

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE HIGH COURT- PORT ELIZABETH)**

CASE NO: 943/11

In the matter between

Date heard: 26/04/2011
Date delivered: 14/02/2012

NONCEBA GRACE MANTSHONGO

Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

**THE DIRECTOR-GENERAL: DEPARTMENT
OF HOME AFFAIRS**

Second Respondent

J U D G M E N T

DAMBUZA, J:

[1] In this application, the applicant seeks an order that the second respondent, being the Director General of the Department of Home Affairs, be compelled to consider her application for a duplicate identity document and to make a decision thereon, which decision shall be communicated to the applicant's attorneys within 10 days of the order.

She also seeks an order that the applicant be directed to, within 5 days of the order, furnish her with particulars of the functionary within the Department of Home Affairs (the Department) who is handling her application for a duplicate identity document. The application is opposed.

[2] The background leading to these proceedings is largely common cause. On 20 May 2004 the applicant lodged an application with the Uitenhage office of the Department for a duplicate Identity Document. She had lost her original identity document. Subsequent to the application being made the second respondent directed a letter to Uitenhage Regional Office of the Department. In that letter, dated 20 May 2004 the second responded instructed that the Uitenhage office obtain from the applicant a completed B1-9/10 application form together with two recent Identity Document photographs, a birth certificate indicating a birth entry number together with full names of the applicants' parents, an affidavit with the applicants' left thumb print, the applicant's previous addresses over the preceding five years and a copy of her marriage certificate. It is common cause on the papers that the applicant did furnish the information and documents required on 13 June 2006

[3] Thereafter, on a number of occasions, the applicant visited Uitenhage office of the Department to enquire as to the progress of her application. Each time she was told by employees of the Department that her Identity Document had not yet been issued, or, in her words "was not ready for collection." Sometimes she was told that there was no information regarding progress of her application and that she should wait for a

further period of time.

[4] On 30 March 2007 the applicant wrote to the Pretoria offices of the Department, enquiring about her application. She received a response (letter) dated 18 April 2007 from the Department in which she was advised to contact **T Nkoane** by telephone so that her matter could be looked into and that she could be provided with a progress report. According to the applicant she did phone **Nkoane** and gave her details, afterwhich she waited for further advice from the Department. She never received any further communication from the Department and ultimately resorted to instituting these proceedings.

[5] This application was preceded by a letter dated 27 August 2010 from the applicant's attorneys to the Director Legal Services in the Department of Home Affairs. In that letter the applicant's attorneys, enquired about the applicant's application and demanded that the applicant be furnished with a response to her application within 30 days of receipt, by the Department, of the letter. The second respondent responded in a letter dated 10 January 2011 requesting the applicant not to proceed with the intended court proceedings as her application was receiving attention. The second respondent further advised that the reason for the delay in finalizing the application was that the applicant's identity number had been *"erroneously linked to fingerprints of another person."*

[6] In opposing the application the respondents take issue with the delay by the

applicant in bringing this matter to court. They contend that on that ground alone the application should be dismissed, more so that as the applicant has not furnished any explanation for the delay and has not applied for condonation of her failure to bring this matter before court within 180 days *“from the date on which she experienced the injustice relied upon”* in the application.¹ Further to that, the respondents contend that at the time of the institution of the application the applicant was well aware that her application was under consideration. As to the delay in processing the application for duplicate Identity Document **Courtenay Patrick George de Havilland Champion**, a chief administrative officer of the first respondent states in the answering affidavit that during 2004 to 2009 the respondents became aware that thousands of fraudulent Identity Cards had been issued to foreign nationals. This was done under the guise of late registration of births or applications for duplicate identity documents. To stamp out this fraud the Department “subjected to full scale investigation” all (new) Identity Document applications. These investigations, conducted in terms of section 12 (b) of the Identification Act resulted in delays by the Department in finalizing new Identity Document applications.

[7] The respondents’ case is that in a letter dated 12 October 2009 the applicant was advised that her Identity Number had been erroneously linked to fingerprints of another person and she was invited to furnish some information and documents to the functionaries at the offices of the Department to resolve the problem. It is the applicant’s failure to respond to this letter that is the cause for the delay, so contend the respondents.

¹ C Section 7 (1) OF Promotion of Administrative Justice Act of 2000.

[8] Apart from denying that she ever received the letter dated 12 October 2009 the applicant states, and I agree, that the information that may have been sought by the Department as per that letter (of 12 October 2009) had already been furnished by the applicant on 13 June 2006. It is common cause in the papers that the applicant had been advised of this problem as far back as August 2004 and that she had submitted to the Department, documents that were required to resolve the problem. There is no explanation from the respondents as to why they, in October 2009, sought from the applicant, information which was given to them as far back as 2006. The contention by the respondents that the delay is the applicant's own fault cannot stand and does not merit further attention. In any event, it would appear that all the parties are in agreement that there has been an undue delay in processing the applicant's application for a duplicate Identity Document. In their letter of response to the applicant's Attorneys (dated 10 January 2011), the respondent's attorneys admitted that "*despite the above reason (for the delay), we accept that the delay is unacceptable*". There is also no explanation as to why, if the cause of the delay is the applicant's failure to provide the Department with information, that reason was not communicated in the letter of 10 January 2011 or to the applicant herself during her visits to the offices of the Department. There can be no doubt that the applicant was entitled to have her application for an Identity Document processed by the Department and to be advised of the outcome thereof within a reasonable period. When the applicant instituted these proceedings it was almost seven years since she had applied for the document and her application had not been finalized. That period is, in my view, extremely unreasonable.

[9] As to whether the applicant should be non-suited for the delay in instituting court proceedings, section 7 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) on which the respondents' contention is based, provides that:

“ (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 such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons.

2) (a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or a tribunal may, in exceptional circumstances and on

application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

[10] It was not the respondents' case that there are internal remedies that the applicant was obliged to exhaust prior to approaching court. And although I agree that the applicant could have instituted proceedings much sooner than she did, my view is that non-suiting her for that "delay" would only aggravate the injustice that she has had to suffer as a result of the failure of public officials employed by the Department. In my view she was acting within her rights in lodging an application with the Department and doing her best to pursue the application, to the extent that she wrote to the National Office of the Department to seek assistance.

[11] I therefore grant the following order:

- 1 The second respondent is ordered to consider, finalize and advise the applicant's attorneys of the result of the applicant's application for a duplicate identity document within 30 days of this order;
- 2 The second respondent shall, within five days of this order, furnish the applicant's attorneys with the names and contact details of the functionary within the Department of Home Affairs who is dealing with the applicant's application for a duplicate identity document;
and

3 The first respondent shall pay the applicant's costs of this application;

N. DAMBUZA

JUDGE OF THE HIGH COURT

For the applicant : Moorhouse instructed by Mc William & Elliot INC. Port Elizabeth

For the respondents: NJ Sandi instructed by The State Attorney 29 Western Road
Central Port Elizabeth