the applicant for a disability grant, alternatively that of such applicant's procurator, to procure and submit a medical report which, on its face, does support of the application. An applicant cannot expect the Agency to explain why the medical officer to whom the applicant has presented him/herself for confirmation of the existence of a disability finds that there is no disability. If the applicant has a complaint against the medical officer's findings, or wishes to obtain reasons for such findings, that is a matter to be pursued with the medical officer concerned, or with the medical officer's professional body or, if applicable, institutional employer. It might be that a failure by a medical officer to properly discharge his/her functions in preparing an assessment in terms of the regulations

arguably might give rise to judicial review, but, if so, the administrative decision impugned would be the findings of the medical officer; and not the decision of the Agency to refuse a non-compliant application for a disability grant.

50]The Agency is required to give reasons for the refusal of an application. In cases in which the application for a disability grant is not accompanied by a medical report confirming the existence of the disability, the Agency has no authority to grant the application. In those circumstances pointing out, or identifying the nature of the non-compliance of the application with the requirements for approval is an adequate explanation of the reason for the refusal of the application. It seems to me, with respect, that the judgments cited to me in argument by the applicant's counsel in which it has been held that there is a duty on the Agency to give reasons for the medical officer's findings that the applicant is not disabled²⁵ have overlooked the discrete nature of the decisions in issue (viz.

²⁵ *Vumazanke v MEC for Social Development, Eastern Cape and three Similar cases* 2005 (6) SA 229 (SE) at para.s [31]-[32] with reference to para. 25(2) of the Schedule to the 1998 regulations. (The 1998 regulations required that the disability be confirmed by a medical report) ; *Sikutshwa v MEC for Social Development, Eastern Cape and Others* 2009 (3) SA 47 (TkHC) at para.s [32]-[35] and *Matlakala Marriam Motsage v The Chief Executive Officer of the South African Social Security Agency*, (28 August 2008) North West High Court in case number 1026/08. In *Motsage* the passage relied upon by the applicants' counsel (at para. 30 of the judgment) described the reason furnished by the Agency as follows: '*The reason for refusing her application is said to be that she is not disabled. This is not a reason. It is a conclusion.*' The description of the reason furnished in that case is quite distinguishable from a reason to the effect that the application has been refused because the accompanying medical report does not confirm the existence of the alleged disability. In this respect *Motsage* is distinguishable from *Vumazonke* and *Sikutshwa*.

(i) the medical determination of the existence and nature of the alleged disability and (ii) the determination of the eligibility of an applicant for the award in terms of the legislation administered by the Agency) and also the discreteness of the functions of the functionaries charged with making them. The first decision, namely that of the medical officer, is separate from and antecedent to any consideration by the Agency of the application for a social grant. The reasons for the second decision, namely whether or not to approve the application, bear reference to the first decision, but they do not include revisiting the merits of the first decision. In furnishing its reasons in compliance with s 14(3)(b) of the Social Assistance Act, the Agency is required to give the reasons for the second decision, as aforementioned; not the first.

51] Having addressed the identified issues common to a number of the applications it is now time to deal with each of the applications, individually.

The application of Nokuzola Sylvia Mbali

52] In proceedings instituted on 30 October 2009, the applicant

sought orders directing the respondent to consider and decide her application for a disability grant and to advise her in writing of his decision within 15 days, with reasons for refusal should the application be refused. In the event of the application for social assistance being granted, the applicant sought compensation for the non-receipt of assistance that she alleges she should have received had her application been decided timeously, together with constitutional damages in an amount equivalent to *mora* interest on the amounts that should have been paid to the applicant earlier.

53]The application for a disability grant was submitted on 26 March 2008. In my view the institution of proceedings more than 18 months after the submission of the relevant application for social assistance was unreasonably delayed; and in the absence of an application to condone the delay, this afforded good grounds for the refusal by this court to entertain the application. I shall proceed, however, to deal with the matter on its merits to show that on any approach it falls to be dismissed.

54]The date of submission meant that the application for social assistance was subject to the 1998 regulations. The Social

Assistance Act provides that a person is eligible for a disability grant if, amongst other matters, he or she is, owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance.²⁶ The 1998 regulations provided that an application for a disability grant was required to be supported by a medical assessment confirming the existence of the disability. This was an 'additional requirement' for eligibility imposed by the Minister in terms of s 5(2), read with s 33(2), of the Social Assistance Act.

55]It is evident that the application for a disability grant in issue in the current matter was not the first such application submitted by the applicant. An application submitted by her in 2007 was refused because her claim to be disabled by reason of tuberculosis and high blood pressure was not supported by the results of a medical assessment. It is apparent from the respondent's answering affidavit that the application submitted by the applicant in 2008 was also not supported by a medical assessment confirming her alleged disability. In the circumstances it is apparent that the applicant did not submit an application complying

²⁶ See s 5(1)(a) read with s 9 of the Social Assistance Act

with the requirements of the legislation and that it should have been apparent to her when she made the application that she did not comply with the eligibility requirements.

56]The applicant failed to disclose in her founding papers that her claim to be suffering from tuberculosis and a disabling degree of high blood pressure had been previously refuted on medical examination and that the application submitted by her in 2008 was also not supported by the accompanying medical report. She also failed to disclose that her 2007 application had resulted in her receiving a grant for temporary disability based on her having been diagnosed as asthmatic.

57]The respondent alleges that the application was refused (as it had to be) and that the applicant was informed of this in a letter dated 15 April 2008 addressed to an address at which the applicant appears to have received previous communications. A copy of the letter, which was introduced in evidence, explains that the applicant did not qualify for a disability grant in the light of the medical assessment. There is however no proof that the letter was addressed to the applicant by registered post.

58]The applicant alleges that she was not in receipt of the letter from the Agency advising her of the refusal of her application.

59]In the circumstances it is apparent that the applicant is now aware of the refusal of her application and of the reason for that refusal. It is also evident that her application failed on its face to satisfy the eligibility requirements and should in fact never have been submitted. The allegation in her founding affidavit that she had 'satisfied the requirements of s 9 and s 5 of the Act and complied with the prescribed conditions of the Act' was just untrue.

60]In all the circumstances no case for any of the relief sought is made out. It is only because I accept that the applicant's omissions and misdirections may well have been as a consequence of ignorance, rather than deceitfulness or wilful obtuseness, that I have desisted from dismissing the application with an adverse costs order.

61]In this matter therefore there will be an order dismissing the application, with no order as to costs.

The application of Francis Tsaliswa Mamkeli

62]In this matter, in which proceedings were launched on 2 November 2009, the applicant sought orders directing the respondent to consider and determine an application for a disability grant submitted by her on 4 July 2006. The further relief sought was essentially in the same vein as that described in respect of the Mbali application in paragraph , above. For the same reason as that mentioned in paragraph , above, the application to court was amenable to dismissal on account of the unreasonable delay in the institution of proceedings.

63]I do not intend to discuss this matter in any detail. Suffice it to say that, as in the previous case, the respondent produced a response that had allegedly been sent to the applicant in August 2006 informing her of the refusal of the application because it was not supported by the accompanying medical assessment. Also, as in the previous case, there is no proof that the notification of the refusal of the application was sent by registered post, or that it in fact came to her notice.

64]The applicant in the current case also failed to fully set out the history of her interaction with the Agency; and, as in the Mbali matter dealt with earlier, the averment in her founding papers that she satisfied the requirements of s 9 and s 5 of the Act and complied with the prescribed conditions of the Act was untrue. The medical assessment submitted in support of her application for a disability grant did not confirm that she had either a permanent or temporary disability rendering her eligible for a grant.

65]For the same reasons as in the previous matter, this application is dismissed, with no order as to costs.

The application of Kutala Mthambeka

66]In this matter, the applicant sought an order directing the respondent to supply full written reasons for the Agency's refusal of her application for a disability grant.

67]The applicant had been informed by the respondent that her application, which had been submitted in July 2009, was unsuccessful because 'in the light of [the accompanying medical]

assessment [she] did not qualify for a disability grant’.

68]The respondent’s answering affidavit and the annexures thereto reveal that the applicant had made an application for a disability grant in 2008 and that this had been unsuccessful because the application had not been supported by the accompanying medical assessment. The answering affidavit does not, however, deal with the application made by the applicant in 2009 and appears to confuse that application with the one submitted by the applicant in 2008.

69]In the answering affidavit, the deponent makes the following self-contradictory statement on behalf of the respondent: ‘The Agency has no record that the applicant has filed such an appeal [i.e. an appeal in terms of s 18 of the Social Assistance Act]. According to our records, she noted an appeal. This has been forwarded to the Appeal Tribunal, and is being processed.’

70]There is no copy of the medical assessment, or of the appeal (if there was one) in the papers. However, having regard to the considerations discussed in paragraphs -, above, it is apparent

that an applicant for a disability grant should not submit an application for social assistance if the medical assessment submitted in support of such application does not confirm the alleged disability on which the application is founded. If the medical assessment is understood by the applicant to have confirmed the disability and the Agency takes a different view, then the resultant issue is one of the proper construction of the assessment report. That sort of issue is pre-eminently one that falls to be determined on appeal, where, once again, the determination will be made on the basis of the appellate tribunal's reading of the medical assessment report. The meaning of the assessment report is an objective issue, which, because of the requirements of the legislation, discussed above, falls to be determined by the content of the report itself. If the report, objectively considered, does not confirm the disability, the applicant is ineligible.

71]In the circumstances I am not persuaded that the further reasons sought by the applicant are reasonably required. It must be remembered that the remedy in respect of the requesting of reasons afforded in terms of s 5(1) of the Promotion of Administrative Justice Act is available to a person who has not

been given reasons for the action. In the current case the Agency has given the applicant the reason for the refusal of her application. In my view, for all the reasons mentioned above, the reason furnished by the Agency is an adequate one. It might be that the applicant did not retain a copy of her application, or a copy of the medical assessment report, and that she would therefore need those documents to be able to assess the cogency of the reason given so as to decide whether to lodge an appeal against the decision. If so, her remedy is to request copies of those documents; not further reasons.²⁷ Indeed, the Agency would be well advised in cases where its reason for refusing an application for a disability grant is that the medical assessment does not confirm the existence of the disability to attach a copy of the assessment to its letter advising the applicant of the outcome of the application.

72]The application will therefore be dismissed. As discussed

²⁷ In *Administrative Law in South Africa* (Juta) 2007, at pp. 432-433, Professor Cora Hoexter points out 'The position is different when reasons have in fact been given and the complaint is that they are inadequate. While the terms of s 8 of the PAJA would not seem to rule out an order directing the administrator to furnish further or better reasons, this remedy was judged to be inappropriate in the *Maimela* case [*Commissioner SAPS v Maimela* 2003 (5) SA 480 (T); 2004 (1) BCLR 47]. Here, following the provision of cryptic reasons, an order had been sought for 'full and proper written reasons'. A full bench took the view that the proper course in such a situation is not to ask for better reasons but to have the action reviewed. As Du Plessis J indicated [at 487C-D], a court can order reasons to be furnished 'only if it concludes that the decision-maker did not give reasons at all or that what are purported to be "reasons" do not in law constitute reasons.'

above, my approach in this respect represents a departure from the approach of a number of judgments in some of the other High Courts. In the context of the existence of those judgments, I do not regard the institution of the current application, albeit that it proved unsuccessful, to have been unreasonable. With regard to that consideration and the fact that the peculiar social utility represented by the Agency makes it in some senses not an ordinary litigant, I have determined that the appropriate order as to the costs of the application would be to make no order as to costs. The application is dismissed with no order as to costs.

The application of Nontombise Ntsholo

73]The applicant applied for a disability grant on 20 August 2008. Alleging that she had not been informed of the outcome of that application, the applicant applied in these proceedings, instituted on 30 October 2009, for relief of the nature sought in the Mbali matter (see paragraph , supra).

74]In the respondent's answering affidavit it is averred that the applicant's application was refused because the accompanying

medical assessment report did not confirm the existence of any disability. A copy of the medical report, dated 8 August 2008, attached to the affidavit confirms that the medical officer expressed the opinion therein that the applicant did not qualify for a disability grant. The respondent also annexed a letter, dated 5 November 2008, which purports to note a statutory appeal on the applicant's behalf against the refusal of her application for a grant. The respondent indicates that there is a significant backlog in the determination of appeals and that the appeal is therefore still pending. The affidavit seeks to explain the reasons for the delay in the determination of appeals. The explanation makes it apparent that the Department of Social Services has been lacking in the putting into place of the necessary infrastructure for the proper administration of this aspect of the Social Assistance Act. This is unfortunate, to say the least. Hopefully, the default has now been addressed and such problems will not arise again in the future.

75]The applicant's counsel requested a postponement of this application so that the applicant could file a replying affidavit. No adequate reason for a postponement has been made out. It is not acceptable for a litigant to launch an application for urgent relief and then to put herself out of contactable reach of her legal

representatives for an indefinite period; *a fortiori* when the institution of proceedings had been unreasonably tardy in the first place. In the context of the documentary evidence attached to the respondent's affidavit, it is difficult to imagine in any event what purpose would be served by a postponement.

76]In the circumstances the application for a postponement is refused and the principal application is dismissed. For similar reasons to those given in paragraph , above, there will be no order as to costs.

The application of Zolani Vivian Majalamba

77]In this matter the applicant sought relief of an essentially identical nature as that described in paragraph , above, with reference to the Mbali matter, save that the nature of the social assistance in issue in this matter was a child support grant. It appears that the applicant had been registered for and in receipt of such assistance in the Eastern Cape. There was no record by the Agency of the relocation of the applicant to the Western Cape. The applicant had made a fresh application for social assistance in the Western Cape on 25 March 2009. She alleged that she had not been informed of the result of that application by the time she deposed to her founding affidavit on 31 October 2009.

78]The respondent alleges that it informed the applicant of the positive result of her application by letter dated 3 July 2009.

79]In her founding affidavit the applicant gives her address as 'House number 32325 Further Crescent, Khayelitsha'. The Agency's response to the application was addressed to '31 325 Futha Street, Makhaza, Khayelitsha', which the deponent to the

answering affidavit avers was the address furnished by the applicant in her application. A copy of the application which was included in the file of original documents handed up during argument by the respondent's counsel, without objection, confirms the correctness of the averment made by the deponent to the answering affidavit. The applicant confirmed in reply that her address was indeed Futha Street and apologised for the incorrect averment in her founding affidavit. In the absence of proof of postage by registered post of the Agency's response, I have no reason not to accept the applicant's averment that she did not receive the advice.

80]The applicant's child support allowance has, however, in any event been re-instated and there seems to be no practical need remaining for any relief. The applicant averred in reply that the payments which the respondent averred had been paid into her account had not been received. I have no basis for resolving the resultant factual dispute on paper. The issue of payment is clearly one that should be resolved administratively. With the information provided in the papers that should not prove difficult. Having regard to the considerations mentioned earlier,²⁸ and taking into

²⁸ At paragraphs -.

account that the respondent's evidence that notice of the outcome of the application was sent in July 2009, albeit not by registered post, I do not consider that it would be appropriate to make an award of constitutional damages.

81]The respondent contended that the institution of the application had been reckless and that the applicant should be ordered to pay the costs. While it does appear that the proceedings were unnecessary, the Agency was not blameless in this regard. Had more conscientious attention been given to responding to the applicant's letter of demand, proceedings would have been avoided. The current case affords an excellent example of the need for the introduction of and avilment by applicants of the litigation avoidance mechanism mentioned earlier.

82]In my judgment the application in the current matter was justified. Although there is no longer any need for the relief sought, the respondent must pay the applicant's costs of suit because of its failure to properly comply with regulation 13(2) of the 2008 regulations. An order will therefore issue noting that the applicant's application for social assistance has been granted and

directing the respondent to pay the applicant's costs of suit.

The application of Nokuzola Ngomana

83]In this matter the applicant sought relief in essentially the same terms as that sought in the preceding case of Majalamba. She submitted her application for a child support grant on 14 April 2009. Having not received a response from the Agency, notwithstanding a letter of demand, the current proceedings were instituted on 2 November 2009.

84]In the respondent's answering affidavit it is averred that the application was approved and that the applicant was informed thereof in writing on 23 November 2009. Reasons for the delay were given. These were said to be connected with the transfer of beneficiary particulars from Gauteng and attending to a request to change the form of payment of grants already being paid in respect of the applicant's other children.

85]The Agency should have responded to the social assistance application within the prescribed three month period and should

have informed the applicant of the reasons for the delay in determining her application.

86]In the circumstances the appropriate order is one noting that the social assistance application has been granted and directing the respondent to pay the applicant's costs of suit.

The application of Xoliswa Zenani

87]In this matter, similar relief was sought to that in the preceding case, except this time in respect of an application submitted for a disability grant. The application was submitted on 19 May 2009.²⁹ The applicant averred that notwithstanding the passage of more than the three months prescribed in the regulations and despite repeated enquiries at the Agency's local office she had not been informed of the outcome of her application by the time she deposed to her founding affidavit on 12 November 2009. The applicant stated that her application had been made in Khayelitsha, but the receipt annexed to her affidavit suggests that it must have been made in East London in the Eastern Cape.

²⁹ I have used the date stamped on the official receipt issued by the respondent, in preference to the date of 29 May 2009 mentioned by the applicant in the founding affidavit.

88]It further appears from the information set out in the respondent's answering affidavit that the applicant was medically assessed for the purposes of her application on 13 August 2009, which suggests that there must have been some interaction between herself and the Agency in connection with the processing of her application, which was not disclosed in her founding papers.

89]The answering affidavit states that the applicant's application was approved in January 2010 and she was informed accordingly. It is not apparent whether the letter informing the applicant of the outcome of her application was sent by registered post, as required in terms of the regulations.

90]The letter of demand in this matter was sent by the applicant's attorney less than three months after the applicant's medical assessment on 13 August; and proceedings were instituted only a few days after the three month period available to the Agency in terms of the regulations to determine the application after it had been supplemented by the medical assessment. In all the circumstances it will suffice to make an order noting that the applicant's application for a disability grant has been approved,

with no order as to costs.

The application of Veleka Zweni

91]In this matter the applicant averred that she had applied on 10 March 2009 for a child support grant. In proceedings launched on 18 November 2009 she sought an order directing that her social assistance application be determined within 15 days and, in addition, if the application were successful, an order awarding constitutional damages.

92]In the answering papers it was pointed out that the applicant had been informed on 24 March 2010 that her application had been approved. There is no indication of how this was done; more particularly, no proof that the notification had been sent by registered post. It was also averred in the answering papers that the applicant had also applied for a change of payment instruction in respect of a child support grant of which she was already in receipt and that this application had also been approved on 24 March.

93]The facts of this case do warrant the award of constitutional damages. However, in the absence of proof that the applicant was effectively notified of the outcome of the application in the manner prescribed in the regulations, it is noted that the application for social assistance was approved on 24 March 2009 and the respondent is ordered to pay the applicant's costs of suit.

The application of Monica Ntombentsha Bentele

94]In this matter the applicant applied for similar relief to that sought in the immediately preceding case, save that the nature of the social grant in issue is a disability grant. The applicant alleged that she had applied for a disability grant on 14 May 2008. She averred further that she satisfied the eligibility requirements for such a grant in terms of ss 5 and 9 of the Social Assistance Act. She testified that notwithstanding numerous queries directed by her in person to the office at which she had submitted her application, no-one had been able to advise her of its result. She also contingently sought an order for constitutional damages on the same basis as it was claimed in the other matters discussed above.

95]In the Agency's answering affidavit it was averred that the applicant was notified on 29 May 2008 that her application had been refused on the basis that it was not supported by the medical assessment report. A copy of the relevant medical assessment report, which is dated 23 April 2008, and presumably accompanied the social grant application, states that the applicant does not qualify for the grant and is fit to work. The answering affidavit alleged further that the applicant had submitted an appeal against the refusal of her disability grant application. A copy of the appeal, dated 11 July 2008, was annexed to the answering affidavit. The appeal had, however, not yet been determined when the answering affidavit was deposed to on 15 January 2010.

96]In a replying affidavit, the applicant confirmed having enlisted the assistance of the Treatment Action Campaign (under whose letterhead the aforementioned appeal was submitted), but averred that she had not been aware that that body had submitted an appeal on her behalf.

97]In all the circumstances it would appear therefore that the application should not have been instituted in the form it was. It is

also regrettable, to say the least, that the applicant should have averred in her founding papers that she satisfied the eligibility requirements under the Social Assistance Act when it was clear from the content of the medical assessment accompanying her application that this was not in fact the case. That said, it is inexcusable that after a delay exceeding 18 months the applicant had not been informed of the final result of the process and the appeal lodged on her behalf not yet determined. Accordingly, I shall make no order as to costs.

98]The application is dismissed with no order as to costs.

The application of Lubabalo Chintso

99]This matter concerned an application for a disability grant. The application was not supported by a medical assessment that confirmed the existence of a qualifying disability. For similar reasons to those furnished in respect of the Mbali application (dealt with from paragraph , above), the application is dismissed, with no order as to costs.

The application of Nozipho Regina Pamla

100]The applicant in this matter has on a number of occasions during the preceding five years applied for a disability grant. The current proceedings have been instituted in respect of an application for a disability grant submitted by the applicant in April 2009. The medical assessment report submitted by the applicant in support of her application for a social assistance grant stated that in the medical officer's opinion she did not qualify as being disabled. For similar reasons to those furnished in respect of the Mbali application (dealt with from paragraph , above), the application is dismissed, with no order as to costs.

The application of Nomsebenzi Elina Tenjwayo

101]In this matter the applicant applied on 18 August 2009 for a disability grant. She was advised by letter, dated 8 September 2009, that her application had been unsuccessful because 'in the light of [the medical assessment submitted in support of her application] you do not qualify for a disability grant'. The applicant seeks an order directing that the respondent 'supply the

Applicant's attorney with full written reasons for its refusal', failing which, granting the applicant leave to apply on the same papers, amplified where necessary, for an order setting aside the respondent's refusal of the application for social assistance and directing that the award of the social grant be approved.

102]The medical assessment report submitted by the applicant in support of her application stated that the applicant did not qualify as being disabled within the meaning of the Act as she did not suffer from any 'disabling medical illness'. For similar reasons to those furnished in respect of the Mbali application (dealt with from paragraph , above), there will be an order dismissing the application, with no order as to costs.

The application of Nomakaziwe Pawuli ('Zama Plaatyi')

103]In this matter the applicant had applied to the Agency in June 2009 for a disability grant. The nature of the relief sought by her in these proceedings was, in essence, the same as that sought in Mbali's case (see paragraph , above). The notice of motion named the applicant as Zama Plaatyi, whereas the founding

affidavit was deposed to by Nomakaziwe Pawuli. This shoddy lack of attention to detail is all too liable to occur when cases of a similar nature are brought at the same time in a large numbers by the same legal representatives and on the basis of founding papers which give the clear impression of having been prepared on a *pro forma* template. I shall revert to this aspect later in this judgment in regard to the taxation of costs.

104]It appears from the answering affidavit that the applicant had made an earlier application for social assistance in the Eastern Cape. Thus, when she submitted an application at the Agency's Khayelitsha office in June 2009, it was evidently necessary, in the circumstances, for that office to submit a 'transfer request' to the office in the Eastern Cape. The applicant was advised in December 2009 that she had been awarded a temporary disability grant. It is, however, not apparent from the answering papers why the applicant's application could not have been disposed of within three months of its submission in June 2009, long before the institution of the current proceedings on 18 November 2009.

105]In the circumstances an order is made noting that the

applicant's application for a disability grant has been determined and directing the respondent to pay the applicant's costs of suit. The delays involved in this matter were relatively short. With that consideration in mind, as well as those discussed earlier in general terms, I am not disposed to grant an award of constitutional damages.³⁰

The application of Tebello Richard Sidlayiya

106]In this matter the applicant averred that he made application at the respondent's Khayelitsha office on 22 May 2009 for an older person's social grant. He averred that as the institution of the current proceedings he had yet to be informed of the outcome of his application. Save that his application concerned a different class of social grant, he sought an order in essentially similar terms to that sought in the Mbali case (described in paragraph , above).

107]The answering affidavit pointed out that the application had in fact been made at the respondent's Eerste Rivier office. The respondent states that the application was in fact approved on

³⁰ At paragraphs -.

3 August 2009 and that the first payment into the applicant's bank account in September 2009 was returned as 'unpaid'. It was averred that 'a further and fresh payment has now been paid out to the applicant in January 2010'. There is no indication of whether the respondent's advice had been communicated to the applicant by registered post, as required in terms of the regulations. There is also no indication as to what the reason was for the non-payment of the pension attempted in September 2009.

108]It would appear in the circumstances that the applicant does not require substantive relief. I am not persuaded that an award of constitutional damages is justified on the peculiar facts. In the absence of any proof that the applicant was informed of the result of his application by registered post, it is, however, appropriate that the respondent be directed to pay the applicant's costs of suit and it is so ordered.

The application of Nxolo Alice Sabane

109]In this matter the applicant applied for a child support grant in respect of her minor child, Simanye. The applicant averred that

the application was submitted on 4 March 2009 at the pension office at Makhaza Hall, Khayelitsha. In proceedings instituted on 18 November 2009, the applicant sought in essence the same type of relief in relation to her aforementioned application for social assistance as was sought by the applicant in the Mbali case (*supra*, at paragraph).

110]The respondent averred that the applicant was already in receipt of a grant in respect of Simanye, same having been awarded pursuant to an application made earlier in the Eastern Cape. The respondent averred that the applicant had applied in January 2009 for a transfer of the grant to the Western Cape and that, after verification of information processes, this had been approved; and the applicant notified thereof by letter, dated 28 December 2009.

111]The documentation annexed to the respondent's answering affidavit does not bear out the averments in the body of the affidavit. Annexure NAS1 to the affidavit is in fact a letter, dated 28 December 2009, which purports, according to its tenor, to inform the applicant that her application for a child support grant in

respect of Simanye, dated 4 March 2009, has been approved with effect from the date of the application. There is no explanation in the papers as to why the applicant had not been so informed within three months of having submitted the application.

112]The administrative process entailed in this matter was not entirely without complication and for that reason, as well as those generally considered earlier,³¹ I am not disposed to make an award of constitutional damages.

113]An order will be made noting that the applicant's application for social assistance has been approved in accordance with the content of the Agency's letter, dated 28 December 2009. The respondent is directed to pay the applicant's costs of suit.

The application of Nomaneji Mthini

114]In this matter the applicant sought the same type of relief as that sought in the Mbali matter (paragraph , supra). The social assistance involved concerned an application for a disability grant.

The applicant averred that she had submitted her application for

³¹ At paragraphs -.

social assistance on 18 February 2009.

115]In answer, the deponent to the respondent's answering affidavit averred that the applicant had been advised by letter, dated 4 March 2009, that her application had been unsuccessful because the supporting medical assessment report established that she was not disabled. It is not established that the aforementioned communication had been sent to the applicant by registered post, as required in terms of the regulations. Furthermore, the copy of the medical report attached to the answering papers is incomplete and this deficiency was not cured by reference to the content of the file of original documentation handed in by the respondent's counsel, without objection from the applicants' counsel, at the hearing.

116]In the circumstances no order is made in respect of the substantive relief sought by the applicant, but respondent is directed to pay the applicant's costs of suit.

The application of Ntomboxolo Nake

117]Save that the social assistance applied for in terms of the Social Assistance Act was a child support grant, the relief sought in this matter was of the same sort as in the Mbali matter (paragraph , supra). The applicant averred that she had submitted the application for social assistance on 24 June 2009.

118]In the answering affidavit it was averred that the applicant had been advised by written communication, dated 28 December 2009, that the application had been approved. It was explained that the delay in processing the application had been due to the fact that the minor child in question was not the applicant's own child, but that of her husband's late wife. A 'verification' and a house visit had been necessary to determine that the minor child lives with the applicant and his father and that indeed care for the child.

119]In the circumstances there will be no order made in this application.

The application of Bulelani Samson Ntyamba

120]This application was yet another of those in which the relief sought was equivalent to that applied for in the Mbali case (paragraph , supra). The applicant applied for a disability grant on 11 March 2009. He averred in his founding affidavit that his application satisfied the qualification criteria prescribed in the Social Assistance Act and stated that his disability was confirmed by the medical practitioner who had examined him.

121]In response, the respondent averred that the application for a disability grant had been refused on 26 March 2009 due to the fact that the applicant did not qualify for a disability grant. The deponent to the answering affidavit stated that a copy of the medical assessment report was not attached to the affidavit 'due to the sensitive nature of the report', but offered to make it available in court if required. It was averred, however, that the report, by a certain Dr Matjekane, indicated that the applicant was fit for work and therefore does not qualify for a disability grant. The applicant did not challenge these averments in reply, or seek to have the medical report produced in court.

122]For the same reasons as those expressed in paragraph , above, in the Mbali matter, there will be an order dismissing the application, with no order as to costs.

The application of Bulewa Matiso

123]In this case too, the relief sought corresponded with that sought in the Mbali case (paragraph , supra). The applicant in this matter had applied for a care dependency grant in respect of her minor child, Simo. The application was submitted on 4 August 2008.

124]A care dependency grant is given to a person if he or she is a parent, primary care giver or foster parent of a child who requires and receives permanent care or support services due to his or her physical or mental disability and such person satisfies the eligibility requirements in terms of s 5 of the Social Assistance Act. In terms of the applicable regulations (the February 2005 regulations), the application was required to be accompanied by a report from a medical officer on the prescribed form.

125]In the answering affidavit, it was averred that the applicant had been informed in writing that her application for a care dependency grant had not been recommended by a medical officer and that she was entitled to appeal against the refusal of her application. The date upon which the aforementioned alleged communication was sent was not stated and a copy of the letter was not attached. The respondent averred that a further letter was sent to the applicant on 9 December 2009 to the address indicated in her founding affidavit.

126]A perusal of the original application documentation handed up by the respondent's counsel at the hearing indicates that the application submitted in August 2008 was processed only in September 2009.

127]No point would be served by making an order at this stage on the substantive relief sought by the applicant. An order will, however, be made directing the respondent to pay the applicant's costs of suit.

The application of Patric Thobani Gwili

128]In this matter the applicant applied for a disability grant on 22 October 2008. The application was approved, but only the basis that the applicant was temporarily disabled. The applicant was advised thereof, and of his right of appeal by letter dated, 28 December 2009, after the institution of these proceedings. In the circumstances the only order that need issue is one directing the respondent to pay the applicant's costs of suit. It is so ordered.

The application of Nolwazi Mavis Tyu

129]The applicant in this matter applied for a disability grant on 29 April 2009. On 18 November 2009, she instituted proceedings for relief of the same nature as that sought in the Mbali matter (paragraph , supra).

130]From the answering affidavit filed by the respondent it would appear that at the time the applicant submitted her application on 29 April 2009 she was in receipt of a temporary disability grant. The application was unsuccessful because it was made at a time

when 'there was a payment in process'. It is not apparent from the answering affidavit whether the applicant was informed accordingly, or if so, by what means she was so informed. It is not disputed, however, that the applicant had submitted a fresh application for a disability grant on 14 October 2009. She should obviously have disclosed this fact in her founding papers, and also explained the circumstances in which such fresh application came to be made. The respondent averred that the applicant had been informed of the refusal of her 14 October 2009 application by letter, dated 12 November 2009. There is no indication that the letter was addressed by registered post, as required in terms of the regulations. In a replying affidavit deposed to on 29 January 2010, the applicant stated that she had not received the aforementioned letter of 12 November 2009.

131]The respondent avers that it appears from the medical assessment report submitted in support of the application made in October 2009 that the applicant does not qualify for a disability grant. The copy of the assessment report annexed to the answering papers is incomplete, however; and it is not possible from the part that has been attached to confirm the relevant averment in the answering papers.

132]In the context of her submission of an application in October 2009, the proper course, if so advised, is for the applicant to lodge an appeal against the refusal of that application.

133]In all the circumstances the application is dismissed, with no order as to costs.

The authority of the applicants' attorney and related matters

134]Each of the applicants in the 21 cases dealt with above was represented in the proceedings by the same firm of attorneys. The letters of demand that had preceded the institution of proceedings had been addressed on each of the applicant's behalf by a company, HST Administrasie (Pty) Ltd. HST Administrasie (Pty) Ltd is not a firm of attorneys. The company purported to represent the respective applicants in terms of a power of attorney executed by each applicant, which purported, according to its tenor, to 'irrevocably' appoint the company as the applicant's agent to investigate the circumstances of the applicant's application for a social grant and appoint an attorney or counsel to institute proceedings in the High Court and to give such legal

representatives instructions 'without necessarily referring such matters to myself'. The power of attorney provides further that the company shall be entitled to be paid an administration fee of R100 once the applicant had 'received any money from the Department of Social Development / SASSA'.

135]The content of the aforementioned powers of attorney is objectionable on a number of grounds, the detail of which it is unnecessary to go into. It is necessary to remark, however, that there would appear to be a close connection and possible identity of interest between the company and the applicants' attorney of record, Hendrik Strauss Attorney. Various allegations, which again I find it unnecessary to enumerate in this judgment, were raised by the respondent and the State Attorney concerning the propriety of the conduct of HST Administrasie (Pty) Ltd and its relationship with the applicant's attorneys of record. These were addressed in affidavits exchanged in connection with a so-called application in terms of rule 7 by the respondent. I do not propose to determine the issues arising from these allegations. It does seem to me, however, that an investigation into them by the Law Society would be desirable. An order will therefore be made directing the registrar to forward a copy of this judgment, together with a copy of

the papers in the interlocutory application by the respondent, dated 17 February 2010 and the affidavits by Ms M.J. Luter and Ms S. Lioma, filed in support thereof, together with the affidavit by Mr H.J. Strauss in response thereto, dated 22 February 2010, to the Secretary of the Cape Law Society.

136]The application brought by the respondent to challenge the authority of HST Administrasie (Pty) Ltd was misdirected. Rule 7 is directed at enabling a party to litigation to challenge the authority of any person purporting, *qua* legal representative, to represent another party in those proceedings. HST Administrasie (Pty) Ltd did not purport to act as attorney for the applicants in these proceedings.

137]The respondent filed an amended so-called application in terms of rule 7, three days after the conclusion of argument in the matters. In terms of that application sought to dispute the authority of 'VGV Attorneys Inc and/or Hendrik Strauss Attorney and/or HST Administrasie (Pty) Ltd to institute proceedings and to act for the individual applicants herein on their behalf in these proceedings'.

138]Rule 7(1) provides:

Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

139]The effect of a challenge to authority in terms of the sub-rule is that the attorney concerned may no longer act until s/he has filed a power of attorney. It seems to me that the object of the provision is generally defeated if the request is made when the proceedings have almost run their course. The position might be different where the attorney whose authority is challenged represents a juristic person, but it seems to me that in cases such as the present, in which the litigants are all natural persons who have made affidavits in support of the relief sought in terms of the notices of motion filed on their behalf, it would serve no good purpose to grant the respondent leave to pursue its challenges to authority at such a late stage.

Taxation of costs and the use of a standard format for the drafting of the founding affidavits

140]As mentioned earlier, these applications were brought in two batches, which were consolidated for the hearing of argument at a single hearing. The applicants were all represented by the same legal representatives. The taxing master's attention is directed to the fact that the founding papers in the applications gave every indication of having been drawn on the basis of a template, as it may have a bearing on the taxation of costs in those of the matters in which costs have been awarded against the respondent.

141]The applicant's attorney sought in an affidavit filed of record to justify the use of a standard form for the purpose of drafting the founding papers in these applications. The justification was flimsy and did not bear scrutiny in the matters before the court. Any use of a standard form document for such purposes must be undertaken with particular care that it does not give rise to an inadequate regard to the peculiar facts of each given case, resulting in deponents being invited to sign affidavits that are inaccurate, incomplete or misleading. It will be apparent from some of the remarks I have made while treating with each of the matters individually, above, that I consider that the use of a standard form basis in these matters caused such unwholesome characteristics to manifest in many of the affidavits filed by the

1. Orders will issue as indicated in paragraphs , , , , , , , , , , , , , , , , , and , above.
2. The Registrar is directed to give notice of this judgment, and to furnish a copy of the text of paragraphs Error: Reference source not found - hereof, to the Cape Bar Council, the Law Society of the Cape of Good Hope, the Independent Advocates Association of South Africa and the National Forum of Advocates for the information of the members of those bodies.

3. The Registrar is also directed to forward a copy of the notice and extract referred to in paragraph 2 of this order to the Minister of Social Services and to the Cape Town regional office of the Social Services Agency at the addresses given in paragraph (a)(i) and (ii) of the judgment.

4. The Registrar is further directed to forward a copy of this judgment, together with a copy of the papers in the interlocutory application by the respondent, dated 17 February 2010, and the affidavits by Ms M.J. Luter and Ms S. Lioma, filed in support thereof, together with the affidavit by Mr H.J. Strauss in response thereto, dated 22 February 2010, to the Secretary of the Cape Law Society for consideration in terms of paragraph of the judgment.

A.G. BINNS-WARD
Judge of the High Court