



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

Not reportable

Case no: A182/2025

In the matter between

MOEKETSI SAMSON LETSELA

APPELLANT

and

THE MINISTER OF POLICE

FIRST RESPONDENT

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

SECOND RESPONDENT

Neutral citation: *Letsela v Minister of Police and Another* (A182/2025) [2026] ZAFSHC
37 (2 February 2026)

Coram: VAN RHYN J and MUVANGUA AJ

Heard: 19 January 2026

Delivered: This 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 2 February 2026 at 14h00.

Summary: Appeal – condonation – section 3 the Institution of Proceedings Against Certain Organs of State Act 40 of 2002 – legal principles re-stated – insufficient reasons for delay.

ORDER

The appeal is dismissed with costs, including the costs of counsel on scale C.

JUDGMENT

Muvangua AJ (Van Rhyn J concurring)

Introduction

[1] Before us served an appeal against an order by the regional court for dismissing the appellant's application for condonation, (in terms of s 3 of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 (Act)), on the ground that the requirements for the granting of condonation were not satisfied.

[2] The appellant seeks to appeal against that order on several grounds, the sum-total of which being that the court *a quo* misdirected itself – both on the facts and in law, when it assessed the appellant's application.

[3] The first respondent, the Minister of Police, and the second respondent, the National Director of Public Prosecution, opposed the appeal on the basis that the judgment of the court *a quo* is unassailable.

Background

[4] The facts in this case are largely not in dispute. The appellant was arrested on 21 September 2010 by persons in the employ of the first respondent and charged with robbery with aggravating circumstances. He appeared in court on numerous occasions and was eventually acquitted on 18 October 2016.

[5] The appellant served a notice in terms of section 3 of the Act ("section 3 notice") on the respondents on 25 and 26 April 2018 respectively.

[6] In terms of s3 Of the Act, a party who intends to institute legal proceedings against an Organ of State for the recovery of a debt is required to give written notice of his/her intention to do so. Such notice must be given within six months from the date on which the cause of action arose (when the debt became due) and be served on the Organ of State in accordance with s4(1).

[7] Section 3(4)(a) of the Act permits a litigant to apply to a court for condonation, if the six-month period was not complied with, and section 3(4)(b) permits a court to grant condonation where it is satisfied that: (i) the debt has not been extinguished by prescription, (ii) good cause exists for the creditor's failure to comply with the Act, and (iii) the Organ of State in question has not been unreasonably prejudiced by that failure.

[8] The appellant initially issued summons against the respondents for malicious proceedings/prosecution, in the Pretoria Regional Court during August 2018, claiming payment of damages in the amount of R400 000.00. That summons was served as follows:

- (a) on 1 August 2018 on the National Director of Public Prosecutions;
- (b) on 2 August 2018 on the Office of the State Attorney;
- (c) on 6 August 2018 on the National Commissioner of Police; and
- (d) on 8 August 2018 on the Free State Provincial Commissioner of Police.

[9] On 9 December 2019, the appellant's action was transferred from the Pretoria Regional Court to the court *a quo* subsequent to the issue of jurisdiction being raised by the respondents in their special plea filed on 22 October 2018. The respondents furthermore pointed out that the appellant failed to comply with the requirements of section 3(2) of the Act, in that the section 3 notice was served out of time and without a request for condonation.

[10] It is common cause that the appellant's cause of action arose on 18 October 2016, when the appellant was acquitted. This meant that the s 3 notice ought to have been filed

within six months from 18 October 2016, therefore prior to 18 April 2017. It was served on 25 April 2018, some 18 months after the date on which the appellant's cause of action arose, and about 12 months outside the prescribed six months period.

[11] The appellant filed a condonation application on 13 October 2022, six years after the cause of action arose and approximately four years after he was alerted of the need to apply for condonation.

[12] The appellant provided the following reasons for the delay in providing a notice to the respondents within six months from the date of his acquittal, being 18 October 2016:

- (a) Although he was advised by his erstwhile attorneys during October 2016 that he might have a claim against the respondents, he is a lay person who did not know that he might have a civil claim for damages arising from the alleged malicious prosecution. He also did not know that he was required to give statutory notice to the respondents within six months from the date on which he was acquitted.
- (b) The criminal trial caused significant disruption to his employment, requiring him to take leave on numerous occasions, and that he also took sick leave to attend psychological treatment due to stress arising from the ordeal. By that stage, his leave had been exhausted. He worked in Reitz, and the inability to take time off from work made it impossible for him to consult with his legal representatives, who were some 110 kilometers from Harrismith.
- (c) He attended to his attorneys' offices as soon as reasonably possible, but by then, the six-month period had already expired. Thereafter, the necessary information was obtained, the matter was referred to his current attorneys, and the statutory notice was drafted and served.

[13] The appellant alleged that the respondents would suffer no prejudice as a result of his failure to comply with the provisions of s 3 of the Act. He also alleged that his proposed

action had strong prospects of success because the underlying criminal proceedings were initiated and pursued in circumstances that were unlawful, unreasonable, and unsupported by evidence. He alleged that he was wrongfully and unlawfully arrested on 21 September 2010 on a charge of robbery with aggravating circumstances by members of the South African Police Service, without a warrant and in the absence of any lawful basis for such arrest.

[14] The appellant alleged that he provided the police with a clear alibi, explaining his whereabouts at the time of the alleged offence and stating that his five-year-old son was with him throughout. He alleged that his alibi was independently corroborated by an employee of Lesedi Bookshop, who testified at the trial that the appellant was present at the shop shortly after 08h00 on the day in question, accompanied by his young son, and that she assisted him at that time.

[15] Despite this, (so the appellant averred) the police made no attempt to investigate or verify his alibi, nor did they follow up on the information he provided. This omission, he contends, was material and rendered both the arrest and the subsequent prosecution unjustifiable. There was no evidence linking him to the alleged offence and that, whatever evidence was available, fell short of establishing a *prima facie* case against him. The appellant alleged further that notwithstanding these deficiencies, he was prosecuted for a period of almost six years.

[16] He was found not guilty and discharged in October 2016. The appellant relies on this outcome as confirmation that the prosecution was unfounded and should never have been instituted or continued.

Issue

[17] In light of the above, the question before us was whether the regional court was correct in dismissing the appellant's condonation application, on the basis that the requirements for the relief sought had not been satisfied. In answering this question, we commence with an exposition of the legal principles on condonation.

Legal Principles on Condonation

[18] Condonation is a discretionary remedy, not a right. The overarching test is whether granting condonation is in the interests of justice. This standard is flexible and context-dependent – it requires the court to consider all relevant circumstances.¹ A party seeking condonation must show sufficient cause, which requires a full and reasonable explanation for the non-compliance.²

[19] Over time, courts have identified a number of interrelated factors as relevant to the condonation enquiry. These are: the nature of the relief sought;³ the extent and cause of the delay;⁴ the importance of the issue to be raised;⁵ the effect of the delay on the administration of justice and other litigants;⁶ and the prospects of success on the merits if condonation is granted.⁷

[20] These factors are not individually decisive; they must be weighed together in a holistic manner. However, the Constitutional Court in *Mphephu-Ramabulana*⁸ noted that 'the extremity of the delay, coupled with the paucity of the explanation provided, justify the immediate refusal of condonation', but cautioned that 'lateness and inadequacy of the explanation provided are not necessarily dispositive of the question of condonation. This is because the other factors relevant to condonation may favour its granting and tilt the interests of justice to the other side of the scale.'⁹

[21] The party seeking condonation bears the onus to provide a full, detailed, and accurate account of the causes of the delay, including dates, duration, and the effect of any obstacles. Generalised or vague explanations are insufficient.¹⁰ In addition, a party seeking condonation must institute such an application as soon as they become aware of non-compliance, and a delay in seeking condonation itself must be explained.¹¹

¹ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC) (*Grootboom*) para 22.

² *Ibid* para 23.

³ *Ibid* para 22.

⁴ *Brummer v Gorfil Brothers Investments (Pty) Ltd* [2000] ZACC 3; 2000 (2) SA 837 (CC) (*Brummer*) para 3.

⁵ *Grootboom* para 22.

⁶ *Brummer* para 3.

⁷ *Mankayi Mankayi v AngloGold Ashanti Ltd* [2011] ZACC 3; 2011 (3) SA 237 (CC) para 8.

⁸ *Mphephu-Ramabulana and Another v Mphephu and Others* [2021] ZACC 43; 2022 (1) BCLR 20 (CC).

⁹ *Ibid* para 38.

¹⁰ *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) para 6.

¹¹ *Mphati and Another v Minister of Police* [2022] ZAFSHC 39 para 10.

Application of the legal principles to the facts

Reasons for the delay

[22] It is common cause between the parties that the appellant's s 3 notice was served approximately 12 months late, and that the application for condonation was only instituted some four years after he had been alerted to the need to seek such condonation. During oral argument, counsel for the appellant contended that there is no principle requiring a condonation application to be brought expeditiously, distinguishing this from instances under the Uniform Rules of Court where specific time-periods are prescribed. On this reasoning, it was argued that an application for condonation could competently be brought even on the first day of trial. This contention is plainly incorrect and is inconsistent with this Court's *dictum* in *Mphati*.¹²

[23] The appellant's explanation for the 12-month delay in serving the s 3 notice did not cover the whole period of delay. It was generalised, internally inconsistent, and materially incomplete. For instance, the appellant did not provide any detail at all to the court regarding:

- (a) the number of leave days that were available to him in 2017, bearing in mind that s 20 of the Basic Conditions of Employment Act 75 of 1997 entitles him to '21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle';
- (b) what he did during the entire period of 2017;
- (c) when he first consulted Balden, Vogel & Partners Inc;
- (d) when he consulted his current attorneys;
- (e) why he could not arrange a consultation with his attorneys over a day that he did not work, or outside of his working hours; alternatively, what efforts he made to secure consultations despite alleged work constraints;
- (f) when he gave his attorneys instructions to issue the statutory notice; and
- (g) how his employment arrangements made consultation objectively impossible.

[24] On his version, the appellant got legal advice during October 2016 that he may have a claim against the State. In light of this, his reliance on lack of knowledge of the

¹² Ibid.

law (which is in any event not an excuse) was self-contradictory and undermines the credibility of the explanation.

[25] In addition, the appellant did not provide any medical evidence to substantiate the claim that psychological treatment and stress contributed to the exhaustion of leave days. We do not know how much time he required for such treatment. The appellant's explanation was assertion-based rather than evidence-based, and thus fell short of the standard articulated in *Uitenhage*.¹³

Prospects of success

[26] The high-water mark of the appellant's case on prospects of success is his assertion that he was ultimately acquitted after a protracted prosecution, and that both his arrest and prosecution were unlawful on the basis that his alibi was not properly investigated.

[27] In contrast, during oral argument counsel for the first respondent drew attention to paragraph 9.1 of the appellant's particulars of claim (*qua* plaintiff), and submitted that the appellant's prospects of success are, objectively, weak. In that pleading, the appellant alleges no more than that he was arrested on a charge of robbery with aggravating circumstances, which, without more, falls materially short of establishing a viable cause of action against the first respondent.

[28] This accords with the regional court's finding that, on the limited and untested evidence before it, it could not conclude that the appellant enjoyed strong prospects of success. There was nothing placed before that court to suggest otherwise, and counsel for the appellant was likewise unable, during oral argument, to point to anything in the record that contradicted that conclusion.

Prejudice to the respondents

[29] We accept that the first respondent asserted, without demonstrating, that granting the appellant condonation would cause it unreasonable prejudice, because the memory of its witnesses would have faded with the passage of time. We are, however, cognisant

¹³ Footnote 11.

of the human experience that with the passage of time, human memory fades and witness recollection of events gets diminished.¹⁴

Conclusion

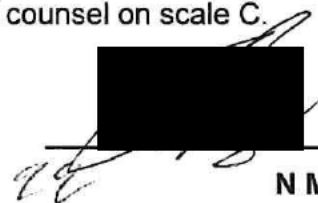
[30] We conclude that the court *a quo* was correct in dismissing the application for condonation. This is so because condonation is discretionary and not a right; and the appellant bore the onus to, but did not, establish good cause. The explanation he offered was contradictory, vague, unsupported, and incomplete; the delay was substantial and inadequately accounted for; and condonation was not sought promptly. In addition, prospects of success were not shown to be compelling; and granting condonation would prejudice the respondents and undermine finality.

[31] The overriding standard is the interests of justice. In the absence of a full and satisfactory explanation for the considerable delay of approximately ten years, coupled with the appellant's thin prospects of success and the demonstrable prejudice to the respondents, we are not persuaded that it would be in the interests of justice to interfere with the regional court's order or to uphold the appeal.

Order

[32] In the result, the following order is made:

The appeal is dismissed with costs, including the costs of counsel on scale C.


N MUVANGUA
ACTING JUDGE OF THE HIGH COURT

I concur.


I VAN RHYNE
JUDGE OF THE HIGH COURT

¹⁴ In both the heads of argument and during oral submissions, counsel for the appellant relied on *MEC for Education, KZN v Shange* 2012 (5) SA 313 (SCA), particularly paragraphs 18 to 22, for the proposition that it is insufficient for a party to assert prejudice based on memory loss without demonstrating it. Regrettably, we were unable to locate support for that proposition in *Shange*.

Appearances

For the appellant:

A C Gobetz

J C van Eeden

Instructed by:

Jacobs Fourie Attorneys, Bloemfontein

For the respondent:

M S Mazibuko

Instructed by:

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