



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: 2227/2014

In the matter between:

REFITLHILE TAXI ASSOCIATION	1 st Applicant
PAPA MOSUNDA	2 nd Applicant
OTTO MAGAGANE	3 rd Applicant
PETRUS MONWAPELE	4 th Applicant
BUTI PUTE	5 th Applicant
JOE SETHINI	6 th Applicant
PAPI MOOKETSI	7 th Applicant
FEZILE MAYEKISO	8 th Applicant

and

VAALHARTS TAXI ASSOCIATION	1 st Respondent
THE NORTHERN CAPE PROVINCIAL OPERATING LICENCE BOARD	2 nd Respondent
THE MEC OF TRANSPORT, SAFETY AND LIAISON NORTHERN CAPE PROVINCE	3 rd Respondent

JUDGMENT

O'BRIEN AJ

1. There was a dispute between the first applicant and the first respondent concerning specified taxi routes. For unrelated reasons the conflict culminated in an order granted by Pakati J on 14 November 2014. The court order relevantly determines that the first respondent shall, within 20 days of the granting of the order to constitute an action for a declaratory order and a final interdict. The order granted by the learned Judge turns on the fact that the applicants shall not interfere with the first respondent; shall not prevent the first respondent from loading or offloading passengers; the applicants are interdicted and restrained from encroaching in any manner whatsoever on the operating routes of the applicants; the applicants are interdicted and restrained from intimidating, harassing, assaulting or use any form of violence against the respondents' members or their passengers; interdicted and restrained from calling, instigating, promoting or encouraging any person to intimidate, harass, assault or use any form of violence against any of the respondents' members. This order was taken by agreement between the parties.
2. On 09 March 2018, AJ Lever declared the interim order granted on 14 November 2014 as lapsed due to non-compliance by the first respondent (Vaalharts Taxi Association).
3. On 15 February 2019, Coetzee AJ revived the interim order of 14 November 2014, and rescinded the order of Lever AJ. The latter order specifically stated

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that pending the final determination of the action instituted, the order of 14 November 2014 should remain enforced against the first to eighth Respondents.

4. On 20 November 2019, the applicants approached this court, declaring the summons in the action proceedings instituted by the first respondent under Case No: 2227/14 declared to have lapsed. I shall refer to this application as the main application.
5. The first respondent opposed this application, and on 20 November 2020, Chwaro AJ granted an order allowing the first respondent to file its opposing affidavit in the main application. The main application was postponed *sine die* to enable the parties to resolve their dispute. The cost of the main and the condonation application was reserved for later determination.
6. Realising that the replying affidavit was out of time, the applicants' current attorney applied for condonation for the late filing of the applicants' replying affidavit. The first respondent opposes the application for condonation for the late filing of the replying affidavit.
7. The second to eighth applicants are members of the first applicant. The second and third respondents did not take part in these proceedings. Points were taken that the applicants did not join certain parties, and did not have the authority to institute the present proceedings. These points have no merit. The evidence point to both points.

8. The issues to be determined by this court are whether the first respondent's action has become stale and whether this court should grant condonation to the applicants for the late filing of their replying affidavit.
9. It is common ground between the parties that the action instituted by the first respondent was within the period envisaged by the court order dated 14 November 2014.

The summons

10. In **Molala v Minister of Law & Order & Another 1993 (1) SA 673 (W)** Flemming DJP lamented that there are no fixed time limits to force a plaintiff to prosecute a claim under our rules of court. Under our rules, it is left to the Judge's discretion to determine whether there has been an abuse of process. The learned Deputy Judge President undertook an exhaustive exercise on cases in which it was held that the plaintiff's claim had lapsed.
11. In **Cassimjee v Minister of Finance 2014 (3) SA 198 (SCA)** at para 11 the court states as follows:

“[11] There are no hard and fast rules as to the manner in which the discretion to dismiss an action for want of prosecution is to be exercised. But the following requirements have been recognised. First, there should be a delay in the prosecution of the action; Second, the delay must be inexcusable and, Third, the

defendant must be seriously prejudiced thereby. Ultimately, the enquiry will involve a close and careful examination of all the relevant circumstances, including, the period of the delay, the reasons therefore and the prejudice, if any, caused to the defendant. There may be instances in which the delay is relatively slight but serious prejudice is caused to the defendant, and in other cases the delay may be inordinate but prejudice to the defendant is slight. The court should also have regard to the reasons, if any, for the defendant's inactivity and failure to avail itself of remedies which it might reasonably have been expected to do, in order to bring the action expeditiously to trial."

12. In its answering affidavit, the first respondent avers that due to a lack of funds and its involvement in another dispute before the second respondent, it was not in a position to proceed with the action. According to Mr Olivier, who acted for the first respondent, the lack of prosecution is fully explained; consequently, the court should not exercise its discretion in favour of the applicants.
13. Mr Baloyi, who appears for the applicants, contended that the applicants are seriously prejudiced by the failure of the first respondent to prosecute its claim.
14. I am not persuaded by Mr Olivier's argument that a detailed explanation is given why the action was not brought to finality. On the contrary, the

information is scant, and the lack of finance is referred to in broad terms. No specifics are given; no financial statements are attached to the answering affidavit, and insufficient detail is given regarding the matter before the second respondent.

15. As stated earlier, it is common ground that the first defendant issued a summons out of this court within the period stipulated in the order dated 14 November 2014. After that, the first respondent requested the applicants to file their plea alerting them that a failure to do so would put them under bar. When the applicants did not reply, the first respondent merely sat back and did not compel the applicants to take further steps. That is an abuse of process.
16. After more than three years, Lever AJ (as he then was) declared the interim order of 14 November 2014 has lapsed due to non-compliance. It seems that this stirred the first respondent into action, and on 15 February 2019, Coetzee AJ rescinded that order. On 20 November 2019, the first respondent had to be dragged again before the court with the present application. The attitude displayed by the first respondent is not one of a serious litigant who wants to enforce their rights when it had more than one opportunity to do so. In my judgment, the first respondent has displayed a *non-chalant* attitude regarding compliance with the rules of court. This will be reflected in the cost order.
17. In its founding affidavit, the deponent states the following regarding prejudice:

“18. The applicants are prejudiced by the long pending action proceedings which took over 4 years in that they cannot plan their expansion in their business and/or re-develop their business while the said action is still pending.”

18. Self-evidently, the fact that the applicants operate a taxi business and are not allowed to travel certain distances or operating routes creates prejudice.
19. In the circumstances, I am satisfied that there has been a delay in the prosecution of the action; the delay is inexcusable and, the applicants are seriously prejudiced.
20. The applicants apply for condonation for the late filing of its replying affidavit. This is senseless because the applicants have already filed a replying affidavit. The application for condonation was therefore superfluous.
21. Before issuing the order, I need to point out a worrying fact in this matter. Both the applicants and the first respondent made the task of this court arduous for lack of particularity. Legal representatives acting for the parties must ensure that when applications for condonation are made sufficient detail must be placed before the court to reach a just decision. In this matter, both the applicants and the first respondent, because of this failure, made the task of this court particularly cumbersome in coming to a conclusion. As is apparent, the matter before this court is simple and need not have occupied this court. It could have been disposed of more pragmatically if the parties were

transparent. In making the order as I envisaged, I shall have regard to what I have said in this paragraph.

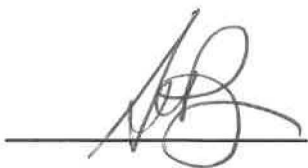
22. I make the following order:

22.1 Action 2227/2014 is dismissed with costs;

22.2 The first respondent to pay the costs of this application;

22.3 The cost for the attempt to file a second replying affidavit by the applicants is dismissed with costs;

22.4 Each party shall pay its own costs occasioned by any postponement of this matter, if any.



S C O'BRIEN

ACTING JUDGE

On behalf of the First Applicants:

Adv. D Olivier

(Van De Wall Incorporated)

On behalf of the Respondents:

Mr K. Baloyi

(Mkhokheli Pino Incorporated)