

IN THE HIGH COURT OF SOUTH AFRICA  
[EASTERN CAPE LOCAL DIVISION, MTHATHA]

CASE NO: 4306A/17

Heard on: 08/03/18

Delivered on: 20/03/18

In the matter between:

OCCONNORR SECUNDA HLAZO

Applicant

and

MINISTER OF POLICE, RSA

1<sup>ST</sup> Respondent

THE STATION HEAD, CENTRAL

POLICE STATION, MTHATHA

2<sup>ND</sup> Respondent

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JUDGMENT

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NHLANGULELA DJP

[1] For the reasons that are quite understandable, the unnecessarily complicated relief sought by the applicant was bound and confused the respondent. This is more often occasioned in matters that have grown up exponentially in our Division concerning a demand for access to information in

terms of s 32 (1) of the Constitution Act No. 108 of 1996 (the Constitution) read with the provisions of the Promotion of Access to Information Act No.2 of 2000 (the PAIA). Section 32 (1) of the Constitution reads:

- “(1) Everyone has the right of access to-
- (a) any information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

[2] In this case the legal instruments implicated are *inter alia* s 32 (1) (a) of the Constitution in that the Applicant asked for the respondents to furnish him with the accident report, key to plan, sketch plan, witness statements and written outcome of criminal proceedings. When these documents were not supplied to him he lodged an internal appeal against the decision not to furnish the information as required. The continued silence on the part of the Respondents led to the launching of this application in terms of ss 78 and 82 of the PAIA to compel the furnishment of the documents as aforementioned.

[3] In so far as the respondents had not given a reply to the letter of demand for access to information and the reason(s) for failure to give information not having been known to the Applicant the issue for decision must be limited to the

common cause fact that the Respondents indicated for the first time on 01 November 2017 that the information/documents sought had never been in their possession. On the consideration of the common cause fact of non-possession the Respondents were justified in being confused by the insistence on the further relief, which ought to have been abandoned, that the court should declare the failure to supply the information as unconstitutional, the Respondent must be ordered to furnish the information required and that they must give reasons for their failure to furnish such information.

[4] The evidence gleaned from the papers, which is undisputed, is that on 03 May 2017 the Applicant was involved in a motor vehicle accident whilst being driven as a passenger in a taxi on the N2 National Road. The registration letters and number of the taxi was [...], and it was driven at the time by one Mr Mntuwelizwe Nkosikhona, Id No. [...] of Mpindweni Location, Mthatha. In and as a result of the accident on 03 May 2017 he was admitted in Mthatha General Hospital for the purpose of treatment for certain bodily injuries that he had sustained in the accident. On 12 May 2017 he reported the accident to the police. On 25 May 2017 he addressed a letter to the Respondents requesting that he be furnished with the documents/information as aforementioned, but to no avail. Having taken the view that the Respondents had chosen to remain supine despite the demand for the information having been rightfully made in terms of the Constitution and PAIA, he launched the present application on 14 September 2017.

[5] The Respondents became aware for the first time upon receipt of the application that the Applicant had been involved in a motor vehicle accident, and that he took the steps as he did to obtain the information as requested for in the letter of demand dated 25 May 2017.

[6] The provisions of s 82 of the PAIA enjoin the Court to decide an application of this nature in a particular manner. The section provides as follows:

“The court hearing an application may grant any order that is just and equitable, including orders-

- (a) confirming, amending or setting aside the decision which is the subject of the application concerned;
- (b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;
- (c) granting an interdict, interim or specific relief, a declaratory order or compensation;
- (d) as to costs, or
- (e) condoning non-compliance with the 180 day period within which to bring an application, where the interests of justice so require.”

[7] On the consideration of the facts of the case the Court cannot issue an order compelling production of the documents/information sought by the Applicant because they do not exist owing to the fact that the accident was never recorded in the books of the Respondents. The evidence advanced on affidavits does not place the blame for non-recordal of the accident at the door-step of the Respondents. That is, whereas s 32 of the Constitution does confer a right of access to information, it is not proved that the Respondents held the required information at any stage. Consequently, paragraphs (a), (b), (c) and (e) of s 82 of the PAIA cannot be granted.

[8] In so far as the decision of the application turns only on the issue of costs, it is my finding that the Applicant has made a case for an order in that regard. The Respondents made no effort to tender payment of any costs. They contented themselves with pursuing a defence that the Applicants' application failed to disclose a cause of action. Such a defence is, with respect, ill-conceived. Further, the Respondents took no visible steps to meet the Applicants' request even after 01 November 2017 when they should and could have complied therewith.

[9] In the result the following order shall issue:

**The Respondents shall pay the costs of the application  
calculated from 02 November 2017, including the costs  
incurred on 08 March 2018.**

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**Z. M. NHLANGULELA**

**DEPUTY JUDGE PRESIDENT OF THE HIGH COURT**

**MTHATHA**

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|-------------------|---|----------------------------|
| For the Plaintiff | : | Adv Mfino                  |
| Instructed by     | : | Ndzendze & Associates      |
|                   |   | No.52 Sprigg Street        |
|                   |   | ECRDA Building, Office 221 |
|                   |   | MTHATHA.                   |

|                   |   |                            |
|-------------------|---|----------------------------|
| For the Defendant | : | Mr Mkhongozeli of          |
|                   | : | HN Mkhongozeli Attorneys   |
|                   |   | No.55 Nelson Mandela Drive |
|                   |   | Barbara's Guest House      |
|                   |   | Block E – Unit 6           |
|                   |   | MTHATHA.                   |