



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. 4629/2015

In the matter between:

HANS SEUNTJIE MATOTO

Applicant

and

FREE STATE GAMBLING AND LIQUOR AUTHORITY 1st Respondent

**THE CHAIRPERSON, FREE STATE GAMBLING
AND LIQUOR AUTHORITY**

2nd Respondent

**THE CHIEF EXECUTIVE OFFICER,
FREE STATE GAMBLING AND LIQUOR AUTHORITY** 3rd Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL
ECONOMIC DEVELOPMENT, TOURISM
& ENVIRONMENT**

4th Respondent

CORAM:

RAMPAI, J *et* MOLITSOANE, AJ

JUDGMENT BY: MOLITSOANE, AJ

HEARD ON: 5 DECEMBER 2016

DELIVERED ON: 23 FEBRUARY 2017

- [1] This is a condonation application. The relief sought by the applicant is to have his lateness in applying for judicial review in terms of sec 6(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) condoned. The respondents oppose the application.
- [2] The applicant previously made an application to the First Respondent in terms of section 41 (1) of the Free State Gambling and Liquor Act 6 of 2010 for the permanent removal of a tavern from 132 Vietman Street Jacobsdal to 338 Wolf Street, Ratanang Jacobsdal. That application was refused on 13th November 2013.
- [3] Pursuant to such refusal, the Applicant launched an application to this court under case number 812/2014 to have the second respondent's decision reviewed and set aside. (the first review application) The first review application was settled between the parties. The settlement agreement was made an order of court on 5th June 2014. The court ordered that:

"1. The first respondent's decision, in terms of which the applicant's application for the permanent removal of a Tavern registration

certificate pertaining to erf 338, Wolf Street Ratanang, Jacobsdal, Free State Province, was refused, is hereby rescinded.

2. The matter is referred back to the First respondent to consider the applicant's application afresh, and well within 30 (thirty) days from date of signature hereof."

- [4] It would appear that the application was not considered afresh within 30 days as per the order of the court. As a result of such non-compliance, the applicant commenced with contempt of court proceedings in this court under case number 3652/2014. The contempt of court proceedings were opposed. It would appear that at the time of the hearing of this second review application, the contempt application was still pending.
- [5] The reconsideration of the application by the second respondent proceeded on 2nd October 2014. The applicant was subsequently informed by the respondent that his application had been unsuccessful. He was informed by way of a letter dated 12 March 2015, marked 'Annexure H' which letter the applicant received on 18th March 2015.
- [6] It is this decision, which the second respondent made on 12 March 2015, whereby the applicants' application for the transfer or removal of a tavern registration certificate from one erf to another, which the applicant seeks to be reviewed and set aside in these proceedings.

[7] Before us were two applications. The review proceedings were obviously the main application. Then there were interlocutory proceedings in the form of a condonation application. The two counsels were asked to address us on both. Having heard argument for and against each application, we reserved judgment. I deal with the condonation application first.

[8] The issue was whether the applicant has advanced a reasonably satisfactory explanation for his default to initiate the review application in good time.

[9] It is not in dispute that the applicant's application was launched outside the 180 days as envisaged in section 7 of PAJA. The one hundred and eighty days period within which to launch the application expired on 18 September 2015. The current review application was issued by the registrar on 29th September 2015, twelve days after the 180 days envisaged in section 7(1)(b) of PAJA had expired.

[10] Section 7 (1) of PAJA 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.”

[11] As to when the 180 day period referred to in section 7(1) of PAJA begins to run, Brand AJ in Camps Bay Ratepayers' and Residents Association and Ano v Harrison and Ano 2011 (4) SA 42 CC par 57, said the following:

“..... 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.

[12] It is thus clear that the period within which to review an administrative action in terms of section 7(1)(b) of PAJA starts to run from the moment the aggrieved party becomes aware of the administrative action and the reasons for it. The review of the said action must be brought without any unreasonable delay and not later than 180 days after the aggrieved party becomes aware of the actions and its reasons.

- [13] In the case of Optis Telecommunications (Pty) Ltd v Minister of Communications and Others (A571/2006 [2007] ZAGPHC 44 (30 May 2007) the court said the following:

“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.....”

- [14] Section 9 of PAJA deals, however, with variation of times in circumstances where there has been non-compliance with the time limits as stipulated in section 7 of the said Act. The relevant part provides as follows:

s9(1 ‘ The period of -

(a).....

- (b) 90 days or 180 days referred to in sections 5 and 7 may be extended for a fixed period, by agreement between the parties or failing such agreement by a court or tribunal, on application by the person or administrator concerned.

(2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require.'

[15] The principles applicable to applications for condonation are settled. In this regard the courts have a wide discretion which must be exercised judicially on a consideration of all the facts of each case.- See Natures Choice Products (Pty) Ltd v Food and Allied Workers' Union and Others (2014) ILJ 1512 (LAC) at 1515 C-E.

[16] The approach to be followed in an application for condonation in terms of PAJA was dealt with by the Supreme Court of Appeal in the matter of Camps Bay Ratepayers and Residents Association v Harrison 2010 (2) All SA 519 (SCA) par 54, (confirmed on appeal –See par 11 above for a full citation).The court said the following:

"Section 9(2) however allows the extension of those time frames where the 'interest of justice so require'. And the question whether the interest of justice require the grant of such extension depends on the facts and the circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the importance of the issue to be raised in the intended proceedings and the prospects of success"

- [17] In Melane v Santam Insurance Co Ltd 1962 (4) SA 532 (A) the court explained the judicial discretion vested in a court in granting condonation as follows:

“In deciding whether sufficient cause has been shown, the basic principle is that the court has discretion to be exercised judicially upon a consideration of all the facts and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation thereof, the prospects of success and the importance of the case. Ordinarily these facts are interrelated they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and the strong prospects of success may tend to compensate for a long delay. And the respondent’s interest in finality must not be overlooked.”

- [18] The thrust of the applicants’ explanation for non-adherence to the prescripts of section 7(1) (b) is that he intended to settle the matter out of court. This court was referred to a number of letters written to the first respondent in this regard. However, most of the letters written on behalf of the applicant did not support his excuse. The tone of all those letters was threatening. The letters were mostly about threats and not settlement negotiations. Analysis of the correspondence aforesaid will reveal that the

applicant was informed of the decision by way of a letter dated 12 March 2015. He then began with his correspondence on 20th March 2015. In a letter dated 8 May 2015, marked 'Annexure L' to the founding affidavit he set out in detail, the reasons for his disgruntlement. He informed the respondents that if the undertaking he sought was not forthcoming he will "... **immediately proceed with a review application**". (my emphasis)

- [19] On 12th May 2015 the first respondent duly responded by way of a letter marked 'Annexure M' to the contents of Annexure 'L'. I need to pause and indicate that Annexure 'M' is dated 12 February 2015. It is my considered view that this date is incorrect. Firstly, on 12th February 2015 a decision had not been taken to refuse the application. Secondly, the applicant had not yet written Annexure 'M'. Thirdly, the first respondent clearly wrote in Annexure 'M', "Your letter of 8 May 2015 refers". I am inclined to accept that Annexure 'M' was actually written on the 12 May 2015.
- [20] In 'Annexure M' sent by email to the applicant's attorneys on 13th MAY 2015, which the attorney acknowledges having received on the same day (See par 8.13 of the founding affidavit), the applicant was unequivocally informed that "...the Authority will not litigate on correspondence". This obviously implied that the applicant should stop wasting time writing letters and that he should launch his contemplated review application without further delay.

[21] It is thus clear that as early as 13th May 2015 the applicant should have realized that attempting to resolve the matter out of court was futile and that it was not going to bear any fruit. In the said letter the applicant was expressly challenged to bring his application for the review of the respondents' decision. Notwithstanding that clear and unequivocal indication that there would be no settlement out of court, the applicant still persisted with his threats instead of actually approaching the court for review. However, such useless threats of taking the matter on review were repeated in subsequent letters dated 6th July 2015, as well as 11th September 2015, marked Annexures 'T' and 'U' respectively.

[22] For this court to grant an indulgence for non-compliance with section 7(1)(b) of PAJA the applicant must fully explain the delay for the entire period of his default. In other words, he ought to have given us a reasonably satisfactory and acceptable explanation of his primary delay prior to the expiry date of the 180 day deadline as well as his residual delay subsequent to the expiry of such deadline. That the applicant has failed to do. He was aware as early as 13 May 2015 that pursuing settlement was not an option. Yet he persisted with useless threats. It was argued before us that the applicant was out of time with only twelve days. This argument misses the point. The point of departure in the exercise of the discretion whether to grant condonation in matters of PAJA is not to look at the days after the 'cut off' 180 day period per se but an enquiry should cover

the entire period after the applicant was informed of the administrative decision and its reasons. At the time the respondents repudiated him, the applicant still had well over 162 days left within which he could and should have launched his review application.

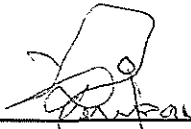
[23] It is my considered view that the applicant failed to explain adequately why he did not bring his application at least in time after he was informed by way of a letter of 12 May 2015 that the respondents were not going to litigate by way of correspondence. Moreover the applicant has poor prospects of success as regards the review application itself. Bearing all the aforesaid factors in mind, it becomes obvious that a reasonably diligent person, in those circumstances, would have acted differently. The respondents are entitled to have finality.

[24] I am, therefore, inclined to dismiss the condonation application. In view of this conclusion, it becomes unnecessary to deal with the review application.

[25] Accordingly I propose the following order.

The application is dismissed with costs.

o b e


PE MOLITSOANE, AJ

I concur. It is so ordered


MH RAMPAL, J

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