



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: 3905/2018

In the matter between:-

JEAN WILLEMSE

Applicant

and

THE MEC FOR HEALTH, FREE STATE PROVINCE

Respondent

CORAM:

N. M. MBHELE, J

HEARD ON:

29 NOVEMBER 2019

DELIVERED ON:

17 FEBRUARY 2020

- [1] This is an application for leave to appeal against the whole judgment and the order of Morobane, AJ in which he dismissed the applicant's application for condonation. The applicant instituted action proceedings against the respondent for damages he

allegedly suffered as a result of negligence on the part of the respondent. The respondent resisted the applicant's claim and filed a special plea raising non-compliance with the provisions of section 3 (2) (a) of the Institution of Legal Proceedings against Certain Organs of State ACT 40 OF 2002 (the Act).

- [2] In his judgment, Morobane, AJ found that the applicant failed to provide full and reasonable account for his non-compliance with the relevant provisions of the Act, that there are no prospects of success and further that the respondent will suffer prejudice if condonation for non-compliance with the relevant provisions of the Act were to be granted.
- [3] The application is based on numerous grounds set out in the notice of application for leave to appeal, I am not going to repeat them. Ms. Mitchley, on behalf the applicant, and Mr. Mtokosha, on behalf of the respondent, filed heads of argument for which I am grateful.
- [4] In terms of section 17(1) of the Superior Courts Act 10 of 2013, I must grant leave to appeal if I am of the opinion, amongst others, that the appeal would have reasonable prospects of success.
- [5] The applicant was admitted to Metsimaholo Hospital, Sasolburg, on 25 October 2016 and got transferred to Boitumelo Hospital, Kroonstad, the following day where he was further transferred to

Pelonomi Hospital, Bloemfontein, on 26 October 2016. He alleges that the ambulance that transported him from Sasolburg to Kroonstad ran out of petrol causing him to wait for more than 3 hours before he could continue with his journey. He, further, alleges that on his arrival at Boitumelo Hospital he was left unattended for most of the day before he could be transferred to Bloemfontein for attention. His arm was amputated and he was informed by the attending doctor that the amputation was as a result of excessive bleeding and unavailability of proper equipment to treat his condition at the relevant health facilities.

- [6] The applicant filed his section 3 notice about 17 months after the cause of action arose. The reasons advanced by the applicant for failure to file his notice is that he was ignorant of the requirement of the Act that provides that the relevant notice must be filed within 6 months from the date on which the debt became due. He only became aware of this requirement when he consulted with his Attorney on 26 February 2018. The Attorney struggled to obtain medical records from the 3 hospitals that attended to the applicant resulting in him only filing the notice a month after the consultation. It is not in dispute that the applicant is a lay person.

- [7] Section 3 (4) of the Act provides:

“If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2) (a), the creditor may apply to a court having jurisdiction for condonation of such failure.

(b) The court may grant an application referred to in paragraph (a) if it is satisfied that-

- (i) the debt has not been extinguished by prescription;
- (ii) good cause exists for the failure by the creditor; and
- (iii) the organ of state was not unreasonably prejudiced by the failure.”

[8] The judgment of the court a quo does not state the nature of prejudice that the respondent will suffer if condonation were to be granted. The respondent dealt with the question on general terms and did not confine it to the matter at hand

[9] Having considered the merits of the application for leave to appeal, I am persuaded that the application for condonation would have a reasonable prospect of success. As a consequence the application for leave to appeal must succeed.

Order:

Application for leave to appeal is granted to the full court of this Division;
Costs shall be costs in the appeal

N.M MBHELE, J

For the Applicant: Adv. Mitchley
Honey Attorneys
Bloemfontein

For the Respondent: Adv. Ntokosha
State Attorney
Bloemfontein