

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA

Case no: 73418/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. [REDACTED]
21 February 2024 [REDACTED]
DATE SIGNATURE

In the matter between:

PETER THEMBEKILE MALGAS

First Plaintiff

ALFRED DISCO BIYELA

Second Plaintiff

BOSWELL JOHN MHLONGO

Third Plaintiff

and

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Defendant

J U D G M E N T

i.r.o Rule 30 alternatively 30A read with Rule 6(12)a

MAKHOB, J

- [1] The applicants filed an application for condonation in terms of section 3(4) of Act 40 of 2002 for any and all non-compliance by the applicants in terms of section 3 of Act 40 of 2002.
- [2] The matter has been set down for trial from 12 February 2024 to 23 February 2024. On the first day of trial, the defendant raised a special plea of prescription which was dismissed with costs on of 15 February 2024.
- [3] In terms of Rule 33(4) the court issued the following order "In terms of Rule 33(4) it is hereby ordered that:
- 1. The issue of prescription is separated from the issues of the Plaintiffs' non-compliance with Section 3 of Act 40 of 2002, merits and quantum.*
 - 2. The issue of prescription is determined first.*
 - 3. The issue of the Plaintiff's non-compliance with Section 3 of Act 40 of 2002, is to be heard second, in the event the plea of prescription is not upheld by the Court.*
 - 4. The issue of merits is to be heard third in the event of the Plea of prescription and the Plaintiffs' non-compliance with Section 3 of Act 40 of 2002 are both not upheld by the Court.*
 - 5. The issue of quantum is postponed sine die, pending the outcome of the merits issue above.*
 - 6. Costs of the Rule 33(4) separation of issues shall be costs in the course.*

- [4] On 13 February 2024, the plaintiffs delivered an application for condonation in terms of section 3(4) of Act 40 of 2002.
- [5] The defendants filed an answering affidavit as well as heads of argument. Despite filing these papers, the defendants on 19 February 2024 served the plaintiffs with a notice in terms of Rule 30, alternatively 30A read with Rule 6(12)(a).
- [6] The defendant submitted the following in terms of Rule 30;
- 6.1 The matter was set down for trial and not for condonation.
- 6.2 The plaintiffs application is inconsistent with the order of the separation of the issues in the trial in terms of Rule 33 formally made by this court on the 15 February 2024.
- 6.3 The notice of motion fails to comply with Rule 6 (12) (a) regarding urgent application.
- 6.4 Through out the pleadings the defendant raised non-compliance with section 3(4) of Act 40 of 2002.
- 6.5 The defendant in its plea raised non-compliance with section 3(4) of Act 40 of 2002 by the plaintiffs.
- [7] On behalf of the plaintiffs it is argued that, the urgency in this matter was created by the defendant.
- [8] Counsel for the applicants referred the court to the decision in *Makhwelo v Minister of Safety and Security* 2017 (1) SA 274 (GJ). Counsel submitted that this court can still hear the application for condonation.

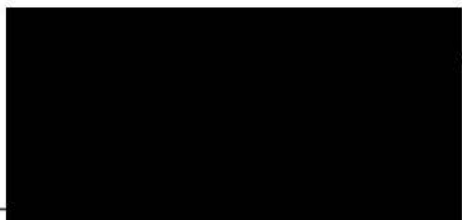
[9] In my view the application for condonation was never envisaged by the parties when they met with the Deputy Judge President and when the court made the order in terms of Rule 33(4).

[10] In addition it is my view that it will be improper and irregular for this court to make a ruling on the application condonation as well as hearing the trial on the merits.

[11] I make the following order;

11.1 The notice of motion dated 13 February 2024 is declared to be irregular and is set aside.

11.2 The applicants to pay the costs including cost consequent upon the employment of two counsel.



MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 19 February 2024

JUDGMENT HANDED DOWN ON: 21 February 2024

Appearances:

For the Plaintiffs: Adv L de Klerk SC with Adv D Thaldar (instructed by) Gildenhuys Malatji Incorporated

For the Defendant Adv G Shakoane SC with Adv D D Mosoma (instructed by) State Attorney Pretoria.