



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: **1380/2020**

In the matter between:

SEKWELA THANDI PETRUS

Applicant

and

MINISTER OF POLICE

Respondent

CORAM: **P R CRONJÉ, AJ**

HEARD ON: **7 SEPTEMBER 2023**

DELIVERED ON: **4 DECEMBER 2023**

JUDGMENT BY: **P R CRONJÉ, AJ**

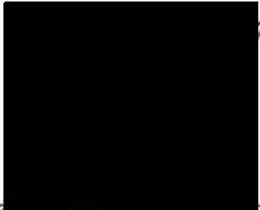
- [1] The Applicant was arrested on 24 August 2018. He seeks compensation of R3 050 000.00 for unlawful arrest and detention. On 26 October 2020, the Respondent filed its Plea wherein it relies on the Applicant's non-compliance with the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2020 ("the Act").

- [2] The Applicant thereafter brought an application to condone non-compliance with Section 3 of the Act; that the Applicant's prosecution of the action be condoned; and leave be granted to proceed with the prosecution of the action.
- [3] The application for condonation was issued on 23 October 2022 and was opposed
- [4] On 5 September 2023, the Applicant withdrew his application for condonation, which was served on the State Attorney on 5 September 2023.
- [5] The State Attorney, on 5 September 2023, dispatched a letter to the Applicant's attorney placing on record that the Applicant abuses Court process and that the Applicant failed to take any steps in the application for condonation from 18 January 2023 until 26 July 2023. It is also noted that the Respondent set the matter down and that no reaction was forthcoming from the Applicant until 4 September 2023. It appears that the Applicant's attorneys telephoned the State Attorney asking that the opposed application be postponed or removed from the roll and the Applicant tendered the wasted costs. The Respondent quoted Rule 41 of the Uniform Rules of Court, which provides for withdrawal of applications and actions.
- [6] On 6 September 2023, the Applicant's attorneys stated that the attorney who dealt with the matter on behalf of the Applicant left the employ of the firm, failed to set the matter down and to brief Counsel timeously. They only became aware of the set-down of the matter on 4 September 2023. The Applicant proposed that the application for condonation be withdrawn, a fresh application be brought and tendered the cost of the application, including cost associated with the appearance of Counsel on 7 September 2023.
- [7] On 6 September 2023, the Applicant issued an application seeking to withdraw his application for condonation. He also sought to be permitted to institute a fresh application to condone non-compliance with the Act.
- [8] On 7 September 2023, the Respondent filed a notice of intention to oppose the withdrawal of the application for condonation.

- [9] The only issue between the parties, is whether the Applicant is entitled to withdraw the application in contravention of Rule 41(1). A court has a discretion to allow a party to withdraw an application. Other than costs, I could not find any basis not to allow withdrawal of the application.
- [10] The Applicant seeks an indulgence to withdraw the matter. It is trite that, generally, the party seeking an indulgence has to pay the costs thereof. I could find no exception that would not entitle the Respondent to wasted costs of the application.
- [11] Having considered the papers and having heard argument by the respective legal representatives, I am of the view that leave should be granted to the Applicant to withdraw the condonation application. Costs were already tendered.
- [12] Wherefore I make the following order:

ORDER:

1. Leave is granted to the Applicant to withdraw his application for condonation, issued on 23 October 2022.
2. The Applicant pays the cost of the Respondent on party and party scale.
3. Leave is granted to the Applicant to institute an application to condone his non-compliance with Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2020.



P R CRONJÉ, AJ

On behalf of the Applicant:

Mohale Moifo Attorneys
Bokwa Incorporated
Bloemfontein

On behalf of the Respondent:

Adv P Chaka
G P Chauke
Office of the State Attorney
Bloemfontein