



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2021-60426

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
DATE 11/02/2025	
LENYATJ	

In the matter of:

JACOBUS JOHANNES MAASDORP

Applicant

And

THE MINISTER OF DEFENCE

First Respondent

**THE CHIEF OF SOUTH AFRICAN NATIONAL
DEFENCE FORCE**

Second Respondent

THE MILITARY OMBUD

Third Respondent

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 11 February 2025.

JUDGMENT

LENYAI J

- [1] This is an application to review and set aside the decision of the first respondent in terms of the Promotion of Administrative Justice Act 3 of 2000, that the first respondent is not in agreement with the findings and recommendations as set out in the report of the third respondent.
- [2] In the joint practice note the parties agreed that the issues in dispute are as follows:
- 2.1 Whether the condonation application for the late filling of the review application should be granted by the court;
 - 2.2 Whether the first respondent's rejection of the third respondent's recommendation is an administrative action;
 - 2.3 Whether, if the court finds that the decision by the first respondent is an administrative action, whether such decision is susceptible to be reviewed and set aside.
- [3] The applicant avers that he joined the National Defense Force during 1992 until he retired in 2018. At the time of his retirement, he was a Senior Staff Officer.
- [4] The applicant avers that he was seconded to the African Union Commission (AUC), Ethiopia during April 2008. During October 2008, he was informed via the SA Embassy in Addis Ababa that the AUC has accepted his nomination to Ethiopia. In preparation for his departure, he drew R 16 000.00 from Naval Headquarters as advance subsistence and travelling allowance (S&T) to pay for his out of pocket expenses and accommodation in Ethiopia, and he departed for Addis Ababa on 15th October 2008.

- [5] The applicant avers that this amount was deducted from his salary over three months during the time of his secondment. After returning to South Africa during 2012, he had on numerous occasions attempted to reconcile his claim with the first and second respondents but was unsuccessful due to the lack of substantiating documents the first and second respondents should have made available to him.
- [6] The applicant further submits that he was forced to refer his matter to the Grievance Board. On the 31st October 2016 the Grievance Board informed him that his grievance was rejected and that the matter was considered to be finalised.
- [7] The applicant avers that he then referred the matter to the third respondent during the end of 2016. He requested that the third respondent assist him with payment of all his unpaid allowances and/or benefits as well as interest on all outstanding payments.
- [8] The applicant submits that during the end of 2016 and/or the beginning of 2017, the third respondent conducted an investigation in terms of Section 6(7) of the Military Ombud Act 4 of 2012, into the alleged non-payment of remuneration/allowances due to him by the first and second respondents.
- [9] The applicant avers that his complaint falls within Regulation 7(1) of the Military Ombud Complaints Regulations of 2015 and was deemed as such by the third respondent. The third respondent's report and recommendations was delivered on 14th October 2019. In the report the following findings were made:

9.1 **Child and resettlement allowances:** non-payment of the child and settlement allowances to the complainant were unfair;

9.2 **Leave pay-out:** non-payment of the complainant's thirty days annual leave for 2009 leave cycle was unfair;

9.3 **Ministerial Authority and reconciliation of S&T:** no Ministerial Authority was issued for the complaint on how to use the allowance/benefits prior to his departure to the second country or recipient organization and that, that conduct was irregular.

[10] The applicant avers that the third respondent made numerous recommendations to the first respondent in terms of sections 6(7) and 6(8) of the Military Ombud Act at paragraph 7 of the report. The recommendations are as follows:

- 10.1 That various departments of the second respondent convene and assist one another with the drafting of the *post facto* ministerial authority setting out each benefit including the cost thereof. This would assist in identifying all benefits that were due and payable to the applicant;
- 10.2 That the child and resettlement allowances be paid to the applicant;
- 10.3 That an amount in rand value equivalent to the thirty days annual leave that the applicant could not take during the 2009 leave cycle, be paid out to the applicant;
- 10.4 That the lease agreements presented by the applicant be taken into cognisance during the determination of any top-up housing allowance that may be due to the applicant;
- 10.5 That the SANDF pay interest to the applicant at the prescribed rate of interest in terms of the prescribed rate of Interest Act 55 of 1975 in the

amount determined to be due to the applicant after the *post facto* Ministerial Authority from the date on which the applicant lodged the grievance;

10.6 That a board of enquiry be convened to determine the cause of the failure to draft the Ministerial Authority, as well as, the non-assistance of the applicant with his claims for his allowance in question;

10.7 That the SANDF to consider taking the necessary steps to sensitise the relevant officials on the correct procedure to be followed during secondment, in order to avoid similar occurrence in future.

[11] The applicant avers that the first and second respondents failed to adhere to the recommendations of the third respondent. The applicant's attorneys of record addressed a letter to the first and second respondents on the 2nd November 2020 demanding that they comply with the recommendations made by the third respondent.

[12] The applicant avers that the first respondent addressed a letter to the third respondent on the 18th November 2020, stating that it is not in agreement with the findings and recommendations set out in its report and that it cannot accept the recommendations.

[13] The applicant further avers that the first respondent informed the third respondent that it has requested the second respondent to ensure that a meeting is set up between the office of the second respondent and the officials of the SANDF to determine which policies apply and which allowances are due to the applicant. The applicant submits that he is not aware if such a meeting took place and was not informed of any such proceedings.

- [14] The applicant avers that the third respondent responded to the letter from his attorneys on the 10th December 2020 and informed them that once it had made its recommendations to the Minister, it is deemed to have completed its investigation and have complied with its legislative mandate.
- [15] The applicant submits that the decision of the first respondent not to comply with the findings and recommendations of the third respondent, falls within the definition of administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA).
- [16] The applicant contends that irrelevant considerations were taken into account, and relevant considerations were not considered by the first respondent in arriving at a decision not to comply with the recommendations of the third respondent. The applicant further submits that the decision of the first respondent was not rationally connected to the information before the third respondent.
- [17] The applicant submits that it is evident from the report of the third respondent that the matter was properly considered, as considerable evidence was gathered and considered. The applicant further submits that paragraph 3 of the third respondent's report sets out exactly how the investigation was conducted. It is evident from the report that various documents, which are listed in paragraph 3.2.1 of the report, were gathered and considered. It is also evident from the report that the first respondent had an opportunity and indeed did furnish the third respondent with its response to the applicant's complaint and views and as such the first respondent's views and stance on the matter were properly considered.

- [18] The applicant also makes an application for condonation for the late filing of the review application. The applicant submits that his attorneys received the correspondence from the attorneys of the first and second respondents on the 18th November 2020, informing his attorneys of their decision not to accept and comply with the findings and recommendations in the report of the third respondent.
- [19] The applicant avers that he was advised by his attorneys to proceed with an interdict application against the first and second respondents to compel them to comply with the findings and recommendations of the third respondent. The attorneys instructed counsel to assist with the drafting of the application and the applicant the founding affidavit in support of the application during July 2021.
- [20] The applicant further submits that prior to the issuing and service of the application, his attorney was informed by counsel that the application for an interdict is not the correct procedure to follow as the decision not to accept and comply with the third respondent's report falls within the definition of administrative action. The counsel advised that they would have to proceed with an application for judicial review in terms of PAJA.
- [21] The applicant avers that he was advised that an application for review in terms of PAJA must be instituted without unreasonable delay and not later than 180 days after being informed of the administrative action or became aware of the action and the reasons for it. He was further advised that, in terms of section 9(1)(b) and 9(2), the 180 days' time period as stipulated in section 7(1)(a), may

be extended by a court on application by the person concerned where the interests of justice so require.

- [22] The applicant submits that his attorney of record deposed to a confirmatory affidavit in support of his submissions which is attached to the review application as annexure "JJM5".
- [23] The first and second respondents contends that the applicant requests an application for condonation for the late filing review. They aver that condonation is not there merely for the asking, nor are applications for condonation a mere formality. A party seeking condonation must make out a case for the indulgence sought and bears the onus to satisfy the court that condonation should be granted.
- [24] The first and second respondents aver that the review application was filed on the 29th December 2021. They submit that the applicant received the report on the 14th October 2019 and only approached his then attorneys during September 2020. This is almost 11 months after the receipt of the report and no explanation is given for the delay in approaching his attorneys.
- [25] The first and second respondents submit that in terms of PAJA the time period within which to bring the application for review is 180 days from the date the impugned decision was made or the date upon which the aggrieved person became aware of the decision.
- [26] The first and second respondents submit that on the 18th November 2020 the applicant's attorneys received correspondence informing them of their decision not to accept and comply with the third respondent's report. The applicant at that stage was advised to proceed with an interdict application to compel them

to comply with the findings and recommendations of the third respondent. Counsel was briefed and the applicant signed the affidavit during July 2021. Prior to the issuing and service of the interdict application, applicant submits that his attorney was advised by counsel that the correct procedure to follow is a judicial review as the decision not to accept and comply with the third respondent's report falls within the definition of an administrative action.

- [27] The respondents contend that the applicant became aware during July 2012¹ that the letter dated 18th November 2020 falls within the definition of an administrative action and yet the judicial review application was only filed on 29 November 2021. The respondents aver that this is a further delay of four months and again no explanation is given for this delay.
- [29] The respondents submit that there is an effective delay of 12 months from the 18 November 2020 to the 29 November 2021 when the review application was filed.
- [30] The well-established general principles to grant condonation were clearly laid out as the following in the matter of **Motseto v Minister of Police and Others JR 134/2019 (23 July 2021) at para 5:**
- (a) The extend of the delay;
 - (b) The explanation for the delay;
 - (c) The prospects of success of the application; and
 - (d) The prejudice to the parties.
- [31] In the **Motseto** matter the court at para 9 held as follows:

“The general principles applicable in deciding applications for condonation apply even more stringently where it comes to review applications.”

[32] It is trite that a party seeking condonation must make out a case for the indulgence it seeks. In the matter of **Mashsishi v Mdladla and Others JR 2644/11 AT PARA 8**, the court held that without a reasonable explanation and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.

[33] In the matter of **Saloojee and Another-NNO v Minister of Community Development 1965 (2) SA 135 (A)**, the Appellate Division held as follows:

“There is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations and misericordiam should not be allowed to become an invitation to laxity. In fact, this court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to the neglect on the part of the attorney. The attorney, after all, is the representative who the applicant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure.”

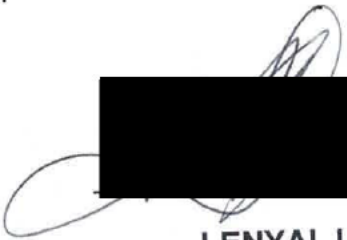
[34] Turning to the matter before me, having considered the documents before me and the submissions made in court, I am not satisfied that the applicant has

provided an adequate explanation for his 11 month delay in approaching his attorneys. Also, the applicant seems to be putting blame on his attorneys for some of the further delays and even went as far as to submit that there was a confirmatory affidavit from his attorney attached to the application. Such confirmatory affidavit is not attached, and the applicant's counsel could not give a satisfactory explanation to the court.

[35] The applicant has not provided a reasonably acceptable explanation for the delay in bring the review application and relying on the dictum of court in the matters of **Motseto, Mashishi and Saloojee** referred to above, the condonation application stands to be refused.

[36] Under the circumstances I make the following order:

1. The condonation application is dismissed with costs.



LENYAI J

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant	:	Adv R Britz
Instructed by	:	Brandon-Swanepoel Attorneys
Counsel for the Respondents	:	Adv SS Jonasse
Instructed by	:	Office of the State Attorney
Date of hearing	:	26 August 2024
Date of Judgement	:	11February 2025