

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 2022-007728

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>24/11/2022</u>	
DATE	MOKOSE SNI

In the matter between:

THE SOUTH AFRICAN RESERVE BANK

Excipient

and

JAG IMPORT EXPORT (PTY) LIMITED

Respondent

In re:

JAG IMPORT EXPORT (PTY) LIMITED

Plaintiff

and

THE RESERVE BANK OF SOUTH AFRICA

1st Defendant

THE MINISTER OF FINANCE

2nd Defendant

NEDBANK LIMITED

3rd Defendant

HBZ LIMITED

4th Defendant

JUDGMENT

MOKOSE J

Introduction

[1] Before this court is an application wherein the South African Reserve Bank, the excipient, has raised an exception to the cause of action of the plaintiff in the main application on the grounds that the plaintiff's particulars of claim disclose no cause of action in that the plaintiff failed to bring its review within the mandatory 90-day period as required by the Exchange Control regulations which, it alleges, do not grant a court the power to condone the plaintiff's delay in so doing. Furthermore, the excipient contends that this court has considered and determined the issue whether to grant the condonation and had concluded in the negative. In the alternative, the excipient contends that the plaintiff's particulars of claim are vague and embarrassing and disclose no factual grounds of review which enable the excipient to meaningfully respond thereto and would accordingly be prejudiced if it were required to plead to the particulars of claim as they stand.

[2] The plaintiff contends that the exceptions raised by the first defendant are devoid of merit as it is not competent for the first defendant to contend in the context of exception proceedings, that the plaintiff's claim in challenging the decision of forfeiture is time barred in terms of Regulation 22D(b) of the Exchange Control Regulations. The plaintiff contends that such contention should be raised in terms of a special plea for purposes of adjudication *in initio* at the trial. A time bar defence is akin to a defence of prescription.

Brief facts

[3] On 3 February 2022 the excipient published its decision made pursuant to its powers in terms of the Exchange Control Regulations of 1961 where it declared the sum of R997 802,12 to be forfeited to the State. Such publication appeared in the Government Gazette of the same date, and it was communicated to the plaintiff accordingly. The 90-day period permitted for the challenge of such decision expired on 4 May 2022.

[4] The plaintiff served and filed its summons and particulars of claim on the plaintiff on 25 July 2022 in which it sought to challenge the decision of the excipient.

[5] On 17 October 2022 the excipient delivered an exception to the plaintiff's particulars of claim as contemplated in Rule 23 of the Uniform Rules of Court. I will refer to this exception as 'the First Exception'. In particular, the excipient relied on Regulation 22(D)(b) which provides as follows:

"Any person who feels himself aggrieved by the attachment of any money or goods.....in the case of a decision under regulation 22(B)(1).....read with 22(C)(3), to forfeit such money or goods, at any time but not later than 90 days after the date of publication of the said notice institute an action in a competent court for the setting aside of any such decision."

[6] Therefore, the excipient contended, that the plaintiff's action served on 25 July 2022 was instituted after the 90 days as provided in Regulation 22(D)(b).

[7] The plaintiff was then afforded 15 days within which to remove the cause of complaint by the excipient. However, on 14 November 2022 the plaintiff delivered what it called *"Amended Particulars of Claim"* which purported to amend the particulars of claim. It is noted that the *"Amended Particulars of Claim"* was not preceded by a notice of intention to amend nor had a court order been obtained permitting the said amendment. On 1 June 2023 the excipient filed a notice in terms of Rule 30A calling upon the plaintiff to comply with the rules by rectifying the step taken of filing and serving the *"Amended Particulars of Claim"*. Furthermore, the excipient served and filed a conditional exception to the *"Amended Particulars of Claim"* (the second exception). However, the plaintiff elected not to remove the cause of complaint raised in the *"Amended Particulars of Claim"*.

[8] The plaintiff admits that the decision of the excipient was transmitted by way of email on 3 February 2022 which invited it to institute action in a competent court of law to set aside such decision should it feel aggrieved. It contends that the invitation was clear and unequivocal in that it stated the following:

"Kindly note that in terms of the Exchange Control Regulation 22D, read with the relevant provisions of the Promotion of Administrative Justice Act 2000 (Act 3 of 2000) any person who feels aggrieved by a decision under Exchange Control Regulation 22B to forfeit monies to the State, may at any time, but

no later than 180 days from the date of the publication of the Notice and Order of Forfeiture in question, institute an action in a competent court for the setting aside of such decision.”

Issues

[9] The main issue in this matter is whether the regulations, properly interpreted, permit the condonation by this court to be granted after the expiry of the 90-day period in circumstances where it clearly advised the plaintiff of its right to institute proceedings challenging its decision within 180 days of such decision. If the court finds in the negative, it is also entrusted to determine whether the plaintiff's first particulars of claim are vague and embarrassing.

[11] Secondly, the court needs to consider and determine the issues raised in the second particulars of claim and the second exception. Should these issues be determined in the affirmative, the court needs to determine whether the second exception should be upheld on similar grounds to those as traversed in the first exception.

[12] Counsel for the excipient indicated to the court that he does not persist with the Rule 30A application.

Condonation

[13] The first issue to be determined by this court is whether the condonation of an out-of-time review is appropriate prior to the determination of the merits of the review. The rule against unreasonable delay in the ordinary judicial review proceedings has a long history in our law.¹ The rationale is an acknowledgement of the prejudice to interested parties that may flow from an unreasonable delay as well as the public interest in the finality of administrative decisions and acts.²

[14] Regulation 22B (3) provides that the Reserve Bank may not dispose of forfeited assets until final judgment has been granted in an application. The regulations require the Reserve Bank to refrain

¹ Gqwetha v Transkei Development Corporation Ltd and Others 2006 (2) SA 603 (SCA) at para 24

² Associated Institutions Pension Fund and others v Van Zyl and Others 2005 (2) SA 302 (SCA) at para 46

from disposing of the assets for a 90-day period after the notice of forfeiture is published and if a review application is instituted within that period.

[15] Forfeiture decisions, by their nature, require a degree of promptness in finalisation. Once the 90-day period expires, the granting of the condonation for a litigant's delay is no longer possible and a court has no discretion to hold otherwise. The court, in the matter of *M v MEC for Health: Mpumalanga*³ held the following:

"The broad discretion enjoyed by a court when considering whether or not a litigant has shown good cause does not extend to incorporate ignorance of an Act of Parliament nor is it a free-floating power to condone non-compliance with statutory time periods."

This principle as enunciated in the case above, has been confirmed by both the Supreme Court of Appeal and the Constitutional Court.⁴

[16] In its defence, the plaintiff contends that it had reacted to the letter transmitted of its decision under cover of a notice, by way of email dated 3 February 2022 which invited it to institute an action in a competent court for setting aside such decision. The plaintiff contends that the invitation was clear and unequivocal and stated that it may at any time, but no later than 180 days from the date of the publication of the notice of forfeiture, institute an action in a competent court for the setting aside of the decision. It did as directed and within 180 days from the date of publication.

[17] The plaintiff contends further that it was primarily the responsibility of the excipient for causing the delay in the institution of the action in that it informed that the action must be instituted within 180 days, thus waiving the prescriptive requirement as set out in Regulation 22B. As such, the delay was not deliberate.

³ [2021] ZAMPMBHC 21 at para 20

⁴ *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) at paras 11 and 17; *Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* 2010 (4) SA 109 (SCA) at para 14

[18] Counsel for the excipient admitted that there had been an error in the letter as the challenge to the forfeiture was to be done within a 90-day period but further contended that ignorance of the law is not an excuse.

[19] It is common cause that the review of the plaintiff was launched on 25 July 2022, more than 60 days beyond the 90-day period within which it was obliged to bring the challenge. There is nothing contained in the regulations that can be interpreted as conferring powers of condonation on the courts. I agree that ignorance of the law is not an excuse. The letter was quite clear that the decision had been made in terms of Regulation 22 which the plaintiff should have considered in making the said challenge. It follows that the application for condonation on the part of the plaintiff may not be granted. As such, the particulars of claim do not disclose a cause of action, and the defendant would be prejudiced if he were to plead to the particulars of claim as they stand.

[20] Accordingly, the following order is granted:

1. The first exception is upheld.
2. The plaintiff's claim is struck out.
3. The plaintiff is ordered to pay costs on Scale "B".



SNI MOKOSE J
Judge of the High Court of South Africa
Gauteng Division, Pretoria

For the Excipient: Adv M Stubbs
On instructions of: Gildenhuys Malatji Inc

For the Plaintiff: Adv NG Winfred
On instructions of: Shabeer Joosab Attorneys

Date of Judgement: 24 November 2025