

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No: 4617/2010

In the matter between:-

MEC PUBLIC ROADS AND TRANSPORT:

1st Applicant

FREE STATE PROVINCE

PREMIER OF THE FREE STATE

2nd Applicant

and

JJ VAN DER MERWE

Respondent

JUDGMENT BY: MOENG, AJ

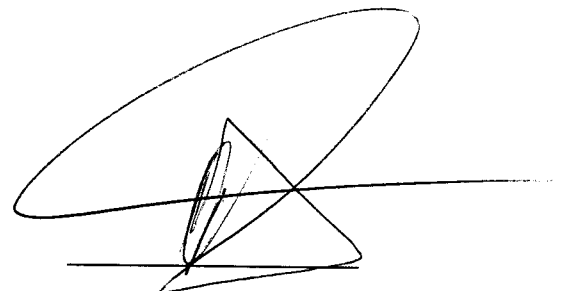
DELIVERED ON: 20 March 2015

- [1] This is an application for leave to appeal to the full bench of this division against the whole of my judgment delivered on 29 January 2015. The grounds of appeal are contained in the notice of appeal and I do not deem it necessary to repeat same. I ordered that heads of argument be filed and that the parties appear before me if they so pleased. I further warned the parties that I will proceed with the application irrespective of their appearance. I was only favoured with respondent's heads and applicant failed to provide me with same. Applicant likewise failed to appear before me.

- [2] On the strength of the foregoing grounds of appeal, applicants submit that in the circumstances there is a reasonable prospect of success and that another Court, constituted differently, may come to a different conclusion. The application is opposed. The respondent contends that none of the grounds of appeal have any substance and that there is no reasonable likelihood that another Court will differ from me on the conclusions I reached on the issues raised.
- [3] It is trite that leave to appeal should not be granted unless the applicant satisfied the trial court concerned that he has a reasonable prospect of success on appeal. The issues at hand relate to whether there was merit in the application in terms of section 3(4) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 ("the Act") and whether respondent unduly delayed instituting the condonation application.
- [4] I concluded in my judgment that it is implausible, based on the course of events, that applicant could have consulted and instructed an attorney to institute an action before expiry of the notice period. I was satisfied that all three requirements encapsulated in section 3(4)(b)(i), (ii) and (iii) were established. I was also satisfied that the attorney's admitted neglect to timeously proceed with the condonation application should not in the circumstances, debar the applicant from relief.
- [5] After having revisited my judgment and having re-evaluated same with the notice of appeal as well as the heads of argument proffered

herein, I came to the conclusion that applicant has no reasonable prospect of success on appeal. In his heads of argument, Mr. Mullins SC moved for an order dismissing the application and that costs include those of two Counsel. I do not believe that the respondent's choice to employ two Counsel was warranted under these circumstances and I will accordingly make the following order:

1. Leave to appeal is dismissed with costs.



L.B.J. MOENG, AJ

On behalf of applicants:

Mr. SS Jonase
Instructed by:
State Attorneys
BLOEMFONTEIN

On behalf respondent:

Adv. JF Mullins SC and J Zietsman
Instructed by:
Honey Attorneys
BLOEMFONTEIN