

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, MTHATHA)**

CASE NO. 1045/2019

Heard on : 18 June 2019

Date delivered: 02 July 2019

In the matter between:

NOLUSIZO MAKHAMBI

Applicant

And

**MEC FOR HEALTH,
EASTERN CAPE PROVINCE**

First Respondent

**THE CHIEF EXECUTIVE OFFICER
BUTTERWORTH HOSPITAL**

Second Respondent

JUDGMENT

MAJIKI J:

[1] In these two matters, 1045 and 1046 of 2019 the applicants apply for similar remedies. The issues that arise are also similar. I will refer to the matter in 1046/2019, the result therein will apply to 1045/2019 as well. The applicant applied for a relief following the alleged failure of the second respondent to furnish the documents requested by the applicant. The applicant applies to this court in terms of Promotion of Administration of Justice Act (PAJA) for review and setting aside the second respondent's failure to consider and decide the applicant's request for information. She particularly relies on section 6(2)(g) of PAJA for instituting proceedings for failure of the second

respondent to make a decision. Further, she referred to various sections in the Constitution Act No 108 of 1996 alleging that her constitutional rights were infringed by the respondents' conduct. The respondents filed notice to oppose but no answering affidavit was filed.

Background

[2] On 9 December 2018 the applicant was involved in a motor vehicle accident. She was treated at Butterworth hospital for injuries sustained therein. A request for completion of medical section in the RAF 1 Form was made to the hospital for purposes of lodging her MVA claim. The request was delivered by hand and the hospital stamp dated 14 December 2018 was affixed on the copy of the letter at the hospital. There is also a signature next to it which I presumed it is that of the recipient of the letter. There was no response to the said request.

[3] On 4 February 2019, the applicant wrote a letter headed "Statutory demand" against the member of executive council and the second respondent.

The demand was framed as follows:

"client's request be considered and a decision be taken and same be communicated to us, within thirty (30) days of receipt hereof, to avoid any further delay and litigation on the matter."

This does not reflect a model demand, but that is not so much of an issue in this matter. On 22 March 2019 the present application was filed.

[4] The applicant says the relief she seeks is premised on sections 5(2) and 6(2) (g).

Section 5(2) provides:

“The administrator to whom the request is made must, within ninety (90) days after receiving the request, give that person adequate reasons in writing for the administrative action.”

Section 5(1) provides that the reasons are for the administrative action which materially and adversely affected the rights of the person who requests the reasons.

[5] During the hearing I engaged with Mr Mfeya in relation to internal processes that ought to have taken place in this matter, before the application would have been launched. Mr Mfeya submitted that there are no specified internal remedies that the applicant ought to have pursued under PAJA. Her letter of demand would serve any internal process which is envisaged she ought to have pursued before coming to court. In paragraph 31 of her founding affidavit under the subheading, CONDONATION the applicant states:

“I may just mention that my quest for condonation and exemption as prayed in instant proceedings is sought only, to the extent that it may be shown, notwithstanding the respondents’ failure to pronounce on my application, I was obliged to adhere to relevant time frames and pursue internal remedies.”

In the next paragraph she goes on to state that the internal process was obliterated and rendered more ineffective by the respondents’ own inaction and special circumstances in the case, which she says includes that the respondents adopted a passive attitude to her initial application and letters of demand.

[6] The applicant has not stated why reasons for the administrative action had to be furnished in less than the ninety (90) days prescribed in section 5(2). Her initial request was made on 14 December 2018, five days after the accident. On 4 February 2019 she demanded that her request be considered and that the decision taken be communicated within thirty (30) days of the receipt of the letter. It is not clear whether she considered the initial failure to

respond to the request for information or the failure to meet the subsequent demand to take a decision and communicate it, as constituting the actual administrative action of failure to take a decision. However, logic says such failure could only arise after the thirty (30) day period referred to the demand, calling for a decision to be made. The actual administrator from whom the reasons would be sought being the Chief Executive Officer of the hospital.

[7] The application was launched on 22 March 2019 after the thirty (30) days referred to in the letter demanding that the decision be made. The demand to the MEC for health was despatched on 9 February 2019, the ones to the Chief Executive Officer, Butterworth hospital and Superintendent General, department of health were sent on 6 February 2019. The thirty (30) days expired on 6 and 9 March 2019 respectively. From 6 and 9 March 2019, it is 15 and 18 days to 22 March 2019, when the application was launched.

[8] In case number 1045/2019, the initial request was received by the Chief Executive Officer, Butterworth hospital on 16 April 2018. Statutory demand framed as in 1046/2019 was received by the Chief Executive Officer on 4 February 2019. The ones to the MEC for Health and Superintendent General, department of Health were sent by registered post on what seems to be 09 February 2019. The application was launched on 22 March 2019, 13 and 18 after dispatch of the letters respectively.

[9] If the averments in paragraph 32 of her founding affidavit were anything to go by, the respondent's passiveness and inaction is the maximum of eighteen (18) day period, in both matters, from dispatch of letters of demand. This is the period during which the second respondent failed to respond.

It must be taken into account that the dispatch dates are not those of receipt of the letters. It is not known as to when the letters were actually received by the second respondent. Further, the applicants still had more than two years in

both matters within which to lodge the claim with the RAF, from the date of the launching of the applications. The date of accidents are 9 December 2018 and 29 March 2018, respectively.

[10] In my view, the applicant has not established any basis for not allowing the respondents the ninety (90) day period prescribed in section 5(2) of PAJA. The applications therefore were launched prematurely.

[11] The applications were not opposed, therefore there would be no reason for entitlement to costs by any of the respondents.

In the result,

1. Applications in case number 1045/2019 and 1046/2019 are hereby dismissed.

B Majiki
Judge of the High Court

Applicant's Counsel	:	Mr Mfeya
Instructed by	:	Messrs A R NGQONWA INC. BUTTERWORTH c/o MGCOTYELWA KREWU INC. No. 19 Corner of Park Road and Blakeway Street MTHATHA