

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

CASE NUMBER: **2025-028534**

SIGNATURE

DATE: 6 August 2025

In the matter between:

MATSHELE TOMAS MOUKANGWE

Applicant

and

THE MINISTER OF LABOUR

1st Respondent

DIRECTOR GENERAL OF THE DEPARTMENT OF LABOUR

2nd Respondent

THE COMPENSATION COMMISSIONER

3rd Respondent

Heard: 20 June 2025

Delivered: 6 August 2025

J U D G M E N T

H NOCHUMSOHN AJ:

1. On 20 June 2025, and in the unopposed motion court, I granted an Order ("**the Order**"), at the instance of the Applicant against the Respondents in the following terms:

- 1.1. *“That the Applicant is granted leave to institute legal proceedings sounding in damages against the Respondents;*
 - 1.2. *The Respondents shall pay the costs on a scale as between party and party on Scale C, jointly and severally and in solidum, the one paying the other to be absolved.”*
2. On 24 July 2025, the Respondents’ filed a Request for Reasons (**“the Request for Reasons”**) for the grant of this Order. In filing the Request for Reasons, the Respondents placed reliance on the provisions of Rule 49(1)(c).
 3. That sub-rule provides as follows:

“When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within 10 days after the date of the order”
 4. At the time of granting the Order, the Respondents elected not to brief Counsel to appear. In point of fact, when handing the Order down, I did not indicate any intention to provide reasons at a later time. Hence, the Respondents’ invocation of Rule 49(1)(c) is somewhat misguided.
 5. Moreover, the Request for Reasons was only filed on Courtonline on 24 July 2025, more than a month after the Order was handed down. ¹It is clear that the Request for Reasons has been filed out of time, and there is no accompanying application for condonation.

¹ The Request for Reasons was not bundled into Caselines, and was only emailed to me on 1 August 2025. I did not have access to it before then.

6. Notwithstanding the lateness and the irregularity of the Request for Reasons, I have decided that in the interests of transparency and judicial accountability, to provide the reasons so requested. It is to this end that this judgment is penned.

6.1. Why the matter proceeded in the unopposed motion court

- 6.1.1. On 8 May 2025 the Respondents filed a Notice of Intention to Oppose²
- 6.1.2. The Respondents did not file an Answering Affidavit;
- 6.1.3. The Respondents did not file a Notice in terms of Rule 6(5)(d)(iii) signifying that they intended to raise any question of law;
- 6.1.4. The Respondents did not file Heads of Argument;
- 6.1.5. The Respondents did not file a Practice Note;
- 6.1.6. The Respondents did not brief Counsel to oppose the application on the day.

² Caselines 03-1, 03-2

- 6.1.7. In point of fact, other than filing a formal Notice of Intention to Oppose, the Respondents did nothing whatsoever thereafter to actually oppose the application, notwithstanding having been served with due and proper notice of set down on 3 June 2025.³
- 6.1.8. In the result, by the time the matter came before me in open court on 20 June 2025, the Respondents had all but abandoned their opposition to the application. The Respondents took no issue with the factual matrix testified to by the Applicant in the FA. Neither did they take any points *in limine*.
- 6.1.9. The Applicant, on the other hand, was duly represented in court by his attorney of record, Mr Zungu, who moved for the Order in the terms expressed above. In the circumstances, it would have been manifestly unfair and unjust to have denied the Applicant a hearing, by refusing to entertain the application in the unopposed motion court. There was also no reason to burden the opposed motion court with the matter given (as demonstrated above) that there was no opposition on the day, either in the form of legal representation or even any oppositional papers whatsoever.
- 6.1.10. Most notably, the Applicant's attorney was well within his rights to enroll the application on the unopposed motion roll. This is so because an unopposed motion is defined in paragraph 9.9.1 of the Practice Manual of this Division, as follows:

³ Caselines 05-1, 05-2

“9.9.1 Definitions

1. For purposes of this directive ‘unopposed motions’ shall include –

1.1 all motions and applications in which the respondent has failed to deliver an answering affidavit and has not given notice of an intention only to raise a question of law (Rule 6(5)(d)(iii) or a point in limine”. (Emphasis included)

6.1.11. The Respondents’ question in the Request for Reasons as to “*why the matter proceeded on the unopposed motion roll when it was opposed*”, is thus based on the false premise that the application was actually opposed. It also begs the real question: why did the Respondents not oppose the application, either in the papers or in open court?

6.2. Why leave to institute action against the Respondents was granted

6.2.1. The Notice of Motion (“**NOM**”) and the Founding Affidavit (“**FA**”) were served:

6.2.1.1. on the First and Second Respondents on 11 March 2025⁴;

⁴ Caselines 02-1 to 02-4

6.2.1.2. on the Third Respondent on 18 March 2025⁵.

6.2.2. As signified above, Notice of Intention to Oppose was filed by the State Attorney on behalf of all three Respondents, so the application definitely came to the notice of the Respondents.

6.2.3. The full relief sought by the Applicant in the NOM was as follows:

“1. An order directing the 3rd Respondent, Compensation Commissioner to publish to the Applicant’s attorneys of record and to the applicant’s employer a date for the hearing of the applicant’s objection in terms of section 91 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 as amended, within 10 (ten) days of service of this order.”

“2. In the event that the 3rd Respondent fails to comply with paragraph 1 (one) of this order, the Applicant is granted leave to institute legal proceedings for a claim sounding in damages against the 1st, 2nd and 3rd Respondent.” (sic)

“3. The Respondent to pay the costs on a scale as between party and party Scale C.”

“4. Further and/or alternative relief”.

6.2.4. At the hearing, Mr Zungu abandoned the relief sought in prayer 1, and moved for an order in terms of prayers 2 and 3.

⁵ Caselines 02-6

- 6.2.5. The explanation for this was set forth in the Practice Note⁶ filed by Mr Zungu on behalf of the Applicant in which the following was stated:

6.2.5.1.

“RELIEF SOUGHT BY THE APPLICANT:

The Third Respondent has since partially resolved the matter by compensating the Applicant for his permanent disability, albeit inadequately. Accordingly, the Applicant now seeks an order granting leave to institute legal proceedings for a claim sounding in damages arising from the repercussions of the unreasonable delay in resolving the matter”

- 6.2.6. Mr Zungu also provided the following background information in his Practice Note ⁷:

“BACKGROUND

On or about the 03rd of March 2025, the Applicant caused a Notice of Motion to be issued out of this court wherein amongst other prayers, the Applicant is requesting. An order directing the 3rd Respondent, Compensation Commissioner to publish to the Applicant’s Attorneys of record and to the applicant’s employer a date for the hearing of the applicant’s objection in terms of section 91 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 as amended. In the event that the 3rd Respondent fails to comply with paragraph 1 (one) of this order, the Applicant is granted leave to institute legal

⁶ Caselines 06-5 to 06-9

⁷At paragraph 9, Caselines 06-6 to 06-8

proceedings for a claim sounding in damages against the 1st, 2nd and 3rd Respondents.

On or about the 11th of March 2025, the notice of motion and founding affidavit were served on the First Respondent's personnel as it will appear on the Sheriff's Return of Service, which is filed at 02-0002 on caselines.

On or about the 11th of March 2025, the notice of motion and founding was served on the Second Respondent's personnel as it will appear on the Sheriff's Return of Service, which is filed at 02-0001 on caselines.

On or about the 18th of March 2025, the notice of motion and founding was served on the Third Respondent's Legal Services Department personnel as it will appear on the Sheriff's Return of Service, which is filed at 02-0003 on caselines.

On or about the 15th of April 2025, the Applicant's attorneys received correspondence from the third Respondent, notifying the applicant that a date has been scheduled for the hearing of the Applicant's objection to the commissioner's refusal to compensate the applicant.

On or about the 25th of April 2025, the notice of motion and founding affidavit was served on the Respondents' legal representatives, the state attorney, as it will appear on the Sheriff's Return of Service, which is filed at 02-0004 on caselines.⁸

⁸ This is erroneous. As is set out in paragraph 6.2.1 *supra*, the NOM and the FA were served by the Sheriff on the Respondents on 11 and 18 March 2025, respectively

On or about the 08th of May 2025, the Respondents' attorneys served the Applicant's attorneys with the Respondents' Notice of Intention to oppose. The said notice is filed at 03- 0001 on caselines.

On or about the 13th of May 2025, the Applicant's attorneys received correspondence from the third Respondent, notifying the applicant that the date scheduled for the hearing of the Applicant's objection has been cancelled and the third Respondent has resolved to award the Applicant 15% compensation.

On the 05th of June 2025, the 20 days within which the Respondents were supposed to have served and filed their answering/opposing affidavit expired without serving or filing the same."

6.2.7. It is thus apparent from the above quoted section of the Applicant's attorney's Practice Note that the Applicant procured some form of partial relief from the Respondents, only after service of the application.

6.2.8. The Applicant, in his FA, narrates the treatment which he received from officials of the Third Respondent in relation to his Workmens compensation claim which he lodged in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("**COIDA**"), as follows:

6.2.8.1. On 20 March 2024 the Third Respondent rejected the Applicant's claim, asserting that he had not suffered permanent disablement⁹;

⁹ FA Paragraph 9, Caselines 01-8

- 6.2.8.2. On 6 August 2024, the Applicant lodged an objection against the Third Respondent's decision, in the prescribed manner in terms of Section 91 of COIDA¹⁰;
- 6.2.8.3. On 23 September 2024, the Applicant's attorney received a letter from an official of the Third Respondent scheduling the section 91 objection hearing for 10 October 2024¹¹;
- 6.2.8.4. On 2 October 2024, the Applicant's attorney received an email from an official of the Third Respondent stating that the hearing could not proceed on 10 October 2024 after all, due to the unavailability of their Legal Officer¹²;
- 6.2.8.5. On 20 October 2024, the Applicant's attorney addressed an email to the Third Respondent's official requesting a new hearing date be allocated¹³;
- 6.2.8.6. On 20 November 2024, an official of the Third Respondent responded to the Applicant's attorney by copying him on an email to a colleague requesting the

¹⁰ FA Paragraph 10 Caselines 01-8

¹¹ FA Paragraph 11, Caselines 01-8, as read with annexure C at Caselines 01-24

¹² FA Paragraph 12, Caselines 01-8 as read with annexure D1 at Caselines 01-25

¹³ FA Paragraph 14, Caselines 01-9 as read with annexure D3 at Caselines 01-27

latter to assist with the allocation of a hearing date as a matter of urgency¹⁴;

6.2.8.7. On 28 November 2024, the Applicant's attorney addressed a follow up email to both employees of the Third Respondent enquiring as to the allocation of a hearing date. No response was received to this follow up email¹⁵;

6.2.8.8. On 10 January 2025, the Applicant's attorney sent a further reminder to the two officials at the Third Respondent, asking for follow up on the allocation of a hearing date. The Applicant's attorney once again received no response to this email¹⁶. The content thereof is apposite. It reads:

"Good afternoon

Compliments of the new year.

1. *This is my third follow-up email, requesting a hearing date to be allocated for this matter.*
2. *The delay in the finalization of this matter is unacceptable.*
3. *As you are aware, our client continues to experience*

¹⁴ FA Paragraph 14, Caselines 01-9 as read with annexure D3 at Caselines 01-27

¹⁵ FA Paragraph 15, Caselines 01-9 as read with annexure D4 at Caselines 01-28

¹⁶ FA Paragraph 16, Caselines 01-9 as read with annexure D5 at Caselines 01-29

*significant strain due to the injuries sustained at work,
which subsequently led to his disability.*

4. Kindly attend to this matter expeditiously.

Kind regards

SP Zungu"

- 6.2.9. The application was thereafter issued on 3 March 2025.
- 6.2.10. The Applicant asserts that the delay in allocating a hearing date by the Third Respondent is an infringement of his right to claim compensation in terms of Section 22(1) of COIDA.¹⁷
- 6.2.11. The Applicant also alleges that the lack of finality in the administration of his claim and consequent lack of access to medical care and attention has resulted in him experiencing pain and suffering, violation of dignity, humiliation, discrimination and exclusion. I regard this state of affairs with particular concern, having regard to the fact that the Applicant is a previously disadvantaged person, and a blue collar worker, who was engaged in manual labour.¹⁸

¹⁷ FA Paragraph 17, Caselines 01-10

¹⁸ See the medical referral letter dated 9 July 2024 by Drs Hubert Edmond Foster and Dr Prenil Hira, annexed as Annexure B4 to the FA, at Caselines 01-16

6.2.12. According to the Applicant's attorney, per the information disclosed in his Practice Note¹⁹, yet another hearing was scheduled and then cancelled by the Third Respondent, who did an about turn on the repudiation of the claim, and ostensibly unilaterally finalized the same by awarding to the Applicant only fifteen percent (15%) of the quantum of his claim, *sans* a Section 91 hearing. This notwithstanding the fact that a hearing was promised by the Third Respondent in its letter dated 20 March 2024²⁰.

6.2.13. The Applicant, clearly aggrieved by this, and the entire chronology of events outlined above, still sought an order granting leave to the Applicant to institute legal proceedings sounding in damages against the Respondents, and for costs – but abandoned prayer 1 of the NOM.

6.2.14. I granted such leave for the following reasons:

6.2.14.1. The Applicant's uncontroverted version as per the FA ²¹ is that he was mistreated by the Third Respondent in regard to the administration of his claim, and his Section 91 objection. Various appointments scheduled with officials of the Third Respondent were cancelled without reason, and he was delayed and frustrated in the prosecution and quantification of his claim. It is clear that had he not brought the application, he would not have received even the fifteen percent (15%)

¹⁹ Caselines 06-7

²⁰ The letter forms Annexure A to the FA, at Caselines 01-12

²¹ Caselines 01-6 to 01-29

compensation, which he ultimately did before the application came before me;

Condonation in terms of The Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002

6.2.14.2. I am cognizant that the effect of the Order granting the Applicant leave to institute legal proceedings against the Respondents effectively condones the non-delivery of a notice under Section 4(1) of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 ("**the Act**"). Section 5(2) of the Act provides that no legal proceedings may be served against an Organ of State until a period of sixty (60) days has elapsed after the date of delivery of a Notice under Section 4(1). Section 3(4) of the Act states that a creditor may apply to a court having jurisdiction for condonation for failure to serve such a notice.

6.2.14.3. Section 3(4)(b) empowers a court to grant such condonation if it is satisfied that:

6.2.14.3.1. the debt has not been extinguished by prescription; and

6.2.14.3.2. good cause exists for the failure by the creditor;

6.2.14.3.3. the Organ of State was not unreasonably prejudiced by the failure.²²

6.2.14.4. Once these three requirements have been met, it has been held that the discretion to condone noncompliance with the provisions of the Act operates according to established principles in such matters²³;

6.2.14.5. To my mind, in applying for leave to institute legal proceedings *sans* such a notice in terms of the Act, the Applicant has effectively applied for condonation. In granting such leave, I have effectively granted the same. In so doing, I have taken the following factors into account:

6.2.14.5.1. The NOM and FA were served on the Respondents on 11 and 18 March 2025 respectively²⁴. In both the NOM and the FA, the Applicant makes it clear that he intends to institute civil proceedings for damages against the Respondents. The NOM and FA therefore, to my mind, in and of themselves, constitute notice as envisaged in terms of Section 3(1)(a) of the Act, in substance, if not in form. A period of sixty (60) days had already elapsed from date

²² The issue of prejudice was discussed in *Ngwazi v Minister of Police* 2024 JDR 4195. In that case, it was alleged that the respondent would not suffer any prejudice. These allegations were met with a bare denial. The court found that indeed the respondent would not, in those circumstances, suffer any prejudice and to the extent that any prejudice may exist, that such prejudice would be unreasonable.

²³ *Madinda v Minister of Safety and Security* [2008] 3 All SA 143 (SCA)

²⁴ Caselines 02-2 to 02-8

of service of the NOM and FA until date of grant of the Order. It seems to me to be superfluous, and prejudicial to the Applicant to impose a further delay of sixty (60) days before allowing him to institute his contemplated legal proceedings, especially in the circumstances where, due to maladministration, his claim and Section 91 objection has been frustrated, delayed and cannibalized without any hearing;

6.2.14.5.2.

The events of which the Applicant complains, which ostensibly would give rise to any claim, arose during the period 20 March 2024 to January 2025²⁵. There can be no question of the claim having been extinguished by prescription;

6.2.14.5.3.

I am of the view therefore that good cause exists to grant condonation for the failure to file a formal notice. In ***Madinda v Minister of Safety & Security***²⁶, the Supreme Court of Appeal examined the concept of ‘good cause’ and found it to be more about considering of all factors which bear on the fairness of granting the relief. These factors may include prospects of success, reasons for delay, sufficiency of the explanation offered and the bona fides of the applicant.

²⁵ Caselines 01-8 to 01-29 and Caselines 06-6 to 06-8

²⁶ [2008] 3 All SA 143 (SCA) at para 12

6.2.14.5.4.

In *Mokhemisa v Minister of Police* ²⁷, it was held that it was not for the court to decide on the merits of the case. Indeed, I do not seek to do so in this judgment.

6.2.14.5.5.

I exercise my discretion in favour of granting leave to institute legal proceedings against the Respondents, and in so doing am guided by principles and natural justice. To this end, and as signified above, there is much to be said for the notion that the NOM and FA constitute substantive compliance with the Act, which is aimed at alerting Organs of State of impending legal proceedings. This, the NOM and the FA achieves. In addition, the unchallenged factual matrix set out in the FA demonstrates the extent to which the Applicant's claim was irregularly and unlawfully handled, to his detriment. The Applicant, on his uncontested version, has already been victimized by the Third Respondent, a factor which I took into account in granting leave to institute action against the Respondents;

²⁷ (1340/2023) [2023] ZAFSHC 436

6.2.14.5.6.

The Respondents in this matter do not stand to suffer unreasonable (or indeed any) prejudice by the failure to file a formal notice. This is so because the Respondents have been aware since service of the NOM that the Applicant intended to seek leave to sue, which is ultimately the intention of Section 3(1) of the Act. To this end, the following was stated by Lewis JA in ***Minister of Safety and Security v De Witt***²⁸:

“[2] The Act is meant not only to bring consistency to procedural requirements for litigating against organs of State but also, it is clear, to render them compliant with the Constitution. The way in which it seeks to achieve a procedure that is not arbitrary and that operates efficiently and fairly both for a plaintiff and an organ of State is to give a court the power to condone a plaintiff's noncompliance with procedural requirements in certain circumstances. Thus access to courts is facilitated, while at the same time procedures against large governmental organisations that need to keep their affairs in order are regulated.”

²⁸ 2009 (1) SA 457 (SCA) at para 2

6.2.14.5.7. Had the Respondents persisted in their opposition by filing Heads of Argument, or relying on a point of law, and by briefing Counsel to oppose the relief, I may have considered the application in a different light on the day. The fact is that they did none of these things;

6.2.14.5.8. The relief is benign and it is not final in nature. It does not seek to opine or in any way determine either the Applicant's right to claim any damages or the quantum thereof. It simply affords the Applicant leave to institute legal proceedings, which the Respondents are of course free to defend. The relief is accordingly not prejudicial to the Respondents, who will be afforded a full opportunity to ventilate their defense to any action;

6.2.14.5.9. The grant of leave to institute legal proceedings is merely interlocutory in nature in that it facilitates further litigation.

6.3. Costs

6.3.1. The Request for Reasons is curiously highly specific. It seeks reasons only in respect of paragraphs 1 and 2 of the Order, and not to the

order as to costs. This seems to signify that the Respondents do not take issue with the costs order. Nevertheless, my reasons for awarding party and party costs are:

6.3.1.1. There is no doubt that the Applicant would not have achieved the award of even the fifteen percent (15%) of his claim, which he did. Although he is clearly not happy with this outcome, the fact is that the institution of the application was necessary to achieve the reversal of the repudiation of his claim, and the partial relief which has flowed therefrom;

6.3.1.2. The Applicant has therefore been substantially successful in the application, and there is no reason to depart from the ordinary rule that costs follow the result.

7. Conclusion

7.1. For all of the reasons advanced above, I granted the Order referenced in paragraph 1 above.

HARRY NOCHUMSOHN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Applicant:

Attorney SP Zungu of Zungu Attorneys

For the Respondents:

No appearance