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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 035606/22

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 2025-12-04

SIGNATURE

In the matter between:

T NGOBENI

1st APPLICANT

KV NKUNA

2nd APPLICANT

and

MINISTER OF POLICE

RESPONDENT

REASONS FOR MY JUDGMENT

RANGATA AJ,

[1] This is an application for condonation, the non-compliance, and the provisions of Section 3(1)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002, as amended.

1.1. The first applicant is Tidwel Amogelang Ngobeni, an adult male with ID number 9[...], residing at 9[...], Z[...] [...], Ga-Rankuwa, Modingwana Street, Gauteng Province.

1.2. The second applicant is Khatliso Voincent Nkuna, an adult male with identity number 9[...], residing at 1[...] Extension 2[...] Tsunami, Ga-Rankuwa, Gauteng Province.

1.3. The respondent is the Minister of Police, Honourable Mr. Bheki Cele, in his official capacity as the head of the South African Police Service ("SAPS"), with a business address at 1[...] J[...] R[...] Street, Telkom Towers North, Pretoria, Gauteng Province.

[2] The Applicants submitted that on 18 May 2019 in Soshanguve, they were wrongfully, unlawfully arrested, detained, further detained, maliciously prosecuted, and assaulted by members of the respondent who indiscriminately fired more than eleven (11) shots, leaving the 2nd applicant's vehicle with eleven bullet holes, with the intent to murder them. They stated that the aforesaid wrongful arrest, detention, further detention, malicious proceedings, and assault were at the instance of unknown members of the South African Police Services, whose names and ranks are unknown to the 1st and 2nd applicants.

[3] They submitted that they were detained for three days at Ga-Rankuwa police station at the instance of the said unknown members of the respondent. On 20 May 2019, they were taken to Court but did not appear before a Magistrate. The 2nd applicant's mother attended the Ga-Rankuwa Police Station to enquire about the 2nd applicant's motor vehicle, which was impounded by the respondent. She could not be assisted and had to return to the police station after two weeks, during which she signed the release form for the vehicle.

[4] They submitted that since the vehicle's release, they had not been summoned to appear in court, and nothing had happened since then. They further stated that on 18 August 2022, the first applicant told his uncle his story, who then informed him that he could file legal action against the respondent and gave him the telephone number of the person to discuss the matter further with.

[5] The applicants consulted with their legal representatives and issued the notice in terms of Section 3 of Act 40 of 2002. The notice was received by the respondent on 23 August 2022.

[6] The applicants further submitted that the debt has not been extinguished by prescription on the basis that they acquired full knowledge of the identity of the debtors, the existence of the debt and the cause of action is completed on 22 August 2022. Further that the in terms of Section 3 was served on 23 August 2022 and the matter would have been extinguished by prescription on 21 August 2025. They submitted that they acquired full knowledge on 22 August 2022.

[7] The respondent submitted that the applicants failed to provide a full explanation for their failure to comply with the rules. The applicants do not explain what they did during the six months they waited for the motor vehicle to be released. The delay period, from that time until they consulted with a lawyer and issued notice under Section 3, exceeds 39 months and remains unexplained.

[8] The respondent submitted that the applicants' claim has prescribed. They should have acquired knowledge of the identity of the debtor without delay.

[9] Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act provides:

“ (1) No legal proceedings for the recovery of a debt may be instituted against an organ of state unless-

(a) The creditor has given the organ of state in question notice in writing of his or her intention to institute the legal proceedings in question; or

(b) (b) the organ of state in question has consented in writing to the institution of those legal proceedings –

(i) Without such notice; or

(ii) Upon receipt of a notice which does not comply with all the requirements set out in subsection (2)

(2) A notice must-

(a) within six months from the date on which the debt became due, be served on the organ of state in accordance with section 4(1); and

(b)

(3) For purposes of Subsection (2)(a)-

(a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the organ of state and of the facts giving rise to the debt, but the creditor must be as having acquired knowledge as soon as he or she or it could have acquired it by exercising reasonable care, unless the organ of state willfully prevented him or her from acquiring such knowledge."

[10] The applicants had six months from the date of the cause of action, which in my view would have run from the date of arrest; alternatively, from the date the applicants were released. Whether it is at that time or on the 18th, the day of arrest, this aspect would have no consequence in my view.

[11] What is clear from the facts above is that the Section 3 notice was submitted only 39 months after the arrest and release. I have been called upon to condone this late notice that was filed with the respondent. It is the applicant's submission that, from the date of the release, they were involved in the release of the vehicle, with the mother of the 2nd applicant also involved. But that does not take this matter any further. The applicants do not address what they did whilst waiting for the vehicle to be released. The applicant only took this court to 18 August 2022, when, seemingly, he consulted his uncle, some two years after the incident.

[12] The uncle of the 1st applicant remains unknown to this court. All that is submitted to this court is that an uncle informed the 1st applicant that he could institute legal proceedings. This uncle seems to be the one who has shed light on the debtor's identity and knowledge of it.

[13] The applicants were requested to clarify what was meant by 'knowledge of the identity of the debtor', which was revealed only during the meeting with the uncle. Further, what could have been shared between the uncle and the applicants in that meeting of 18 August 2022 that could have shed light on the knowledge of the identity of the debtor and the facts from which this debt arises.

[14] This question remains unanswered and to some extent. The applicant's representative attempted to provide an answer that, in that meeting of 18 August 2022, the knowledge of identity that the uncle could have shared would have been to inform the applicants that they have a claim against a Minister of Police, and this court is

confident that this information was not new to the applicant. The applicant knew he was being detained by members of the SAPS. At least, that information became available on the date of arrest.

[15] The applicants failed to take the court into their confidence regarding what happened after they were released. This fact has just been overlooked.

[16] I am therefore not persuaded that the applicant has acted reasonably in ensuring that he complies or that this claim is brought within the expected or regulated period. The application for condonation for non-compliance with the provisions of Section 3 of the Institution of Legal Proceedings Against Certain Organs of State, Act no 40 of 2002.

[17] Having said that this court finds that the applicant has not made out a sufficient case and has not provided a reasonable explanation for the delay. This will not be in the interest of justice if this court were to condone the late submission or the late filing of the notice.

[18] I therefore make the following order:

- (a) The application for condonation is denied.
- (b) The applicants to pay the wasted costs.

RANGATA, AJ
ACTING JUDGE OF THE HIGH COURT

For the Applicant: Adv Kwindu
Instructed by: Makhafole & Verster Inc

For the respondent: Adv Senyatsi
Instructed by: State Attorney Pretoria

Ex Tempore Judgment delivered on 14 October 2024