

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 8943/2022

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED

DATE: 30/5/2025

SIGNATURE

In the matter between:

MOGOLO ALEX TJATJI

APPLICANT

AND

MINISTER OF POLICE

1ST RESPONDENT

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

2ND RESPONDENT

JUDGMENT

MANGENA AJ

- [1] **Mr Mogolo Alex Tjatji** alleges that he was arrested by members of the South African Police Services on or about **31 January 2018**. Subsequent to the arrest he was detained at **Pretoria West vehicle impound** where was assaulted and tortured by the police. He was later transported to Seshego where he was further detained until he appeared in court on **02 February 2018**. The matter was remanded for further investigation to the **07 February 2018** where he was granted bail of **R5 000.00**. He attended court until the charges were withdrawn against him on **21 August 2019**.
- [2] He instituted legal proceedings against the Minister of Police and the National Director of Public Prosecutions on **18 August 2022**. On the same date he dispatched a letter of demand to both the Minister of Police and the National Director of Public Prosecutions required by **Section 3** of the **Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002**.
- [3] The defendants defended the proceedings through the office of the state attorney which pleaded specially on behalf of the Minister of Police that Mr Tjatji has failed to comply with **section 3** of the **Institution of the Legal Proceedings Against Certain Organs of State Act 40 of 2002** in that he failed to give notice of his intention to institute the legal proceedings within the required period of six months from the date on which the date became due and payable. Mr Tjatji has also not applied for condonation and the Minister has not consented.
- [4] Upon receipt of the plea, Mr Tjatji applied for condonation. The Minister is opposing it on the basis that the claim for which he seeks to be compensated prescribed in **January 2021** after the lapse of three years from the date of the alleged assault, torture and detention.
- [5] The principles governing condonation are trite and the overall considerations is the interests of justice. To enable the court to make a determination as to what the interests of justice requires in a particular case, an applicant for condonation must

provide a detailed and reasonable explanation for the delay and same should account for the entire period.

- [6] Before the court could exercise its discretion on whether to grant condonation, **section 3(4)(b) of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002** requires it to be satisfied that: -

- (a) The debt has not been extinguished by prescription.
- (b) Good cause exists for the failure by the creditor.
- (c) The organ of state was not unreasonably prejudiced by the failure.

- [7] The three requirements mentioned above are conjunctive and the applicant has to satisfy all of them.

- [8] In relation to prescription, it was submitted on behalf of the applicant that he only acquired complete cause of action giving rise to the claim on **11 July 2022** after his brother spoke to one of his acquaintances who is a legal practitioner. It is noteworthy that Mr. Tjatji does not disclose the names of the brother as well as the legal practitioner. The Minister of Police rejects the contention by Mr Tjatji that he acquired complete cause of action in July 2022. He knew that he was arrested, tortured and detained in police cells by members of the SAPS. He had a benefit of legal representation throughout the criminal proceedings and it is unfathomable that he could not have known that his delictual claim lies against the Minister of Police in relation to the unlawful arrest, assault and detention. He was simply dilatory in asserting his rights and the court cannot help him because his claim has prescribed due to lack of action on his part.

- [9] There is merit in this contention by the Minister. One does not need sophistication to know that a claim for unlawful arrest lies against the police. Mr Tjatji on his own version knew that he has a claim against police but was afraid or reluctant to do so because he did want to have the criminal charges reinstated. His fear cannot be elevated to lack of knowledge as to the identity of the creditor against whom the claim

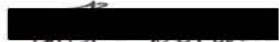
for the recovery of the debt should be instituted. I therefore find without hesitation that the claim against the Minister of police has prescribed.

- [10] The affidavit by Mr Tjatji is scant with information and lacks the necessary details to enable the court to make an assessment of the extent of his innocence in so far as the delay in instituting the proceedings is concerned. In paragraph 4.19 he states that after the charges were withdrawn, he did not understand whether the matter was still proceeding until he was advised that it was indeed finalized. He was later informed by his friends that it means that the case has been permanently withdrawn and that he could sue the state, however he was afraid to approach any attorney for assistance as he thought that the state would reinstate the criminal proceedings.
- [11] The explanation given above is wholly inadequate and readily admits itself to being a contrived version. He fails to state when exactly did his friends tell him that the matter is finalised and that he can proceed to institute the proceedings. He also does not state at what point did his fear of the reinstatement of criminal charges dissipated. In this regard Mr Tjatji has failed to show good cause.
- [12] The Minister has alluded to the prejudice he will suffer if the court were to grant condonation. The applicant has not set out both in this condonation application and the particulars of claim, the names of the police officials who allegedly arrested, assaulted and tortured him. This information, to the extent it is known, should be furnished so that proper investigations can be conducted to establish liability on the part of the Minister. The delay in furnishing it causes prejudice as the Minister requires adequate time to investigate the allegations, verify documentation at police stations and courts where the accused person alleges to have appeared and remanded in custody.
- [13] I have given due regard to the averments contained in the applicant's affidavits and I am not persuaded that he has made out a case for condonation. He failed to satisfy the three requirements enlisted in **section 3(4)(b) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002.**

[14] In the premises, the following orders are made:

14.1. Application for condonation is dismissed.

14.2. The applicant is ordered to pay costs on a party and party scale A of the High Court.



M.I. MANGENA AJ
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR APPLICANT : MAKHAFOLA & VERSTER INCORPORATED

FOR RESPONDENTS : STATE ATTORNEYS POLOKWANE

HEARD ON : 14 MAY 2025

DELIVERED ON : 30 MAY 2025