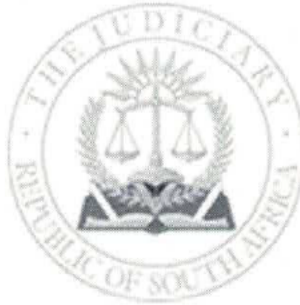


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
Date: 27 August 2025 Signature: _____	

CASE NO:47312-2021

In the matter between:

THULO MOLEFI

Applicant

And

THE COLLEGES OF MEDICINE OF SOUTH AFRICA NPC

First Respondent

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

Second Respondent

Coram: Dlamini J

Heard: 24 July 2025

Delivered: 27 August 2025 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines*, and by release to SAFLII. The date and time for the hand-down is deemed to be 10:30 on 27 August 2025

JUDGMENT

DLAMINI J

Introduction

- [1] On 24 July 2025, I made an order marked X, an order of this court. The order essentially upheld the respondent's point *in limine* and dismissed the applicant's application for condonation with costs. Below are my reasons for the order.
- [2] This is a review application wherein the applicant, Dr. Thulo Molefi, a medical practitioner (Dr. Molefi), has launched a review against the Colleges of Medicine of South Africa (the first respondent) and the Health Professions Council of South Africa (the HPCSA), the second respondent.
- [3] The applicant had written the oncology examination administered by the first respondent on behalf of the HPCSA on three separate occasions and was unsuccessful on each occasion.
- [4] In the review application, the applicant is seeking the following orders;
 - 4.1. Reviewing the decision of the first respondent not to give the applicant a passing grade in respect of his medical oncology certificate examination is declared to be invalid, and it is reviewed and set aside.

Background Facts

- [5] The facts underpinning the dispute are largely common cause and are as follows.
- [6] The applicant first wrote the oncology examination on 21 and 22 February 2019. On 5 April 2019, he was notified that he was unsuccessful.

- [7] On 2 June 2019, the applicant requested a remarking of his failed examination. On 26 June 2019, he was notified that he had again been unsuccessful.
- [8] On 12 July 2020, Dr. Molefe requested a further remarking of his papers.
- [9] On 15 July 2019, the first respondent responded, declined a further remark, and advised the applicant that "*all appeals are now complete*" and that the examination was unsuccessful.
- [10] Around March 2020, the first respondent afforded the applicant a further remark.
- [11] On 28 July 2020, the first respondent notified the applicant that he was unsuccessful.
- [12] On 4 October 2021, after being notified for the third time, he was unsuccessful. As mentioned earlier, the applicant filed this review application.
- [13] The first respondent opposes the application and raises a point *in limine* regarding whether this court has jurisdiction to hear the application, as it was filed outside the 180-day period specified in Section 7(1) of PAJA.¹ In terms of section 7(1), a review application must be filed within 180 days from the date the impugned decision is made.
- [14] Two issues arose for determination in this regard;
- 14.1. First, whether the review application was to be determined in terms of PAJA or under the principle of legality.
- 14.2. Second, the date in terms of the 180 days within which to launch the application began to run, that is, whether the application is time-barred.

¹ 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 that date-

(a) subject to subsection (2) (c), on which any proceedings

(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 action and the reasons."

[15] Before this court, the parties agreed that the first respondent's function in respect of the administration of the examination constitutes an administrative function. As a result, PAJA is applicable.

[16] The only remaining issue was whether the application was time-barred.

Is the Application Time Barred?

[17] Generally, our courts may, upon application on notice and on good cause shown, make an order extending any time prescribed by an act for taking any step in connection with any proceedings of any nature upon terms as it deems fit.

[18] It is trite that good prospects of success and the interest of justice are not sufficient in the absence of a reasonable and acceptable explanation of the default.

[19] Our courts have emphasized that an application for judicial review may only be launched once the administrative decision and its reasons are known or reasonably ought to have become known to the party seeking judicial review of the decision. Such an application as I have mentioned must be brought within 180 days of the party becoming aware of the decision.

[20] It is important to note that the limitations outlined in PAJA are peremptory, and a court may condone the late filing of a review application if it is satisfied with a reasonable explanation as to the nature and extent of the entire period of delay, taking into account the circumstances and without disregarding the merits of the case.

[21] It is now a well-established principle of our law that our courts are empowered to entertain an application for condonation if it is in the interest of justice to do so. This largely depends on the following;

20.1. A full and reasonable explanation for the delay which covers its entire duration.

20.2. The importance of the relief sought.

20.3. The prospect of success of the review.

[22] I now turn to deal with each requirement.

Explanation for the Delay

[23] The applicant avers that the delay occurred because he had to exhaust internal remedies before approaching the Courts for review. That he had to commission an expert who produced a report that concluded that the applicant had passed the examination.

[24] Dr. Molefi argues that the clock for the 180-day period began to run only once he had sight not only of the decision but also of the reasons thereof. Given that he has not been provided with the reasons, the clock had not begun to run; therefore, this application is brought within the 180-day time period, and the question of whether condonation should be granted does not arise.

[25] Before this court, the applicant argues that his application is only 4 four months late beyond the 180-day time period. Finally, the applicants submit that the respondents would not suffer any prejudice if condonation is granted.

[26] The first respondent submits that the applicant became aware of the respondent's final decision on 15 July 2019. This is the date, so the first respondent's argument goes, that the applicant had received feedback and reasons for his failed answers. His script had been re-marked, the first respondent had communicated that this was a final decision, and the applicant had no further internal appeals available. Therefore, the first respondent insists that the applicant was required to launch this application on 11 January 2020; instead, the application was issued on 4 October 2021, which is one 1 year and 8 months later.

[27] The first respondent avers that the applicant's explanation for the delay is inadequate. The first respondent argues that the applicant has not provided any reasons for why he waited for so long to institute these proceedings. Instead, the

first respondent asserts that the applicant's explanation for the delay only begins in August 2020 and that, even for that period, the applicant's explanation is inadequate. Consequently, the first respondent submits that the application is time-barred and should be dismissed. I agree.

- [28] In my view, the applicant's argument lacks merit. I pause here to mention that no separate, self-standing application for condonation has been filed by the applicant. The applicant's notice of motion contains no order seeking condonation to be granted. The applicant's founding affidavit, in this regard, is not a model of clarity; it provides very scant and bald reasons for the delay. Dr. Molefe remains silent as to when, according to him, the final decision was communicated. During argument, Counsel for the applicant submitted from the bar that the applicant claims that his application was launched 4 four months after the final decision was communicated to him.
- [29] Assuming, for the moment, that the application is four months late, which is incorrect, the applicant offers no reasons for the four-month delay. The applicant's affidavit provides no assistance in this regard.
- [30] Based on the facts and evidence presented in this Court, I am satisfied that the first respondent's final decision was communicated to the applicant on 15 July 2019. This means the application for review ought to have been launched on 11 January 2020. It is common cause that the application was only issued by the applicant on 11 October 2021, a year and 8 months out of time. Accordingly, it is abundantly clear that the delay is significant, with no clear reasons provided by the applicant explaining the delay. On this ground alone, the first respondent's point *in limine* must be upheld.
- [31] Faced with an analogous situation, the SCA affirmed this approach in ***Commissioner for the South African Revenue Service v Sasol Chevron Holdings***² at para [42] as follows: "*It therefore follows that Sasol Chevron's review was instituted outside the 180-day period prescribed in s 7 (1). Thus, in the words of Brand JA in OUTA 'after the 180 day period the issue of*

² 2022 JDR 0978 (SCA)

*unreasonableness is predetermined by the legislature; it is unreasonable per se.*³ The inevitable consequences of this are that, in the absence of an application in terms of s 9(2) of PAJA, the high court should have dismissed the review application for want of compliance with the prescripts of s 7(1), as it had no power to enter into the substantive merits of the review. Therefore, whether or not the impugned decision is unlawful no longer matters. Rather, it became validated by the unreasonable delay. Consequently, the Commissioner's preliminary point ought to have been upheld." Our rules of precedent dictate that this Court is not only bound by this decision, but I fully agree and endorse the judgment.

[32] This, in my view, must be the end of this inquiry. The Court in **Chevron**³ continued at [43] and stated "*The conclusion reached above in relation to s 7(1) of PAJA renders it unnecessary to determine the interesting question of law.*"

[33] In all the circumstances mentioned above, I am satisfied that the respondent has discharged the onus that rested on its shoulders and that it is entitled to the order that it seeks. The first respondent's point *in limine* is thus upheld.

ORDER

1. The order marked X, which I signed on July 24, 2025, is hereby made an order of the court.



DLAMINI J

*Judge of the High Court
Gauteng Division, Johannesburg*

³ Ibid.

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