

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

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

**CASE NUMBER:45067/2012**

7 April 2026

DATE

SIGNATURE

In the matter between:

**DISCOVERY LIFE LIMITED**

**APPLICANT**

And

**DAVID KARANIE**

**RESPONDENT**

*In re:*

**DAVID KARANIE**

**PLAINTIFF**

**AND**

**DISCOVERY LIFE LIMITED**

**DEFENDANT**

**Heard:** 26 January 2026

**Delivered:** 7 April 2026

**Headnote:** Civil procedure — dismissal for want of prosecution — inordinate delay — failure to comply with costs order — proceedings stayed — no steps taken to advance action — explanations unsatisfactory — prejudice established — discretion exercised to dismiss claim.

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## JUDGMENT

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**WINDELL J:**

### Introduction

[1] An action was instituted by the plaintiff, Mr David Karanie, against the defendant, Discovery Life Limited, during December 2012, arising from a claim for benefits allegedly due under a life insurance policy. The defendant defended the action and, in turn, instituted a counterclaim for the recovery of amounts paid to the plaintiff under that policy.

[2] The present application is confined to the plaintiff's claim. The defendant seeks the dismissal of the plaintiff's action on account of inordinate delay in its prosecution. It does not seek any relief in respect of its counterclaim, which it intends to pursue. For convenience and to avoid confusion, the parties are referred to as they are in the main action, namely the plaintiff and the defendant.

[3] The application arises in circumstances where the matter was last enrolled for trial on 4 May 2015. The trial did not proceed and was postponed sine die, with the plaintiff ordered to pay the costs occasioned by the postponement. Those costs were subsequently taxed on 23 May 2016 in the amount of R46 871.85. It is common cause that the plaintiff has not paid the taxed costs.

[4] On 13 July 2023, this court granted an order staying the proceedings pending payment of the taxed costs. As a result, more than thirteen years after the institution of the action, and nearly eleven years after the matter was last enrolled for trial, the plaintiff's claim remains stayed and incapable of progression.

[5] The issue is whether this court should exercise its discretion to dismiss the plaintiff's claim for want of prosecution.

### **Background facts**

[6] The plaintiff's claim arises from a life insurance policy concluded between the parties. The plaintiff initially took out the policy on 1 November 2008. On 23 September 2009, he amended or upgraded the policy by completing a service alteration request, which included a medical questionnaire relating to his health and prior consultations with medical practitioners.

[7] The questionnaire required the plaintiff, inter alia, to disclose whether his health had changed since the issue of the existing policy or whether any circumstances had arisen that would affect the assessment of risk, and whether he had suffered from any disorder of the nervous system or had consulted any doctors or specialists, including alternative medical practitioners or traditional healers.

[8] The plaintiff did not disclose any head injuries, pain or diagnoses pertaining to a head injury and declared that he had not consulted any doctors or specialists.

[9] Soon after, the plaintiff lodged a claim. He alleged that he had been involved in an armed robbery in November 2009, during which he sustained a serious head injury which led to the development of a brain tumour diagnosed on 3 December 2009. He claimed that this rendered him unable to continue his occupation.

[10] The claim was approved, and the defendant paid income continuation benefits to the plaintiff in terms of the policy from September 2010 until February 2012, totalling R1 364 120.09.

[11] On 23 February 2012, the defendant ceased payment after concluding that the plaintiff had failed to disclose a prior consultation with a certain Dr Nalla in June 2009 for 'persistent frontal headaches', during which he had been advised to consult a neurosurgeon to rule out further pathology. The defendant contends that this non-disclosure constituted a material misrepresentation when the policy was amended. It accordingly defends the plaintiff's claim on that basis and has instituted a counterclaim to recover payments made to the plaintiff.

[12] After the close of pleadings, the matter was enrolled for trial on 4 May 2015. By that stage, both parties had made discovery, consulted expert witnesses, and held a pre-trial conference, for which a minute was filed. On 1 April 2015, shortly before the trial, the plaintiff's attorney withdrew as attorney of record. The trial did not proceed and was postponed sine die, with the plaintiff ordered to pay the costs occasioned by the postponement.

[13] The defendant's bill of costs was taxed on 23 May 2016. The plaintiff did not pay the taxed costs.

[14] Six years later, on 15 February 2021, the plaintiff appointed new attorneys of record. No steps were, however, taken to progress the matter. On 13 July 2023, this court granted an order staying the proceedings pending payment of the taxed costs.

[15] The order was served on 17 July 2023. The plaintiff's attorneys withdrew in October 2024. On 9 December 2024, the plaintiff undertook to pay the taxed costs, but no payment has been made.

[16] As matters presently stand, although new attorneys were appointed in March 2025, the taxed costs remain unpaid and the matter remains stayed.

### **The law**

[17] The applicable principles are well established. A court has an inherent jurisdiction to dismiss an action for want of prosecution. This power must be exercised sparingly and with due regard to the interests of both parties.

[18] In *Cassimjee v Minister of Finance*,<sup>1</sup> the Supreme Court of Appeal held that the court must consider the length of the delay, the reasons therefor, the prejudice caused, and all the relevant circumstances in determining whether dismissal is warranted.

'There are no hard-and-fast rules as to the manner in which the discretion to dismiss an action for want of prosecution is to be exercised. But the following requirements have been recognised. First, there should be a delay in the prosecution of the action: second,

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<sup>1</sup> *Cassimjee v Minister of Finance* 2014 (3) SA 198 (SCA) ("*Cassimjee*").

the delay must be inexcusable; and, third, the defendant must be seriously prejudiced thereby. Ultimately, the enquiry will involve a close and careful examination of all the relevant circumstances, including the period of the delay, the reasons therefor and the prejudice, if any, cause to the defendant. There may be instances in which the delay is relatively slight but serious prejudice is caused to the defendant, and in other cases the delay may be inordinate but prejudice to the defendant is slight. The court should also have regard to the reasons, if any, for the defendant's inactivity and failure to avail itself of remedies which it might reasonably have been expected to use in order to bring the action expeditiously to trial.<sup>2</sup>

[19] The principles articulated in *Cassimjee* make it clear that the enquiry is a holistic one. The court must consider whether the delay is inordinate, whether the explanation for it is satisfactory, and whether the defendant has suffered prejudice. No single factor is decisive, and the court is required to weigh all the relevant circumstances in the exercise of its discretion.

### **The plaintiff's explanation**

[20] The plaintiff advances three broad explanations for the delay. I deal with them in turn.

[21] First, the plaintiff disputes the reliability of Dr Nalla's report. He contends that he did not consult Dr Nalla and that the contents of the report are false and based on fabrications. He states that, after becoming aware that the defendant relied on that report, he lodged a complaint with the Financial Services Board on 24 May 2013 against Dr Nalla

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<sup>2</sup> Ibid para [11].

and the defendant's reliance on his services. The complaint was dismissed and the file was closed on 12 June 2013.

[22] The plaintiff further states that in 2019 he obtained a report by Dr Oosthuizen which, according to him, undermined the conclusions of Dr Nalla. He contends that this led to a settlement offer being made to him by Old Mutual, which he says also relied on Dr Nalla's report, and with whom he holds a separate policy.

[23] In essence, the plaintiff's position is that the delay in prosecuting the action is attributable to his ongoing challenge to the medical evidence relied upon by the defendant, in particular the findings of Dr Nalla. He contends that those findings are incorrect and have been undermined by further enquiries, including the alleged report from Dr Oosthuizen obtained in 2019, and that this accounts for the failure to advance the matter to trial.

[24] Second, the plaintiff attributes the delay to difficulties with his legal representation and alleges that his former attorneys failed to act on his instructions. He states that he lodged a complaint with the Legal Practice Council in 2021 against the attorneys then on record and thereafter appointed new attorneys.

[25] He further states that, during the period 2020 to 2022, he attempted to obtain updates from his former attorneys. No detail is provided as to what, if anything, was communicated to him in response.

[26] Third, the plaintiff contends that he sought to settle the taxed costs by utilising funds from an investment policy held with a different division at Discovery, and that he

communicated this to the defendant and its attorneys. He alleges that the defendant did not cooperate in facilitating such payment.

### **Evaluation**

[27] These contentions do not avail the plaintiff. The defendant's reliance on Dr Nalla's diagnosis and consultation notes has been apparent since February 2012, when payment of the income continuation benefits was terminated. The plaintiff has, since delivering his replication in April 2013, disputed those findings. The existence of a dispute regarding Dr Nalla's evidence is therefore not new.

[28] The plaintiff's reliance on the alleged report by Dr Oosthuizen similarly does not advance his case. The report is not before the court, notwithstanding the plaintiff's reliance upon it and his undertaking to produce it. It is also not reflected in any supplementary discovery affidavit in the main proceedings. Of particular significance is the fact that the report was not raised at the pre-trial conferences held in 2021 and 2022. If the report was of the importance now attributed to it, one would have expected it to be disclosed and relied upon at that stage. Its absence from those proceedings underscores the lack of any genuine attempt to advance the matter.

[29] Even if accepted, the existence of such a report does not explain the plaintiff's failure to prosecute the action or to comply with the costs order. On the plaintiff's own version, he has been in possession of material which he contends undermines the defendant's case since 2019. Rather than advancing the matter, he has taken no steps to place that evidence before the court or to bring the matter to trial. In that sense, the

reliance on the alleged report serves to underscore, rather than explain, the plaintiff's inaction.

[30] More significantly, more than a decade after the institution of the action, and notwithstanding that the matter was enrolled for trial in 2015, the plaintiff has not delivered any medical expert notices. The absence of expert evidence is particularly striking in a matter where the claim is founded on alleged medical incapacity.

[31] In these circumstances, the plaintiff's reliance on the alleged report does not provide a satisfactory explanation for the delay in prosecuting the action.

[32] The plaintiff's second explanation—that the delay is attributable to difficulties with his legal representation—is not borne out by the chronology. On his own version, the plaintiff has been represented by no fewer than four firms of attorneys since the institution of the action in 2012. His first attorneys withdrew during June 2014. His second attorneys withdrew on 1 April 2015, shortly before the matter was due to proceed to trial on 4 May 2015. The trial did not proceed and was postponed, with the plaintiff ordered to pay the costs occasioned by the postponement.

[33] Thereafter, the plaintiff did not appoint new attorneys for a period of approximately six years. A further notice of appointment was only served on 15 February 2021. During this period, no steps were taken to advance the matter or to secure a trial date.

[34] Although the plaintiff lodged a complaint with the Legal Practice Council in 2021, this was several years after the matter had already stagnated and does not explain the preceding period of inactivity. The complaint was directed only at the attorneys then on

record, and no explanation is provided for the plaintiff's failure to pursue the matter during the earlier period when he was either represented by other attorneys or unrepresented.

[35] Despite expressing dissatisfaction with his attorneys, the plaintiff retained them as attorneys of record until their withdrawal on 15 October 2024, and only appointed new attorneys in March 2025. During this period, including after the order of 13 July 2023 staying the proceedings, no steps were taken to advance the matter or to secure the upliftment of the stay. The matter has accordingly remained dormant.

[36] These facts do not support the plaintiff's contention that the delay was occasioned by his legal representatives. They instead indicate a sustained failure on the part of the plaintiff to ensure that his claim was advanced. No coherent explanation is provided for the changes in representation, nor is there any indication of instructions given which were not carried out.

[37] The third explanation advanced by the plaintiff for the failure to prosecute the action relates to his failure to pay the taxed costs.

[38] This is the most significant feature of the matter. It is common cause that the taxed costs, quantified on 23 May 2016, remain unpaid. The plaintiff does not dispute his obligation to satisfy those costs.

[39] On the plaintiff's own version, any attempt to address payment was only made during 2023, several years after the costs had been taxed. No payment was made, no formal tender was advanced, and no application was brought to court to compel or facilitate payment.

[40] The plaintiff's reliance on an investment policy does not assist him. The obligation to satisfy the taxed costs rested with the plaintiff. Even if there were difficulties in accessing the policy — which was disputed on the basis that it fell under a different division — this did not absolve him from taking appropriate steps to discharge the debt.

[41] The position is further compounded by the plaintiff's undertaking, in December 2024, to make payment of the taxed costs, which has not been honoured. There remains no clear indication as to when payment will be made.

[42] The plaintiff's non-compliance resulted in an order staying the proceedings pending payment of the taxed costs. The stay did not cause the delay; it was a consequence of the plaintiff's failure to comply with the costs order.

[43] The practical effect is that the plaintiff has rendered his own action incapable of progression. The continuation of the action depends entirely on the plaintiff taking a step which he has failed to take for several years and in respect of which no definite commitment has been made.

[44] The invocation of section 34 of the Constitution also does not assist the plaintiff. The right of access to courts does not entitle a litigant to institute proceedings and then allow them to remain dormant indefinitely, particularly where that litigant has failed to comply with a court order which is a prerequisite for the continuation of the proceedings.

[45] Similarly, the reliance on considerations of inequality and on principles applicable to condonation is misplaced. This is not an application to condone lateness, but an

enquiry into whether the continued existence of the action is consistent with fairness and the proper administration of justice.

[46] In these circumstances, the plaintiff's failure to satisfy the taxed costs, coupled with the absence of any concrete steps to do so, provides no reasonable explanation for the delay and constitutes a substantial impediment to the continuation of the proceedings. Having regard to the chronology set out above, the delay in prosecuting the action is inordinate and the explanations advanced by the plaintiff are unsatisfactory. The delay is accordingly inexcusable.

### **The defendant's prejudice**

[47] It is so that, even where a delay is inordinate, an application of this nature will not succeed in the absence of serious prejudice to the defendant, which remains a material consideration in the exercise of the court's discretion.<sup>3</sup>

[48] In the present matter, the prejudice to the defendant is both real and substantial. The underlying claim arises from events which occurred during November 2009, more than 15 years ago. The passage of time inevitably affects the availability and reliability of evidence, particularly expert evidence.

[49] The defendant has prepared its case and has served expert notices in respect of Dr Fleming and Dr van der Walt. Dr Fleming has furnished a report. These experts were identified many years ago. It is inherently prejudicial to expect expert witnesses, particularly medical practitioners, to remain available and to testify many years after their

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<sup>3</sup> *Cassimjee* para [11].

initial involvement. The defendant faces the real prospect of having to secure new experts, with the attendant cost and uncertainty.

[50] By contrast, the plaintiff has, to date, not delivered any medical expert notices. The effect of the delay is therefore asymmetrical: the defendant's case has been prepared and is exposed to the erosion of time, whereas the plaintiff has taken no equivalent steps.

[51] The defendant is further burdened with a long-standing contingent liability. The claim has remained unresolved since February 2012. The defendant is unable to finalise its counterclaim or achieve finality while the proceedings remain stayed as a result of the plaintiff's non-compliance with the costs order.

[52] The practical effect is that the proceedings have reached a state of procedural paralysis. The defendant cannot compel the plaintiff to proceed, nor can it enrol the matter for trial while the stay remains in place. The continuation of the action depends entirely on the plaintiff taking a step which he has failed to take for several years and in respect of which no definite commitment has been made.

[53] The plaintiff has not advanced any cogent basis upon which this prejudice can be ameliorated. His explanations do not address, let alone counter, the prejudice occasioned to the defendant.

[54] While the plaintiff contends that his claim has prospects of success, that consideration cannot outweigh the sustained failure to prosecute the matter and to comply with a court order which is a prerequisite for its continuation.

[55] In these circumstances, the prejudice to the defendant is not only undeniable but serious.

### **Conclusion**

[56] The court's discretion to dismiss an action for want of prosecution must be exercised with caution, as it constitutes a final determination of the plaintiff's claim without a hearing on the merits.

[57] In the present matter, the delay is inordinate, the explanations advanced by the plaintiff are unsatisfactory, and the prejudice to the defendant is serious.

[58] The court has considered whether a lesser remedy would suffice. However, in light of the plaintiff's prolonged failure to comply with the costs order, the absence of any concrete indication as to when such compliance will occur, and the resulting procedural paralysis, a lesser remedy would not bring finality to the matter.

[59] The interests of justice and the proper administration of the court's process require that the defendant not be subjected to indefinite delay in circumstances where the plaintiff has failed to take the necessary steps to advance his claim.

[60] In the exercise of this court's discretion, it is appropriate that the plaintiff's claim be dismissed.

[61] In the result the following order is made:

1. The plaintiff's claim against defendant is dismissed.

2. The plaintiff is ordered to pay the costs of suit, including the costs consequent upon the employment of counsel.

  
L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 7 April 2026.

#### APPEARANCES

|                               |                                  |
|-------------------------------|----------------------------------|
| For the applicant/defendant:  | A R Whitaker                     |
| Instructed by:                | Keith Sutcliffe & Associates Inc |
| For the respondent/plaintiff: | N Rampete                        |
| Instructed by:                | Mbuyisa Moleele INC.             |
| Date of hearing:              | 26 January 2026                  |
| Date of judgment:             | 7 April 2026                     |