

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 5547/2021

- (1) REPORTABLE: YES/~~NO~~
 (2) OF INTEREST TO THE JUDGES: YES/~~NO~~
 (3) REVISED.

DATE 15.12.2025 SIGNATURE 

In the matter between:

LEDWABA obo MINOR CHILDREN**Plaintiff**

and

THE MEMBER FOR THE EXECUTIVE COMMITTEE**FOR HEALTH, LIMPOPO PROVINCE****Defendant**

JUDGMENT

BURNETT, AJ**INTRODUCTION**

[1] The Plaintiff acts in a representative capacity for three minor children in an action against the Defendant based on medical negligence. The exact details of the alleged medical negligence are not relevant for the purposes of this judgment.

[2] The Defendant filed a Special Plea in the action wherein she is pleaded that: -

The Defendant raises the following Special Plea to the Plaintiff's Particulars of Claim: -

1. *These are legal proceedings for the recovery of a debt as envisaged in terms of the provisions of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002.*
2. *In terms of section 3 (2) (a) of the Act, no legal proceedings for the recovery of a debt may be instituted against an organ of state unless 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 within six months from the date on which the debt became due.*
3. *The Defendant is an organ of state as defined in terms of the provisions of the Act.*
4. *The Plaintiff issued summons against the Defendant for the recovery of a debt notwithstanding the fact that the Plaintiff failed to give notice to the*

Defendant within 6 months from the date when the debt became due, in terms of section 3 (2) (a) of the Act.

5. *The Plaintiff's Notice of the intended legal proceedings was served on the Defendant on 30 June 2021 together with the summons in the matter.*
6. *In the premises the Plaintiff is debarred from instituting legal proceedings against the Defendant.*

WHEREFORE *the Defendant prays that the Plaintiff's claim be dismissed with costs.*

- [3] A Notice in terms of Section 3 (1) and proof of delivery via registered mail was attached to the Plaintiff's Combined Summons, however she filed a Replication to the Special Plea whereby she attached the Notice and proof of delivery again.
- [4] The matter was enrolled for hearing on the trial roll on 13 November 2025. The Special Plea was argued at the beginning of the proceedings. No evidence was led in relation to the Special Plea, however both legal representatives presented oral arguments.
- [5] The Defendant contended *inter alia* that: -
 - [5.1] Whilst the Plaintiff did prepare a Notice in terms of Section 3 (1) of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 (hereinafter referred to as the "the Institution of Legal Proceedings Act") and it was properly pleaded, it was incorrectly delivered to the MEC for Health instead of to the Head of Department for the Limpopo Department of Health.

- [5.2] The MEC for Health and the Head of Department for the Limpopo Department of Health are two different people and hold different roles within the Department.
- [5.3] Due to the fact that the Notice in terms of Section 3 (1) was delivered on the incorrect person, the Plaintiff was barred from instituting action against the Defendant and the claim should be dismissed, *alternatively* postponed for the Plaintiff to bring an application for condonation in terms of section 3 (4) (a) and (b) of the Institution of Legal Proceedings Act.
- [6] The Plaintiff's main argument was that the case advanced by the Defendant in oral argument is not the case that was pleaded by the Defendant in her Special Plea, and that the Special Plea should accordingly be dismissed. The Plaintiff contends that the Defendant's case, as per the Special Plea, is simply that the Notice in terms of Section 3 (1) was late. The Plaintiff says that the Section 3 (1) Notice was not late, and the Defendant's legal representative conceded to this. Lateness is thus not an issue in dispute.
- [7] On the morning of hearing, the Defendant's legal representative provided this court and the Plaintiff's legal representative with written Heads of Argument. On conclusion of the oral argument the court directed the Plaintiff's legal representative to file a Heads of Argument and the Defendant's legal representative a Supplementary Heads of Argument, dealing with two specific issues. Those issues are addressed later in this judgment under the heading "legal questions". The Plaintiff's legal representative complied with the court's directive and filed Heads of

Argument. The Defendant's legal representative, much to the displeasure of this court, did not file a Supplementary Heads of Argument.

NOTICE OF INSTITUTION OF LEGAL PROCEEDINGS ACT

[8] The purpose of the Notice of Institution of Legal Proceedings Act is set out in its preamble, which states that: -

“RECOGNISING THAT *certain provisions of existing laws provide for different notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts and different periods of prescription in respect of such debts.*

AND RECOGNISING THAT *the Prescription Act, 1969 (Act No. 68 of 1969), being the cornerstone of the laws regulating the extinction of debts by prescription, consolidated and amended the laws relating to prescription; some of the provisions of existing laws which provide for different periods of prescription in respect of certain debts are inconsistent with the periods of prescription prescribed by the Prescription Act, 1969.*

AND BEARING IN MIND THAT *South Africa has moved from a parliamentary sovereign state to a democratic constitutional sovereign state; the Bill of Rights is the cornerstone of democracy in South Africa and that the State must respect, protect, promote and fulfil the rights in the Bill of Rights, section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; the right of*

access to courts may be limited to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;

AND RECOGNISING *the need to harmonise and create uniformity in respect of the provisions of existing laws which provide for different notice periods for the institution of legal proceedings against certain organs of state for the recovery of a debt, by substituting those notice periods with a uniform notice period which will apply in respect of the institution of legal proceedings against certain organs of state for the recovery of a debt; different periods of prescription, by making the provisions of Chapter III of the Prescription Act, 1969, applicable to all debts.*

AND RECOGNISING *the need to provide for transitional arrangements to ensure a smooth transition between the various existing statutory provisions regulating notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts and the periods of prescription of such debts, and the provisions of this Act.*

AND BEARING IN MIND *the limited need, for legal or practical purposes, to retain certain provisions of existing laws which provide for notice periods that differ from the envisaged uniform notice period; periods of prescription that differ from the periods of prescription prescribed by Chapter III of the Prescription Act, 1969.”*

- [9] In short, the purpose of the Institution of Legal Proceedings Act is to create uniformity on aspects of prescription with specific reference to the State.

[10] Section 3 of the Institution of Legal Proceedings Act states that: -

- “(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 or its intention to institute the legal proceedings in question.*
 - (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) briefly set out-*
 - (i) the facts giving rise to the debt; and*
 - (ii) such particulars of such debt as are within the knowledge of the creditor.”*

[11] Section 4 (1) of the Institution of Legal Proceedings Act states that: -

- “(1) A notice must be served on an organ of state by delivering it by hand or by sending it by certified mail or, subject to subsection (2), by sending it by electronic mail or by transmitting it by facsimile, in the case where the organ of state is—*

- (a) *a national or provincial department mentioned in the first column of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), to the officer who is the incumbent of the post bearing the designation mentioned in the second column of the said Schedule 1, 2 or 3 opposite the name of the relevant national or provincial department: Provided that in the case of the Department of Police, the notice must be sent to the National Commissioner and the Provincial Commissioner of the province in which the cause of action arose, as defined in section 1 of the South African Police Service Act, 1995.*
- (b) *a municipality, to the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).*
- (c) *a functionary or institution referred to in paragraph (c) of the definition of "organ of state", to the chairperson, head, chief executive officer, or equivalent officer, of that functionary or institution, or where such functionary is a natural person, to that natural person.*
- (d) *the South African Maritime Safety Authority, to the chief executive officer of that Authority appointed under section 22 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).*
- (e) *The South African National Roads Agency Limited, to the chief executive officer of that Agency appointed under section 19 of The*

South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998).

(f) a person referred to in paragraph (f) of the definition of “organ of state”, to that person.

(2) If a notice has been sent by electronic mail or transmitted by facsimile as contemplated in subsection (1), the creditor must—

(a) take all reasonable steps to ensure that the notice has been received by the officer or person to whom it was so sent or transmitted; and

(b) within seven days after the date upon which that notice was so sent or transmitted, deliver by hand or send by certified mail a certified copy of that notice to the relevant officer or person referred to in subsection (1), which must be accompanied by an affidavit by the creditor or the person who sent or transmitted the notice—

(i) indicating the date on which and the time at which, and the electronic mail address or facsimile number to which, the notice was so sent or transmitted.

(ii) containing any proof that it was sent or transmitted.

(iii) setting out the steps taken in terms of paragraph (a); and

(iv) indicating whether confirmation of the receipt of the notice has been obtained and, if applicable, the name of the officer or person who has given that confirmation.”

[12] The Institution of Legal Proceedings Act defines **organ of state** as: -

- “(a) *any national or provincial department.*
- (b) *a municipality contemplated in section 151 of the Constitution.*
- (c) *any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in section 142 of the Constitution.*
- (d) *the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).*
- (e) *The South African National Roads Agency Limited contemplated in section 3 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998).*
- (f) *National Ports Authority Limited, contemplated in section 4 of the National Ports Act, 2005, and any entity deemed to be the National Ports Authority in terms of section 3 of that Act.*
- (g) *any person for whose debt an organ of state contemplated in paragraphs (a) to is liable.”*

LEGAL QUESTION

[13] Who must a Notice in terms of Section 3 (1) of the Institution of Legal Proceedings Act, in the case of an action against the MEC for Health specifically, be served upon? If it is found that the Notice must be served on the Head of Department, can

the MEC of Health be construed to be the Head of Department, or are they different people?

- [14] Does the argument presented by counsel on 13 November 2025 accord with what was pleaded in the Special Plea, and if not, must the Special Plea be dismissed?

THE LAW (other than what is stated above insofar as the Institution of Legal Proceedings Act is concerned)

Service of Section 3 (1) Notice and processes

- [15] The ***Institution of Legal Proceedings Act*** does not define the term “Head of Department” in its definition section.

- [16] **Section 2 (1) and (2) (a) and (b) of the State Liability Act 20 of 1957** states that: -

“(1) *In any action or other proceedings instituted against a department, the executive authority of the department concerned must be cited as nominal defendant or respondent.*

(2) *The plaintiff or applicant, as the case may be, or his or her legal representative must—*

(a) *after any court process instituting proceedings and in which the executive authority of a department is cited as nominal defendant or respondent has been issued, serve a copy of that process on the head of the department concerned at the head office of the department.*

(b) *within five days after the service of the process contemplated in paragraph (a), serve a copy of that process on the office of the State Attorney operating within the area of jurisdiction of the court from which the process was issued."*

[17] The **State Liability Act 20 of 1957** defines "Head of Department" as: -

"Means the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 of the Public Service Act, 1994, and includes any employee acting in such post."

[18] The **Public Service Act 103 1994** defines "head of department" as follows: -

"Head of department", "head of a department" or "head of the department" means the incumbent of a post mentioned in Column 2 of Schedule 1, 2, or 3 and includes any employee acting in such post."

[19] Schedule 1 of the **Public Service Act 103 of 1994** lists all the Heads of Department at national level. Schedule 2 lists all the Heads of Department and provincial level. Schedule 3 is not of relevance to any of the Health Departments. Schedule 1 lists the Director-General of Health as the Head of Department at national level. Schedule 2 lists "Head: Health". As the Head of Department at provincial level.

Purpose of a demand

[20] The purpose of a letter of demand was articulated in **Nkisimane and Others v Santam Insurance Co Ltd 1978 (2) SA 430 (A)** to be: -

"The purpose of the section was to ensure that, before being sued for compensation, an authorized insurer would be informed of sufficient time so as to be able to

consider and decide whether to resist the claim or to settle or compromise it before any costs of litigation were incurred.”

- [21] In **Minister of Land Affairs v SJ Rance 2010 (4) SA 109 (SCA)** the court described the purpose of a section 3 (1) Notice in terms of the Institution of Legal Proceedings Act to be: -

“The conventional explanation for demanding prior notification of intention to sue organs of state is that the state, with its extensive activities and large staff which tends to shift, needs the opportunity to investigate claims laid against it, to consider them responsibly and to decide before getting embroiled in litigation at public expense, whether it ought to accept, reject or endeavor to settle them.”

Pleadings

- [22] Rule 22 (2) of the Uniform Rules of Court states that: -

“The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent and shall clearly and concisely state all material facts upon which he relies.”

- [23] In the matter of **Jowell v Bramwell-Jones 1998 (1) (SA) 836 at 898** it was held that:

“As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings...For the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a

different or fresh case without due amendment properly made. Each party thus knows the case he must meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is not part of the duty or function of the court to enter upon any enquiry into the case before it, other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. To do so would be to enter the realms of speculation. Moreover, in such event, the parties themselves, or at any rate one of them, might well feel aggrieved; for the decision given on a claim or a defence not made, or raised by or against a party, is equivalent to not hearing him at all and may thus be a denial of justice... The court does not provide its own terms of reference or conduct its own enquiry into the merits of the case but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings. In the adversary system of litigation, therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to."

- [24] In the matter of ***Imprefed (Pty) Ltd v National Transport Commission 1993 (3) SA 94 (A) at 107*** it was held that: -

"At the outset it need hardly be stressed that: - The whole purpose of pleadings is to bring clearly to the notice of the court and the parties to an action the issues upon which reliance is placed."

- [25] In the unreported matter of **Minister of Safety and Security v Slabbert (668/20090 [2009] ZASCA 163 (30 November 2009)** it was held that: -

“The purpose of the pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for the plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issue falling outside the pleadings when deciding a case.”

- [26] The Supreme Court of Appeal found in **Minister of Safety and Security v Slabbert [2010] 2 All SA 474 (SCA) at para 11** that: -

“The purpose of the pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.”

- [27] The Supreme Court of Appeal again found in **Fischer and Another v Ramahlele and Others 2014 (4) SA 614 (SCA) at para 13** that:-

“It is for the parties either in the pleadings or affidavits...to set out and define the nature of the dispute, and it is for the court to adjudicate upon those issues ... even where the dispute involves an issue pertaining to the basic human rights guaranteed by our Constitution, for it is impermissible for a party to rely on a constitutional complaint that was not pleaded.”

ANALYSIS

Section 3 (1) and the action against the State

[28] In instances where a public hospital is negligent for whatever reason, a Plaintiff must institute action against the Provincial MEC of the Health Department responsible for that hospital. This is in terms of Section 2 (1) of the State Liability Act. The Provincial MEC for Health is the Defendant and not the Department of Health.

[29] It is not disputed that MEC for Health (Limpopo Province) is an organ of state as envisaged by the definition of organ of state in the Institution of Legal Proceedings Act. The court will later consider which subsection of the definition of “organ of state” the MEC for Health falls under.

[30] The normal process that would be followed in medical negligence cases against the MEC for Health is as follows: -

[30.1] Notice in terms of Section 3 (1) of the Institution of Legal Proceedings Act would be delivered to the state organ. If a Plaintiff does not do this, he is barred from issuing summons against the relevant organ of state.

[30.2] The Notice in terms of Section 3 (1) of the Institution of Legal Proceedings Act must be delivered upon the organ of state within 6 (six) months of the debt becoming due (section 3 (2) of the same Act).

[30.3] If the Notice in terms of Section 3 (1) of the Institution of Legal Proceedings Act is delivered outside of the six-month period, the

Plaintiff may bring an application for condonation in terms of section 4 of the same Act. The application for condonation can be launched before or after the summons has been issued.

[31] If one has regard to the content of the Notice prescribed in Section 3 (2) (b) of the Institution of Legal Proceedings Act, a Notice in terms of Section 3 (1) is just a Letter of Demand. Where legal action is to be instituted against the State for recovery of a debt, this Letter of Demand is compulsory. The reason that it is compulsory to deliver a Letter of Demand on the State is eloquently expressed in the judgment of ***Minister of Land Affairs v SJ Rance 2010 (4) SA 109 (SCA)***. An example of another kind of civil matter where Letters of Demand are compulsory prior to summons, would be matters that fall within the ambit of the National Credit Act 34 of 2005. In most other civil cases for the recovery of a debt, it is not compulsory to issue a Letter of Demand before summons is issued.

[32] Once a Section 3 (1) Notice is delivered (whether it is late or not), the Plaintiff must issue summons against the Defendant (being the MEC for Health) but serve it on the Head of Department. Five days later, the summons must be served at the relevant State Attorney Office. This is in terms of the State Liability Act, which definition of Head of Department refers to the Public Service Act, which defines the Head of the Provincial Department of Health as "*Health: Head*". It is however interesting that the State Liability Act differentiates between the MEC and the Head of Department in section 2 (2) (a) in the same sentence. Section 2 (2) (a) says:- "*...after any court process instituting proceedings and in which the executive authority of a department is cited as nominal defendant or respondent has been issued, serve a*

copy of that process on the head of the department concerned at the head office of the department. The section does not say that the summons must be served on the executive authority; it says the summons must be served on the head of the department, and the head of department is defined as "*Head: Health*". The reason for the differentiation is not clear, however perhaps it is the fact that the executive authority is merely the nominal defendant, nominal meaning "*being something in name only, and not in reality.*" The executive authority is the Defendant in name only, and not in reality. The Provincial Department of Health is the real Defendant, hiding behind the executive authority.

- [33] Going back to the Notice in terms of Section 3 (1) of the Institution Legal Proceedings Act, the Notice must be delivered in accordance with Section 4 (1). Whilst the Defendant is the MEC for Health, the MEC for Health is merely cited as the nominal Defendant for their Provincial Department of Health. This means that the only subsection that the Defendant can fall under the definition of "organ of state" is subsection (a) thereof. This matches up with section 4 (1) (a) of the same Act. This means that the Section 3 (1) Notice must be delivered to the person "*in the first column of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994).*" **Column 2 of Schedule 1, 2 and 3 of the Public Service Act 103 of 1994** refers to the "*Department of Health: - Head: Health.*" At national level it is straight forward, i.e. the Director-General is served with the Notice in terms of Rule 3 (1). At Provincial level is left open for interpretation. There is no explanation in the Public Service Act as to why there is a difference between who must receive the Notice at National *versus* Provincial level. Perhaps this is because the Act was passed at the dawn of democracy and the birth of the Constitution, at a time when Provincial

structures were not yet settled. Perhaps at that time, the legislators did not know the title of the person that would eventually become the Head of Department at Provincial level. That is probably the reason that used such a vague term *“Head: Health”*.

- [34] In matters of interpretation, one must often consider what has not been said. Schedule 2 of the Public Service Act says: - *“Head: Health”*. It does not say *“The person to be appointed into the designated employment vacancy of the Head of the Department of Health: Limpopo.”* It also does not give guidance as to who can be construed to be *“Head: Health”*.
- [35] The Plaintiff submits that the *“Head: Health”* means none other than the MEC for Health. The Defendant contends that the *“Head: Health”* is the Head of the Department of the Limpopo Health Department, which is a different position entirely within the organ of state. Of importance is the fact the Defendant did not lead any evidence on the internal structures of the Limpopo Department of Health. The Defendant’s legal representative attempted to explain how the internal structures operated; the court disallowed this because to do so would have been to allow evidence to be led from the bar. The Defendant ought to have called a witness within the internal structures to lead this evidence of this aspect. The Defendant’s legal representative could not produce an official legal source explaining the internal structures within the Limpopo Department of Health. With no properly led oral evidence, and no legal source before the court, it is unknown whether there is a separate employment position within the Provincial Department of Health with the

title Head of Department and whether that is the person intended to receive the Section 3 (1) Notice. Google is not an acceptable legal source.

[35] There does not appear to be any case law that specifically deals with this issue.

[37] Save for what is contained in the Public Service Act, there is no definitive legal definition for Head of Department. There is no explanation as to what "Head: Health" means. In absence of a definitive legal definition, one must turn to the English Dictionary for guidance. The Oxford Dictionary, being the leading authority on the English Language, defines head of an organisation "*as the person in charge of a group of people or an organization*". The Cambridge Dictionary defines the same term to mean "*someone in charge of or leading an organization or group*." Lastly the Collins Dictionary defines it as "*the head of a company or organization is the person in charge of it and in charge of the people in it*."

[38] Having regard to the normal English definition of "Head", the public can construe the "Head: Health" to be the MEC for Health. Simply put, the MEC leads the organisation and the people within it. The MEC is in charge of the people within its department.

[39] I agree with the Plaintiff's submission that it makes sense to serve the Notice in terms of Section 3 (1) on the MEC for Health. A Notice in terms of Section 3 (1) can be served on the MEC for Health.

[40] Having regard to the case law cited above, the purpose of a letter of demand, simply put, is to warn the Defendant of what is coming. The Notice in terms of Section 3 (1) served its purpose when it was delivered to the MEC for Health, in that it warned her

of what was coming. It notified her of the impending legal action and gave her an opportunity to consider the claim on behalf of her department. There is no prejudice whatsoever on the Limpopo Department of Health or the citizens of the Republic of South Africa that the Section 3 (1) Notice was served on the MEC for Health.

[41] This is where the purpose of the Institution of Legal Proceedings Act becomes important. The purpose of an Act of Parliament is generally found in its preamble. The preamble helps the public see the bigger picture. It helps people understand what the whole point of the law is. The purpose of the Institution of Legal Proceedings Act is to create prescription uniformity in relation to the State. Would the purpose of the Act be depleted if the Section 3 (1) Notice was served on the MEC for Health? I cannot see that it has. The Notice in terms of Section 3 (1) was served timeously in terms of Act, thereby complying with the prescription uniformity that the Act sought to achieve

[42] Normally one would say that it is nonsensical that a letter of demand be served on a person other than the Defendant himself/herself/itself, but in matters such as these, the MEC for Health is only a nominal Defendant for the Provincial Department of Health. Accordingly, I see no reason why the Notice in terms of Section 3 (1) cannot also be served on the Head of Department of the Provincial Department of Health if there is in fact such a person.

[43] One must consider the realities of a large organisation like the Limpopo Department of Health. We can accept that the MEC for Health, or any other MEC for that matter, is not going to the post office to personally collect registered letters. The MEC for

Health is not personally attending to all letters that land on her desk. She does have subordinates, and she probably has processes in place to deal with these issues. The same would apply if there was a separate and designated title for Head of Department. Neither Section 3 (2) (a) and 4 (1) of the Institution of Legal Proceedings Act and Section 2 (2) of the State Liability Act require personal service on "*Head: Department*". With that in mind, the principle in Rule 4 (1) (ii) of the Uniform Rules of Court (and Magistrate Court equivalent) can be applied: - "*must be served on a person in charge of the premises at the time of delivery, being apparently not less than sixteen years old*". The reality is that Section 3 (1) Notices are not received personally by either the MEC for Health or Head of Department, and that whoever is receiving the correspondence has internal processes to follow. Perhaps the MEC for Health or Head of Department never actually sees these Notice in terms of Section 3 (1) but we do not know this, because the Defendant did not lead evidence on it.

- [44] If proper evidence was led by the Defendant and it was found that within the internal structure of the Limpopo for Health, there was a separate employment position titled "Head of Department", I cannot see any difference between delivering the Section 3 (1) Notice on the MEC for Health or the Head of Department. Both could be construed to be "*Head: Health*" in terms of the Public Service Act. The important thing is – has the purpose of the Legal Proceedings Act been achieved, and the purpose of a Letter of Demand in general? I believe that it has been achieved as long as the Notice in terms of Section 3 (1), being addressed to the MEC for Health or Head of Department of Health (if proven to exist) is sent to their offices and is received by a responsible person within the department. It is up to the "*Head:*

Health” to ensure that people that receive such important correspondence such as the Notice in terms of Section 3 (1) on their behalf filter it to the right channels so that the matter can be dealt with appropriately. This is where section 4 (2) (a) and (b) kicks in, however this did not form part of the Defendant’s argument, which it perhaps should have been. The Plaintiff has a duty to take all reasonable steps that the Section 3 (1) Notice to ensure that it was in fact received and to file an affidavit in terms of the provisions of section 4 (2) (b).

[45] Having settled the first legal question, the court must turn to the second.

Pleadings

[46] A pleading is a clear and concise statement of the material facts upon which a party seeks to rely. The pleading must contain sufficient particularity to enable the opposite party to reply thereto.

[47] In an adversarial system, pleadings create boundaries between the parties. The parties may not cross those boundaries. It is not the court that sets those boundaries, it is the parties themselves. They are self-created boundaries. The parties draw their own circles and can only colour-inside the lines.

[48] The purpose of pleadings to do define the issues that need to be adjudicated so that the parties can properly prepare for what is to come. The issues that have been defined in the pleadings are the boundaries. The rationale for this is that a party must be properly informed of the case he/she/it has to meet and not be ambushed at trial. An ambush is not a fair fight. To ambush a party would be to cross the self-created boundary; or to colour outside the lines. This is not allowed.

[49] The Defendant's case, as per the Special Plea is that: -

"The Plaintiff issued summons against the Defendant for the recovery of a debt notwithstanding the fact that the Plaintiff failed to give notice to the Defendant within 6 months from the date when the debt became due, in terms of section 3 (2) (a) of the Act. The Plaintiff's Notice of the intended legal proceedings was served on the Defendant on 30 June 2021 together with the summons in the matter."

[50] From a plain reading of the Special Plea, the Defendant's case is that the Plaintiff did not give the Defendant the required Notice within 6 (six) months of the cause of action having arisen. The Notice in terms of Section 3 (1) was served for the first time with the Plea. The Special Plea does not state that the Plaintiff's Notice was delivered to the MEC for Health instead of the Department of Health.

[51] The Plaintiff submits that the reason that the Defendant did not specifically plead section 4 (1) of the Act, is because she had never intended to argue along those lines. The Defendant contended that it did not need to specially plead section 4 (1), because section 4 (1) automatically flows from section 3 (2) (a) and it pleaded non-compliance with section 3 (2) (a).

[52] This is where the wording of Rule 22 (2) becomes important, it states *inter alia*: "...state all material facts upon which he relies." The word "all" means "every one of, or the complete amount or number of, or the whole of". Having regard to this, it cannot be said that the Defendant pleaded all the material facts upon which she relies. The Defendant's case, i.e. that there was non-compliance with section 4 (1), is the crux of the defence, it needs to be specifically pleaded.

- [53] A party cannot simply plead non-compliance with an Act of Parliament and then not explain why. Pleadings must be detailed enough so that the other party knows what the case is all about. Having regard to what was pleaded in the Special Plea, you could not have expected the Plaintiff to know that the Defendant was relying on Section 4 (1) (a) specifically.
- [54] The case that was argued by the Defendant in oral argument is not the case that was pleaded by her in her Special Plea, and the Special Plea should be dismissed regardless of the outcome on the merits.

COSTS

- [55] Costs should follow the result. The question that remains is whether the costs must be punitive in nature.
- [56] Even though the court found against the Defendant on the issue regarding delivery of the Notice in terms of Section 3 (1), the argument presented by her was not frivolous. If that was the only issue before the court, a punitive cost order would not be justified. The problem is that the Defendant did not properly plead her case. It is one of the most basic principles of the South African law of procedure that you are not allowed to argue something that is not pleaded.
- [57] The Defendant is no stranger to litigation and should have known that her Special Plea required an amendment, and not on the day of trial, months before when preparation should have begun. These things should not be discovered on the steps of court; preparation for trial starts with examining your pleadings right at the

beginning. Since the Defendant's case was not properly pleaded, the Special Plea would have been dismissed anyway regardless of what was decided on the merits.

[58] This has caused the Plaintiff to suffer not only wasted costs, but time. Time is the one thing that you can never give back to someone. The Plaintiff is acting in the representative capacity for three minor children. The delay in the litigation is even worse because we are dealing with vulnerable members of society. Must these children now wait another few years for justice, simply because an experienced litigant did not conform with a basic procedural principle? In that time their lives may deteriorate, their injuries may worsen and they might not get the medical care they require. For these children, the time it takes to get justice might be the difference between poverty or not, education or not. How do you give back these children this valuable time where a difference could have been made? I do not think that is fair, and the court is not impressed that Defendant does not take the children's rights seriously enough to come to court with her pleadings in order. The claimants are children, completely innocent in this world, why must their damages (if their case is proven and they are so awarded with damages) be depleted because a Defendant did not plead properly? A child's best interests are of paramount importance in all matters, including civil trials. Litigants, including the State, just litigate in such a way that accords with their best interests. Unnecessary delays such as this are not in their best interests.

[58] I accordingly agree with the Plaintiff's legal representative that costs must be awarded on a punitive scale.

[58] Due to the complexity of the matter, the quantum of the claim and the number of experts that are involved, the cost incurred for two counsels is reasonable.

ORDER

[59] I accordingly make the following order: -

[59.1] The Defendant's Special Plea is dismissed.

[59.2] The Defendant to be pay the Plaintiff's costs on a punitive scale, which include the wasted costs of the trial for two counsels.

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BURNETT, E J
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE PLAINTIFF:- ADV. R HAWMAN

ADV. MS TSHABALALA

INSTRUCTED BY:- NK LEDWABA ATTORNEYS

FOR THE DEFENDANT:-

INSTRUCTED BY:- STATE ATTORNEY

DATE OF HEARING:- 13 NOVEMBER 2025

DATE OF JUDGMENT:- 15 DECEMBER 2025