



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

Case number: 2283/2022

In the matter between:

TSHELISO MOHAPI	1st APPLICANT
LEFU MOKOALELI	2nd APPLICANT
SUSAN MORULE	3rd APPLICANT
LEBOHANG MATEE	4th APPLICANT
JOHANNES MATHOMA	5th APPLICANT
KATU SEPHOKO	6th APPLICANT
THAMSANQA KALAO	7th APPLICANT
ISAAC MAHASOA	8th APPLICANT
NOMSA MALO	9th APPLICANT
MOLEFE MOTLALANE	10th APPLICANT
BANGISO DYWILI	11th APPLICANT
ANNAH HLALELE	12th APPLICANT
LINDIWE MEILE	13th APPLICANT
ISAAC KHATLAKE	14th APPLICANT
MATLERE MORAKE	15th APPLICANT

SAMUEL LITSHASANE	16th APPLICANT
KHWESIWE SEFOJANE	17th APPLICANT
MAHADI MATSOSA	18th APPLICANT
JULIA MKHONDWANA	19th APPLICANT
LEBOHANG NTSANE	20th APPLICANT
BETTY MOETI	21st APPLICANT
RAMOKHOTHU LITABE	22nd APPLICANT
NTSWAKI KHUMALO	23rd APPLICANT
MBUYISELO THENGENI	24th APPLICANT
DINA SEPHOKO	25th APPLICANT
JIMMY MATLALI	26th APPLICANT
SEUTLOADI PETER MATSABA	27th APPLICANT
MASHEANE EDWIN MAKOELE	28th APPLICANT

And

THE REGISTRAR FREE STATE TRANSPORT	1st RESPONDENT
BOTSHABELO SCHOLAR TRANSPORT ASSOCIATION	2nd RESPONDENT
MEC FOR PUBLIC SAFETY AND SECURITY POLICE FREE STATE DEPARTMENT ROADS AND TRANSPORT	3RD RESPONDENT

CORAM: **MOLITSOANE, J et POHL, AJ**

JUDGMENT BY: **MOLITSOANE, J**

HEARD ON: **7 NOVEMBER 2022**

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII on 2 DECEMBER 2022. The date and time for hand-down is deemed to be on 2 DECEMBER 2022 at 9H00.

- [1] The Applicants launched this application to review and set aside the failure of the First Respondent to consider and decide the Applicants' applications to be registered on the provincial transport register. The Applicants further seek an order to compel the First Respondent to register them on the provincial register.
- [2] The Applicants are prospective scholar patrol transport operators. They are all based in Botshabelo. It appears from evidence that they do not possess operating licences and their end goal is to be placed on the provincial transport register in order to later apply for operating licences.
- [3] The First Respondent is the Provincial Transport Registrar: Free State, Department of Police Roads and Transport appointed as such in terms of section 68 of the Free State Transport Act 4 of 2005(the Act).
- [4] The Second Respondent is Botshabelo Scholar Patrol Transport Association, an association duly formed and regulated in terms of the Act.

[5] The Third Respondent is the Member of the Executive Council responsible for transport in the Free State.

[6] The First and Third Respondent opposes this application on various grounds one of which essentially only raises a procedural irregular step. It is in my view unnecessary to deal with all the defences raised. At the onset it is necessary to set out the following from the founding affidavit as deposed to by the First Applicant and duly confirmed in affidavits by other Applicants:

"[43] The applicants are prospective scholar patrol operators based in Botshabelo.

[44] We have applied to be members of the second respondent since 2016....

[45] The first formal communication was on the 31 July 2019 from the first respondent regarding our applications. It informed us as that we have been placed on a waiting list.

[46] On the 30 August 2019, there was a general notice issued by the first respondent informing all applicants that they have been put on the waiting list.

[47] We obtained the services of ZB Moletsane Attorneys to assist. On 22 April 2019 our former attorneys addressed a letter to the first respondent bringing the second respondent's gatekeeping attitude to him. The letter is herein attached and marked annexure 'TM28'. There was no response from the first respondent." (my emphasis)

[7] The letter dated 22 April 2019 from ZB Moletsane Attorneys and addressed to the First Respondent reads as follows:

"Our clients inform us that for 3 years, they have been trying to obtain permits to operate their businesses. However, you have informed them that they cannot be issued with permits as they have to start at their local organisation, namely the Botshabelo Scholar Transport."

[8] On the version of the Applicants this application is premised on section 6(2)(g) of PAJA. Section 7 (1) thereof provides as follows:

"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 actions and the reasons.”

[9] In *Camps Bay Ratepayers’ and Residents Association and Ano v Harrison and Ano*¹, the court said :

“..... the 180 days period starts to run when the ‘person concerned..... became aware of the action and the reasons for it’. Before ‘the action’ nothing happens. In the final analysis it is awareness of ‘the action’ that sets the clock ticking. That raises the question: what ‘action’ did the legislature had in mind? The answer I think, is the ‘administrative action’ and according to the definition of that term in PAJA, the ‘decision’ that is challenged in the review proceedings.”

[10] In *Optis Telecommunications (Pty) Ltd v Minister of Communications and Others*² the following was said:

“A point that has to be made is that it is not entirely correct that in terms of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), an aggrieved party has 180 days within which to launch review proceedings. In terms of section 7(1) of Act 3 of 2000 proceedings for judicial review must be instituted ‘*without unreasonable delay and not later than 180 days after the date 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 its reasons.*’ A reasonable period could be less than 180 days.....”

[11] Section 7 of PAJA clearly requires that review proceedings must be instituted without unreasonable delay and not later than 180 days after the date on which the person concerned was informed of the

¹ 2011 (4) SA 42 CC para 57.

² (A571/2006 [2007] ZAGPHC 44 (30 May 2007).

administrative action. It is thus clear that the period could be less than 180 days.

- [12] In *Matoto v Free State Gambling and Liquor Authority and Others*³ the court observed as follows: . In *Opposition to Urban Tolling Alliance and others v The South African National Roads Agency Limited and others* [2013] ZASCA 148 (9 October 2013) para 26⁴ this court observed:

'Before the effluxion of 180 days, the first enquiry in applying s 7(1) is still whether the delay (if any) was unreasonable. But after the 180 days period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable *per se*. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been 'validated' by the delay . . . That of course does not mean that, after the 180 days period, an enquiry into the reasonableness of the applicant's conduct becomes entirely irrelevant. Whether or not the delay was unreasonable and, if so, the extent of that unreasonableness is still a factor to be taken into account in determining whether an extension should be granted or not'

In this regard it is important to emphasise that s 7(1) does impose an obligation on an aggrieved party to institute proceedings for judicial review without unreasonable delay. (my emphasis) Thus, whilst the launch of an application for review after the 180 days is unreasonable *per se*, the converse does not necessarily hold true. In other words, the launch of an application within 180 days is not reasonable *per se*."

- [13] On the other hand, section 9(1) provides that the 180 days may be extended for a fixed period by agreement between the parties or failing such agreement, by a court on application.

- [14] The above legal exposition crystallises the plight of the Applicants in these proceedings. On their own version the First Respondent

³ (987/2017) [2018] ZASCA 110(12 September 2018)'

⁴ *Opposition to Urban Tolling Alliance and others v The South African National Roads Agency Limited and others* [2013] ZASCA 148; 2013 (4) All SA 639 (SCA).

informed them that he was placing them on the waiting list as far back as 31 July 2019. It appears that prior to 31 July 2019, on 22 April 2019 their erstwhile attorney indicated that the First Respondent had informed the Applicants that *'they cannot be issued with permits...'* On their own version they became aware of the administrative action sought to be reviewed before 22 April 2019 according to the letter of their erstwhile attorney, alternatively on 31 July 2019.

- [15] This application was only instituted on 18 May 2022. It is undisputed that this period is beyond the permissible 180 days within which the review application must be brought. There is no condonation application requesting the variation regarding the time within which to institute this application. The applicants are enjoined by section 7 of PAJA to institute these proceedings within 180 days or within such period agreed between the parties or as sanctioned by the court. The Applicants have failed to institute the application within 180 days as required by the law. This constitutes an unreasonable delay and is fatal to the Applicant's case. It is unnecessary in my view to traverse a number of defences raised herein as the issue discussed in the judgment disposes of the application. I accordingly order as follows:

ORDER

1. The application is dismissed;
2. The Applicants are liable for payment of the costs of the First and Third Respondents, jointly and severally, the one to pay and the others to be absolved.


P. E. MOLITSOANE, J

I concur.


L. LE R POHL, AJ

On behalf of the Applicants:
Instructed by:

Adv. K.P Mohono
Matee Attorneys
BLOEMFONTEIN

On behalf of the Second Respondent:

No Appearance

On behalf of the First and Third
Respondent:

Adv. K. Nhlapo- Merabe

Instructed by:

The State Attorney
BLOEMFONTEIN