



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 3739/2019

In the matter between:

JACOB TLALI obo K T

APPLICANT

and

MEC FOR HEALTH AND SOCIAL DEVELOPMENT:

FREE STATE

RESPONDENT

Neutral Citation: *Tlali obo K T v MEC for Health and Social Development: Free State (3739/2019) ZAFSHC 361 (20 November 2025)*

Coram: OPPERMAN J

Heard: 17 April 2025

Delivered: The judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 20 November 2025 at 15h00.

Summary: Condonation - Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 – costs – discretion of the court – unopposed condonation application.

ORDER

- 1 The applicant's non-compliance with s 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 is condoned.
 - 2 Each party to pay their own costs.
-

JUDGMENT

Opperman J

[1] The applicant seeks condonation in terms of the Institution of Legal Proceedings against Organs of the State Act 40 of 2002 (the Act). The respondent did not oppose the relief sought in prayers 1 or 2 of the notice of motion. The respondent is opposing the relief sought by the applicant on the aspect of costs only.

[2] The applicant claims a costs order on attorney and client scale. They base their arguments on the fact that:

'The respondent had ample opportunity to consent in writing to the late notice as envisaged in section 3(1)(b) yet opted not to do so. This would have thwarted the need for this application and as such the costs occasioned by this, especially in light of an apparent opposition to the application in the main, the failure to do so should be frowned upon and accordingly bolsters the fact that a costs order should be made in favour of the applicant.'¹

¹ Para 8 of the replying affidavit.

[3] It is also a reality that condonation applications in terms of the Act, is dealt with on the following basis:

‘[25] ... Ordinarily, in applications for condonation for non-observance of court procedure, a litigant is obliged to seek the indulgence of the court whatever the attitude of the other side and for that reason will have to pay the latter's costs if it does oppose, unless the opposition was unreasonable. I doubt that this is the correct approach in matters such as the present, as an application for condonation under the 2002 Act has nothing to do with non-observance of court procedure, but is for permission to enforce a right, which permission may be granted within prescribed statutory parameters; and such an application is (in terms of s 3(4)) only necessary if the organ of state relies on a creditor's failure to serve a notice. In the circumstances there is much to be said for the view that where an application for condonation in a case such as the present is opposed, costs should follow the result.’²

[4] The argument for the respondent, on the other hand, carries veracity. This is what they have to say:

- a) The applicant from inception of the application claimed for punitive costs against the respondent in his Notice of Motion, thereby compelling the respondent to oppose the costs order sought in litigation.
- b) The opposition levelled against the costs order sought was brought about by the applicant. In the absence of the punitive order sought, the respondent would not have opposed the application on this basis, or at all.
- c) The respondent did not force the applicant to launch the current application, the applicant elected to issue the current application due to its apparent non-compliance with the statutory notice requirements of the Act.
- d) The respondent submits that the applicant was responsible for the failure to comply with the Act and was also responsible for the current opposition of the

² *Premier of the Western Cape Provincial Government NO v Lakay* (184/11) [2011] ZASCA 224; 2012 (2) SA 1 (SCA); [2012] 1 All SA 465 (SCA) (30 November 2011). See also *MEC for Education, KZN v Shange* (529/11) [2012] ZASCA 98; 2012 (5) SA 313 (SCA) (1 June 2012) para 24.

application in respect of the costs order sought. The respondents want for the applicant to pay the costs of the application and the costs of the respondent's opposition.

e) The respondent concludes that the applicant's reliance on the Supreme Court of Appeal judgements of *Lakay*³ and *Shange*⁴ is misplaced as the matter in *casu* is clearly distinguishable. Punitive costs (or any costs) were also not awarded in the mentioned judgements and is unwarranted in unopposed applications.

[5] The law has developed some clear principles in cases of this nature. The parties gave an extensive exposé of the caselaw in their heads of argument, and I will not repeat it. Suffice it to summarise that where the applicant's delay is adequately explained, and where condonation is granted, courts often order each party to pay its own costs, especially if the delay was not excessive and the organ of state did not suffer prejudice. Sometimes courts even award costs to the applicant, especially if the organ of state unreasonably refused consent to late notice or opposed the condonation without merit. If condonation is refused the applicant is usually ordered to pay costs.

[6] The merits of this case on the costs direct that each party must pay their own costs. Both parties are responsible for the litigation. (The respondent did not oppose the condonation.)

³ Op cit fn 2.

⁴ Op cit fn 3 para 24.

Order

[7] In the result the following orders are made:

- 1 The applicant's non-compliance with s 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 is condoned.
- 2 Each party to pay their own costs.

A black rectangular redaction box covers the signature of the judge. To the left of the box, a faint circular stamp is visible.

M OPPERMAN

JUDGE OF THE HIGH COURT

Appearances

For applicant:

I Sander

Instructed by:

VZLR Incorporated Attorneys,

Pretoria

c/o Du Plooy Attorneys

Bloemfontein

For respondent:

DR Thompson

Instructed by:

Office of the State Attorneys,

Bloemfontein.