THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Reportable/**Not Reportable**
Case no: 1512/2024

In the matter between:

BAREND CHRISTIAAN LANGENHOVEN Applicant

and

MEC: TRANSPORT AND PUBLIC WORKS, NORTHERN CAPE PROVINCIAL GOVERNMENT 1st Respondent

HOD: TRANSPORT AND PUBLIC WORKS, NORTHERN CAPE PROVINCIAL GOVERNMENT 2nd Respondent

HANTAM LOCAL MUNICIPALITY 3rd Respondent

Neutral citation: *Langenhoven v MEC: Transport and Public Works, Northern Cape Provincial Government and Others* (1512/2024) 12 June 2026.

Coram: MAMOSEBO J.

Heard: 08/05/2026.

Delivered: 12/06/2026.

Summary: Condonation – Failure to timeously give notice of intended action proceedings against an organ of State – Court's discretion to condone – Three

requirements to be fulfilled (a) the debt has not been distinguished by prescription; (b) good cause exists for failure by the creditor; and (c) the organ of State was not unreasonably prejudiced by the failure – Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002.

ORDER

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1. Condonation is granted for the applicant's failure to serve the notice contemplated in s 3(1)(*a*) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 within the period laid down in s 3(2)(*a*) of the Act.

2. The applicant's summons served on 13 and 14 June 2024 shall stand as fulfilment of s 3(2)(*a*) of the Act.

3. The first and second respondents are directed to pay the costs of this application, jointly and severally, the one paying the other to be absolved, including costs of counsel on scale B.

JUDGMENT

Mamosebo J

[1] On 23 June 2021, Mr Barend Christiaan Langenhoven was the driver of the Isuzu bakkie with registration number C[...] on Klipwerf/Toren gravel road, conveying passengers and sheep. He was in possession of a learner's licence. Ms Maria Magretha van Zyl approached from the opposite direction, driving a motor vehicle with registration number B[...]. Both vehicles drove on tracks and/or grooves in the middle of the road because the condition of the road where the accident occurred, as claimed in the applicant's pleadings,

was in an extremely poor condition. It was littered with holes, potholes and/or ditches for which the applicant attributes blame to the first to third respondents for failing to properly grade or scrape or maintain the road. He tried to evade a collision with the oncoming vehicle but drove into a pothole which caused his vehicle to overturn.

[2] The applicant sustained the following injuries: a traumatic head injury with sub-arachnoid intraventricular haemorrhage; a lumber vertebral fracture; rib fractures; a chest injury with left pneumothorax; a probable acromia-clavicular joint dislocation; significant abdominal trauma with injury to the bowel and abdominal wall; liver laceration; intra-abdominal bleeding; and various bruises and abrasions. He was first stabilised at Abraham Esau Hospital whereafter he was transferred to Tygerberg Hospital for further treatment. It is common cause that from 23 June 2021 to at least 15 December 2021, a period of six months post-accident, he was in hospital in intensive medical care. This period is supported by hospital medical records.

[3] The applicant was discharged from the hospital on 15 December 2021 into his parents' care for the Christmas period. However, at the beginning of 2022, he had to undergo further surgery followed by recuperation, initially in hospital but later at home for the entire year, being in and out of hospital. He had had to learn to walk and speak again as he had also undergone a tracheostomy. On 02 December 2022, he was admitted for a stoma reversal to be performed on 05 December 2022. He was discharged on 06 December 2022. He attached photographs to substantiate his averments about his condition at the time. In early 2023, he developed a hernia, which took him three to four months to recover from the stoma reversal operation. On 27 February 2023, he had to undergo abdominal wall reconstruction in theatre, following which, on 01 March 2023, a physiotherapist was requested to assist with chest physiotherapy and safe mobilisation. He and his family were only focusing on his recovery until his injuries were no longer life-threatening. He resumed work in July 2023.

[4] In March 2023, the applicant's father consulted a certain Mr Deon Phillips, an attorney in Kuilsrivier, for unrelated commercial issues. It was after this

consultation when the said attorney enquired whether they had taken action in respect of the accident and referred the applicant's father to the applicant's current instructing attorneys. On 12 May 2023, the applicant and his father consulted Ms Desiré Berdine Smit of A Bachelor & Associates Inc, his instructing attorney who is also the deponent to the founding affidavit. During that initial consultation, they expressed to her their desire to pursue damages claim against the Road Accident Fund ("the RAF"). She also advised them that she would prepare a letter of demand against the third respondent, Hantam Local Municipality (the Municipality).

[5] On 19 June 2023, a notice of intended legal proceedings was issued to the Municipality in terms of s 3(1)(*a*) of the Institution of Legal Proceedings Against Certain Organs of State Act[1] ("the Act") by registered mail. The Municipality has not reacted to the notice. The applicant's attorney issued

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[1] 40 0f 2000. Section 3 of the Act provides:

3. Notice of intended legal proceedings to be given to organ of state

(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; or
  (b) the organ of state in question has consented in writing to the institution of that 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.

(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 a creditor must be regarded as having acquired such knowledge as soon as he or she or it could have acquired it by exercising reasonable care, unless the organ of state wilfully prevented him or her or it from acquiring such knowledge; and
  (b) a debt referred to in section 2(2)(a), must be regarded as having become due on the fixed date.

(4)
  (a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2)(a), the creditor may apply to a court having jurisdiction for condonation of such failure.
  (b) The court may grant an application referred to in paragraph (a) if it is satisfied that-
    (i) the debt has not been extinguished by prescription;
    (ii) good cause exists for the failure by the creditor; and
    (iii) the organ of state was not unreasonably prejudiced by the failure.
  (c) If an application is granted in terms of paragraph (b), the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to the organ of state as the court may deem appropriate.

summons out of this Court served on 13 June 2024 to the first respondent, MEC: Department of Transport and Public Works, Northern Cape Provincial Government, and on 14 June 2024 to the second respondent, HOD: Department of Transport and Public Works, Northern Cape Provincial Government. It is common cause that when summons was issued no prior notice of the intended litigation was served on the first and second respondents.

[6] This, amongst other things, triggered the first and second respondents excepting to the applicant's particulars of claim. The applicant amended the said particulars of claim, and the remaining issue, as submitted by his counsel, pertained to the failure by the applicant to serve statutory notices on the first and second respondents. In the papers, the first and second respondents urged the court to hear the exception simultaneously with the condonation application. Mr Modiba for the respondents, correctly so in my view, abandoned this argument.

[7] The applicant applied for an order in terms of s 3(4) of the Act condoning his failure to serve a notice of intention to bring legal proceedings against the first and second respondents within six months as specified in s 3(2)(*a*) of the Act. The first and second respondents opposed the application. The Municipality, though served with the papers, is not participating in these proceedings.

[8] The debt allegedly became due on 23 June 2021 by the first to third respondents when the applicant sustained injuries due to the accident. A six-month computation from the date of the accident for the delivery of the notice would have lapsed on 22 December 2021. The notice was only served on the first and second respondents on 03 February 2025. The first and second respondents contend that the delay in serving these notices on them is inordinate and the court should non-suit the applicant as a result thereof. It is this failure by the applicant that culminated in him launching this application for condonation and seeking a declarator that his summons and particulars of claim served on the respondents on 13 and 14 June 2024 were valid in terms of s 3 of the Act.

[9] Section 3(4)(*b*) sets out the conditions under which a court may condone a failure to serve notice of intention to institute proceedings against an organ of State which are: (a) the debt has not been extinguished by prescription; (b) good cause exists for the failure by the creditor; and (c) the organ of state was not unreasonably prejudiced by the failure.

[10] The standard employed by this Court in the adjudication of this matter takes cue from *Madinda v Minister of Safety and Security*[2] where Heher JA illuminated:

> 'The phrase "if [the court] is satisfied" in s 3(4)(*b*) has long been recognised as setting a standard which is not proof on a balance of probability. Rather it is the overall impression made on a court which brings a fair mind to the facts set up by the parties. See eg *Die Afrikaanse Pers Beperk v Neser* 1948 (2) SA 295 (C) at 297. I see no reason to place a stricter construction on it in the present context.'

[11] The first requirement, that the debt has not been extinguished by prescription, requires the court considering the application to be satisfied that the cause of action is extant. It is common cause between the parties that the issue of prescription does not arise as summons was issued and served on the respondents on 13 and 14 June 2024 respectively, a week before the claim would have lapsed.

[12] The second requirement pertains to good cause shown for non-compliance with s 3(2)(*a*). To determine whether there is good cause, the court must consider, among others, the explanation proffered by the applicant for the delay in serving the notices and the sufficiency thereof, and whether he has prospects of success in the action.[3] In considering the delay, there are, in my view, three relevant periods for consideration. The first would be from 22 December 2021 (when the statutory notice must be served) to 12 May 2023 (when the applicant and his father first consulted the instructing attorney). The second period would be from 12 May 2023 to 13 and 14 June 2024 when summons was served. Finally, from the remainder of June 2024 to 03

[2] [2008] 3 All SA 143 (SCA); 2008 (4) SA 312 (SCA) para 8.
[3] *Ibid* para 10.

February 2025. I hasten to point out that the service of the summons was followed by engagement between the parties as well as other court processes.

[13] The founding papers as well as the explanation proffered in respect of the injuries have sketched a picture of the medical condition of the applicant. Therefore, I have no doubt that for the remainder of 2021, the entire 2022, and at least the first half of 2023, his medical condition hampered him and his active involvement in the matter. A good starting point should rather be after his first consultation with his attorney on 12 May 2023. Ms Smit, the attorney and deponent to the founding affidavit, commenced by regarding RAF as the relevant party. Mr Modiba argued that from the consultation with the attorney until a year later when summons was issued, it cannot be assumed that by merely serving the notice on the Municipality, the Municipality acted as the first and second respondents' agent. Counsel, relying on *Uitenhage Transitional Local Council v South African Revenue Service*[4], also argued that the applicant has not furnished a full explanation for the entire period.

[14] The explanation proffered by the applicant's attorney boils down to the following. She obtained basic information from the applicant during the first consultation. She had instructions to pursue both the RAF and the Municipality. However, between June 2023 and May 2024, her focus was in obtaining documentation for lodgement with the RAF. It is only after the brief to counsel to prepare particulars of claim and during consultation with counsel that she was advised to cite the first and second respondents in the matter, so averred Ms Smit. In light of this explanation, it would be unwarranted to blame the applicant for the inactivity during this period as this delay falls squarely on the doorstep of his attorney who devoted a greater portion of the time on the RAF.[5] The remarks by Makgoka JA in *Rossouw*[6] are instructive and bear repetition:

[4] 2004 (1) SA 292 (SCA) para 6.
[5] See *Rossouw v Blignaut & Wessels and Another* ("*Rossouw*") 2026 (2) SA 477 (SCA) para 57.
[6] *Supra* para 59.

'This raises the question of the extent to which a litigant can rely on the lapse of their legal representatives for non-compliance with procedural steps. As this court pointed out in *Saloojee*, there is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. However, the court made an important caveat:

> "A litigant . . . who knows . . . that the prescribed period has elapsed and that an application for condonation is necessary, is not entitled to hand over the matter to his attorney and then wash his hands of it. If . . . the stage is reached where it must become obvious also to a layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney. . . ."'

I wish to point out that *in casu*, the facts are distinguishable from this caveat. A case was not made out of any delay caused by the applicant either in the answering affidavit or during oral argument. As already held, I also do not think he caused the delay before instructing his attorneys after his recuperation.

[15] As stated hereinbefore, summons was served on the respondents on 13 and 14 June 2024. The next period is from June 2024 to 03 February 2025 when the notices were eventually served. According to the respondents, this period is unexplained, and the court should pay particular attention to the applicant's conduct. Mr Modiba expressed that despite the applicant being aware that the statutory notices for the first and second respondents were outstanding, he still failed to cure that defect until the respondents excepted in August 2024; and instead of serving the notices, the applicant opted to amend the particulars of claim. Further, so the argument went, despite the applicant's attorney's undertaking to serve the notices after the exception application was withdrawn by agreement, with the applicant's undertaking to serve and file an application for condonation, some time passed until a letter from the respondents dated 10 March 2025 before the application was brought. This, argued Counsel, defeated the purpose of s 3 of alerting organs of state of the looming litigation in order to enable them to evaluate the veracity of the claim.

[16] Mr Bisschoff, for the applicant, submitted that in any event, the serving of the notice post summons was a tick-box exercise. What was of essence was that

a notice was served on the third respondent and it was only after the amended particulars that notices had to be served on the first and second respondents. Counsel relied on *Minister of Safety and Security v De Witt*[7] where Lewis JA for the court elucidated:

'It follows that where no notice at all is given by the creditor, and the organ of State relies on the failure, the creditor can nonetheless apply for condonation. A fortiori, if the notice is sent out of time, condonation may be granted. The argument that the application for condonation must precede the issue and service of summons (and that if it does not the summons is ineffective) is unpersuasive. It should also be borne in mind that where no notice is given, the organ of State's objection will in all likelihood only be made for the first time after proceedings have been instituted.'

The court went on to say:

'The conclusion that it is open to a creditor to apply for condonation after instituting legal proceedings is borne out also by the definition of "creditor" in the Act. A "creditor" means a person who "intends to institute legal proceedings" or "*who has instituted such proceedings*". The creditor who has already instituted proceedings may thus apply for condonation if the organ of State relies on the creditor's failure to serve a valid notice before proceedings are instituted.'

It therefore follows that serving the notices after summons was served is no bar to the applicant filing for condonation of such late notice. As already stated, *in casu*, the parties got into several correspondence and other court processes after June 2024. The impression given by the respondents that the applicant merely remained inactive in the matter is incorrect.

[17] The second leg of the second requirement of s 3(4)(*b*) relates to prospects of success. Mr Bisschoff submitted that it is not a requirement when applying for condonation to satisfy this Court that the applicant would definitely succeed in the envisaged trial. All that the applicant is seeking is an opportunity to have the matter tried. In her founding affidavit, Ms Smit averred that there appears to be strong prospects of success in establishing a causal link between the

[7] 2009 (1) SA 457 (SCA) paras 11 and 14.

first and second respondents' negligent and unlawful conduct in relation to the occurrence of the incident and the applicant's injuries as pleaded. Counsel for the applicant urged the Court to have a balanced approach when considering the application, mindful that it does not unnecessarily deprive the applicant of his s 34 right[8] to access the courts.

[18] Mr Modiba, on the other hand, emphasised that the fact that the unaccompanied applicant drove the motor vehicle, having two passengers and sheep whilst only in possession of a learner's licence as opposed to a driver's licence diminishes his prospects of success. Counsel, referring to the provisions of the National Road Traffic Act[9] and its regulations, submitted that the applicant's conduct was criminal and the courts cannot reward criminality. I take cue from *Rossouw*[10] that in considering the three requirements enunciated in s 3(4)(*b*), the standard to be satisfied is the overall impression bringing a fair mind to the facts advanced by the parties. The argument pertaining to the unlicenced driver will best be ventilated in the action together with the other issues. This Court cannot use that one aspect to shut the door in the applicant's face at this juncture as that will not be in the spirit of our Constitution regarding the right of access to courts. It suffices that the applicant has a *prima facie* case and a *bona fide* intention for his case to be tried.

[19] The last requirement to be considered is whether the respondents had not been unreasonably prejudiced by the applicant's failure to serve the notice timeously. According to Heher JA in *Madinda v Minister of Safety and Security*[11]*,* it would depend on the inference to be drawn from the facts which are to be regarded as proven in the context of the motion proceedings launched by an applicant. The approach to the existence of unreasonable prejudice requires a common-sense analysis of the facts, bearing in mind that

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[8] Section 34 of the Constitution of the Republic of South Africa, 1996 provides:
34. Access to courts
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.

[9] Section 75 of Act 93 of 1996.

[10] *Supra* fn 5 para 68.

[11] 2008 (4) SA 312 (SCA) para 21.

whether the grounds of prejudice exist often lies peculiarly within the knowledge of the respondent.[12] Although the *onus* is on an applicant to bring the application within the terms of the statute, a court should be slow to assume prejudice for which the respondent itself does not lay a basis.[13]

[20] The first and second respondents were served with a summons and particulars of claim on 13 and 14 June 2024. They served a notice of intention to defend dated 28 June 2024. They subsequently excepted to the applicant's particulars of claim on 06 August 2024. On 12 December 2024, the applicant filed a notice of amendment in terms of Rule 28 of the Uniform Rules of Court intending to amend his particulars of claim. The first to the third respondents did not object to the said amendment. The applicant amended his particulars of claim and served them on the respondents on 02 January 2025. The condonation application was served on the first and second respondents' attorneys on 16 April 2026.

[21] In the first and second respondents' answering affidavit deposed to by Ms Nomsa Felicity Ndelaphi, a practicing attorney at Mjila and Partners, the following is said pertaining to prejudice:

> 'Evidentiary prejudice.
>
> 61.1 The incident alleged by the applicant occurred on or about 12 June 2021 [correct date is 23 June 2021] while the summons[es] were issued in June 2024 and the section 3 notice was only delivered to the respondents' attorneys in February 2025, this excessive delay has severely compromised the respondents' ability to investigate the matter meaningfully, *some documents of significance in this case could not be found or may have been lawfully destroyed due to the passage of time.*
>
> 61.2 *Crucial corroborative evidence was lost during this time*. Some of the key witnesses, including traffic officials and contractors who may have had knowledge of the condition of the road or even witnessed the incident may either no longer be in the respondents' employ or not be able to recall the events clearly.
>
> Financial Prejudice

[12] *Ibid*.
[13] *Ibid*. See also *Rossouw* para 82.

61.5 The respondents operate within fixed budgetary cycles and should not be expected to make provision for legal claims that are only instituted years after the cause of action arose.

61.6 The respondents being put in a position such as having to oppose this application amounts to a distortion of the state's financial planning which will in turn potentially impact the delivery of public service and road maintenance obligations to the public at large.' (Own emphasis.)

[22] At the stage of receiving the statutory notice, almost a year later, the respondents were already placed in possession of the summons and its particulars of claim and knew the case they had to meet. What the deponent has done in her answering affidavit is what the court in *Rossouw*[14] has cautioned against when it said:

'If there was real and unreasonable prejudice, the MEC should easily state its nature and source, especially after the effluxion of time. It is not sufficient for the MEC to merely assert that some unidentified documents may have been misplaced or lost. To rebut the applicant's assertions, the MEC had to identify a specific document or documents that would have been crucial to the department's case but are no longer available due to the delay.'

[23] It is unclear which documents of significance, referred to by Ms Ndelaphi, could not be found or were lawfully destroyed. This Court is not any wiser in terms of which key witnesses, traffic officers or contractors are no longer in the department's employ or cannot recall the evidence. As correctly argued by Mr Bisschoff, these submissions are not stated as facts but as mere speculation. It would have been helpful for the respondents to elaborate not only on the specific documents but also the search conducted to locate them. If such documents were lost, that should have been stated as a fact. If relevant documents were destroyed following the department's disposal processes, that should have also been stated as a fact. This Court cannot base its considerations on speculative hypothesis. I am satisfied that the first and second respondents have not laid a proper basis for unreasonable prejudice.

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[14] *Supra* fn 5 para 76.

[24] The insightful remarks by Van der Westhuizen J in *Road Accident Fund and Another v Mdeyide*[15] pertaining to the right to access courts bear repeating:

'The fundamental right of access to courts is essential for constitutional democracy under the rule of law. In order to enforce one's rights under the Constitution, legislation and the common law, everyone must be able to have a dispute that can be resolved by the application of law, decided by a court. The right of access to courts is thus protected in the Constitution.'

[25] It is for these aforementioned reasons, authorities and submissions made that I find that all three requirements set out in s 3(4)(*b*) have been satisfied and the applicant is entitled to condonation for the late service on the first and second respondents of the notice required by s 3 of the Act. There is also no reason why costs should not follow the result.

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

1. Condonation is granted for the applicant's failure to serve the notice contemplated in s 3(1)(*a*) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 within the period laid down in s 3(2)(*a*) of the Act.

2. The applicant's summons served on 13 and 14 June 2024 shall stand as fulfilment of s 3(2)(*a*) of the Act.

3. The first and second respondents are directed to pay the costs of this application, jointly and severally, the one paying the other to be absolved, including costs of counsel on scale B.

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MAMOSEBO J

JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION

[15] 2011 (2) SA 26 (CC) para 1.

Appearances

For the Applicant:	Adv C Bisschoff
Instructed by:	A Bachelor & Associates Inc. c/o Roux & Welgemoedt & Du Plooy
For the 1st and 2nd Respondents:	Adv J Modiba
Instructed by:	Mjila & Partners Inc t/a Mhlabeni Inc.