



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 54912/2014

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	
<u>17 JUNE 2026</u> DATE	SIGNATURE

IN THE MATTER BETWEEN:

KHENSANI VICTORIA MAOTO N.O.

Plaintiff

(in her capacity as the duly appointed executor of the estate of the late Dudu Arnold Mawela)

and

MINISTER OF POLICE

First Defendant

CONSTABLE JOHANNES LELAKA

Second Defendant

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Third Defendant

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Fourth Defendant

Delivered: This judgment is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading to Caselines. The date of hand down is deemed to be 17 June 2026

JUDGMENT

Introduction

- [1] Two interlocutory applications brought by the plaintiff serve before me. The first is an application in terms of rule 30 of the Uniform Rules of Court for an order declaring the special plea and plea delivered by the National Director of Public Prosecutions (“the NDPP”) on 13 September 2023 to be an irregular step, and setting it aside. The second is an application in terms of section 3(4)(b) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 (“the Act”) for condonation of the failure to give the NDPP written notice of intended legal proceedings. By agreement the two applications were heard together, and they were argued before me on 8 June 2026.
- [2] The plaintiff sues in her representative capacity as the executor of the estate of the late Dudu Arnold Mawela (“the deceased”), having been substituted for him in terms of rule 15. In the action the deceased claimed payment of R15 000 000, pleaded as “personality damages”, arising from his allegedly unlawful arrest and detention by members of the South African Police Service and his allegedly malicious prosecution.¹
- [3] During argument it appeared to me that a question anterior to both applications required consideration: whether, by reason of the death of the deceased on 21 February 2021, there remains any valid and enforceable claim against the NDPP to which the interlocutory applications can attach. I accordingly directed the delivery of supplementary heads of argument on two questions — first, whether a plaintiff’s non-patrimonial claim is transmissible to his estate upon his death, or whether it perishes with him in accordance with the maxim *actio personalis moritur cum persona*; and secondly, whether there exists a rule of the common law that everything done by an attorney in good faith, while unaware that his client has died, is valid.

¹Particulars of claim, paras 3.2 and 5.1 (CaseLines 001-5 and 001-7), as reproduced in the fourth defendant’s supplementary heads of argument, para 16.1.

- [4] Both parties delivered supplementary heads. Those for the NDPP, settled by Mr Barnardt SC, address the transmissibility question directly. Those for the plaintiff, settled by Mr Mlisana, do not engage the maxim as such; they treat the court's question as one of *prescription*, and contend that the claim "remains live for entertainment and adjudication". I have also had regard to a research memorandum, drawn from Classen's Dictionary of Legal Words and Phrases and placed before me, on the scope and incidents of the maxim. I deal with each in turn.
- [5] For the reasons that follow, I have concluded that the deceased's claim against the NDPP, being a claim for non-patrimonial damages, was extinguished by his death before *litis contestatio* was reached as against the NDPP, and that both interlocutory applications must in consequence fail.

The parties and their citation

- [6] The action was instituted in 2014 against the Minister of Police (first defendant), Constable Johannes Lelaka (second defendant) and the Minister of Justice and Constitutional Development (third defendant). The NDPP was joined as fourth defendant by order of Mabuse J on 12 August 2021.² On 8 September 2023 the plaintiff withdrew the action against the Minister of Justice and Constitutional Development; in papers delivered thereafter the NDPP is cited as the third defendant, while the State's papers retain the original citation as the fourth defendant. Nothing turns on this, and I refer throughout to "the NDPP".

The facts

- [7] The material facts emerge from the pleadings, the parties' chronology tables and the joint practice note, and are in all relevant respects common cause:
- (a) the deceased was arrested without a warrant on 24 August 2004 and detained;
 - (b) he was convicted and sentenced on 23 October 2008;

²CaseLines 017-5 to 017-6.

- (c) on 28 October 2011 his conviction and sentence were set aside on appeal and he was released, having been in custody for some seven years;
- (d) on 30 April 2012 a notice in terms of section 3 of the Act was delivered to the Minister of Police;³ no such notice was ever delivered to the NDPP;
- (e) on 14 August 2014 summons was issued and served on the original defendants, claiming R15 000 000 in “personality damages”;
- (f) the defendants delivered a plea and, on 3 March 2020, an amended plea raising, among others, special pleas of non-compliance with section 3 of the Act and of prescription;
- (g) on 28 October 2020 the deceased launched an application to join the NDPP;
- (h) on 21 February 2021 the deceased died. His attorney was then unaware of his death;
- (i) on 12 August 2021 Mabuse J granted the order joining the NDPP, and the deceased’s attorney addressed a letter to the National Prosecuting Authority enclosing the order;
- (j) on 13 September 2021 the deceased’s attorney delivered a notice of bar in terms of rule 26, calling on the NDPP to plead within five days, failing which it would be *ipso facto* barred;⁴
- (k) on 29 July 2022 the attorney learned, on a visit to the deceased’s home, that his client had died on 21 February 2021;⁵
- (l) a rule 15 notice was served on 1 August 2022; letters of executorship issued to the plaintiff on 10 November 2022; and a notice of substitution was delivered on 22 November 2022;⁶

³CaseLines 015-56; chronology table.

⁴CaseLines 006-4 to 006-5.

⁵Affidavit of the plaintiff’s attorney of record (CaseLines 030-1).

⁶Rule 15 notice (CaseLines 022-1 to 022-3); notice of substitution (CaseLines 025-1 to 025-3). The fourth defendant’s supplementary heads, para 31, record that letters of executorship issued on 10 November 2022.

(m) on 13 September 2023 the NDPP delivered a special plea and plea;⁷

(n) on 18 September 2023 the plaintiff delivered a notice in terms of rule 30(1);⁸ and on 10 October 2023 launched the two applications now before me.⁹

[8] Four facts, each recorded as common cause,¹⁰ are decisive: the deceased died on 21 February 2021; the NDPP was joined on 12 August 2021; the notice of bar was delivered on 13 September 2021; and the plaintiff was substituted by notice dated 22 November 2022. Every procedural step taken against the NDPP — its joinder, the notice of bar, and the eventual plea — post-dates the death of the deceased.

The nature of the claim

[9] The claim is pleaded as a single, globular claim for “personality damages” of R15 000 000, founded on unlawful arrest and detention and on malicious prosecution. Claims of that nature are claims under the *actio iniuriarum* for the impairment of personality interests — bodily liberty, dignity and reputation — and sound in non-patrimonial (general) damages by way of a *solatium*. The research memorandum placed before me, drawn from Classen’s Dictionary, lists “malicious arrest”, assault and defamation among the very wrongs to which the maxim applies, and locates them within the *actio in personam* — a claim against a specific person arising from delict — as distinct from the *actio in rem* concerning property or status.¹¹ Neither the particulars of claim nor the argument suggested that any patrimonial loss (such as loss of earnings or out-of-pocket expense) is claimed. The claim is, in its entirety, a personal claim for non-patrimonial damages.

The two applications

⁷CaseLines 003-5 to 003-19. The date of this pleading is variously given in the papers as 6, 13, 14 and 19 September 2023; nothing turns on the discrepancy and I take the date from the parties’ chronology tables. [NOTE TO CHAMBERS: to be confirmed against the record.]

⁸CaseLines 028-25 to 028-27.

⁹Rule 30 application (CaseLines 028-1); condonation application (CaseLines 015-1).

¹⁰Joint practice note dated 9 February 2026, recording the common-cause facts, read with the parties’ chronology tables.

¹¹This characterisation accords with the memorandum from Classen’s Dictionary of Legal Words and Phrases placed before me, which lists malicious arrest, assault and defamation among the actiones iniuriarum to which the maxim applies.

- [10] In the rule 30 application the plaintiff contends that the NDPP, having been served with the notice of bar on 13 September 2021 and having failed to plead within five days, was under an automatic bar; its plea, delivered some two years later without the bar being uplifted or condonation sought, is said to be an irregular step liable to be set aside.
- [11] In the condonation application the plaintiff seeks condonation, under section 3(4)(b) of the Act, of the failure to serve the NDPP with the statutory notice, contending that good cause exists, that the claim has not prescribed, and that the NDPP has suffered no unreasonable prejudice.
- [12] The NDPP opposes both. It contends that the notice of bar was a nullity because, when delivered, the deceased had been dead for almost seven months, his attorney's mandate had terminated by operation of law, and no executor had been appointed; that the claim, being purely non-patrimonial, was extinguished by death before *litis contestatio* and did not pass to the estate; that the claim has prescribed; and that the particulars were never amended to plead any case against the NDPP.

Whether the point may be taken on these applications

- [13] The plaintiff's supplementary heads suggest that the survival of the claim is a matter to be "traversed and determined when the NDPP's special plea and plea is argued", and not on these interlocutory applications. I do not accept that the question must be deferred. Interlocutory applications are not free-standing; each is ancillary to, and draws its utility from, an extant *lis*. Where the facts that determine whether a claim survives are common cause — and the dates of death, joinder and bar are common cause — a court may, and should, have regard to the legal consequence of those facts in deciding whether the interlocutory relief sought can serve any purpose. A court does not decide moot or abstract questions, and it does not grant relief that can have no practical effect.¹²

¹²*JT Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC) para 17; *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs* 2000 (2) SA 1 (CC) fn 18; *President, Ordinary Court Martial v Freedom of Expression Institute* 1999 (4) SA 682 (CC) para 16.

- [14] I emphasise the limited basis on which I take the point. I do not, on these applications, finally determine the action or the NDPP's special pleas. I decide only whether the two interlocutory applications, each directed exclusively at the NDPP, can yield any effective relief. For the reasons that follow, they cannot — and that conclusion is reached on facts that are common cause and require no evidence.

Actio personalis moritur cum persona: the principles

- [15] The maxim *actio personalis moritur cum persona* — a personal action dies with the person — was received into our law from Roman law through the Roman-Dutch authorities and has long formed part of South African common law. Patrimonial claims are, in general, transmissible to the estate of a deceased claimant; but purely personal claims for non-patrimonial loss — among them claims for pain and suffering, loss of amenities of life, defamation, and injuries to liberty, dignity and reputation — are not transmissible unless *litis contestatio* was reached in the lifetime of the claimant. Where the claimant dies before that stage, the claim abates and is extinguished.¹³
- [16] The authoritative modern statement is that of the Supreme Court of Appeal in *Stransham-Ford*:¹⁴

“[19] While many claims, especially those of a pecuniary nature[,] will be transmissible to the estate of a deceased litigant[,] that is not true of all such claims. A claim for damages for pain and suffering and loss of amenities of life is not transmitted to the deceased estate unless the proceedings have reached the stage of *litis contestatio*. A claim for damages for defamation is so personal to the person defamed that the action dies with the claimant and does not pass to their heirs unless *litis contestatio* has been reached. The principle in these cases is summed up in the maxim *actio personalis moritur cum persona* (a personal action dies with the person).

[20] The nature of the relief claimed by Mr Stransham-Ford makes it clear that this was a personal action. ... His death extinguished his claim for relief. There can be few starker examples of a cause being extinguished by the death of the claimant. ... There was no longer any claim capable of being adjudicated and no claim to pass to his estate. As there was no longer a claim before it, there was nothing left on which the court could pronounce.”

¹³*Executors of Meyer v Gericke* (1880) 14 Foord 14; *Pienaar and Marais v Pretoria Printing Works Ltd* 1906 TS 654 at 656; *Willenburg v Willenburg* (1908) 25 SC 775 at 777; *Jankowiak v Parity Insurance Co Ltd* 1963 (2) SA 286 (W) at 289E–H; *Hoffa NO v SA Mutual Fire & General Insurance Co Ltd* 1965 (2) SA 944 (C) at 952F; *Government of the Republic of South Africa v Ngubane* 1972 (2) SA 601 (A) at 606G–H.

¹⁴*Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others* [2016] ZASCA 197; 2017 (3) SA 152 (SCA) (“Stransham-Ford”) paras 19–20.

- [17] The same principle emerges from the older authorities.¹⁵ Its rationale is that non-patrimonial damages compensate the injured person for harm personal to him; neither the estate nor the heirs suffer that harm. And the rationale of the *litis contestatio* exception is equally instructive: it exists to ensure that proceedings already joined and underway at the date of death are not disrupted by it. Where the rights of the parties have, by *litis contestatio*, become fixed and defined, the claim is treated as having hardened into something transmissible; before that moment it remains personal and perishes with the claimant.
- [18] In modern practice *litis contestatio* is reached at the close of pleadings. The majority in *Nkala*, on constitutional grounds and in the singular setting of a certified class action by mineworkers, developed the common law to permit transmission of general-damages claims of class members who died after certification but before *litis contestatio*; that development was rooted in the exceptional features of the class action.¹⁶ Subsequent decisions of the High Court — *Ngubane v Road Accident Fund* and *Mtshwene v Road Accident Fund* — have declined to treat *Nkala* as authority for any general relaxation of the rule, and have reaffirmed the settled position.¹⁷ In the present matter no case for the development of the common law has been pleaded or advanced; the plaintiff did not, in his supplementary heads, engage the maxim at all. The matter falls to be decided on the settled principle.

Application of the principle

- [19] The claim is, as I have found, wholly non-patrimonial. The deceased died on 21 February 2021. The decisive question is whether, by that date, *litis contestatio* had been reached as between the deceased and the NDPP. It plainly had not. On 21

¹⁵*Spendiff v East London Daily Dispatch Ltd* 1929 EDL 113 (defamation of the deceased), *Meyer's Executors v Gerricke* (1880) and *Union Government v Lee* 1927 AD 202. *Executors of Meyer v Gericke* (1880) Foord 14 is independently cited in the fourth defendant's heads.]

¹⁶*Government of the Republic of South Africa v Ngubane* 1972 (2) SA 601 (A) at 606–607; *Nkala and Others v Harmony Gold Mining Co Ltd and Others* [2016] ZAGPJHC 97; 2016 (5) SA 240 (GJ) (“*Nkala*”) paras 176–194.

¹⁷*Ngubane v Road Accident Fund* [2022] ZAGPJHC 275; 2022 (5) SA 231 (GJ) paras 35–36; *Mtshwene v Road Accident Fund* (44674/2020) [2024] ZAGPPHC 1027 (7 October 2024) (“*Mtshwene*”) paras 16–17.

February 2021 the NDPP was not a party to the action: the joinder order was granted only on 12 August 2021, almost six months later. Before joinder the NDPP could deliver no plea, and pleadings could not close as against it. The deceased's personal claim against the NDPP was therefore extinguished by operation of law at his death, and nothing in respect of the NDPP passed to his estate.

The contention that joinder brought about *litis contestatio*

- [20] The plaintiff's principal answer must be confronted directly. In the pre-trial questionnaire the plaintiff asserted that *litis contestatio* against the NDPP "has been reached due to the effluxion of time periods for filing by the NDPP of its Notice of Intention to Defend and subsequent pleadings following the Plaintiff's service of the order joining [the] NDPP".¹⁸ The argument, developed in the heads, is that the joinder of the NDPP, followed by the expiry of the time to plead and the notice of bar of 13 September 2021, closed the pleadings and so achieved *litis contestatio*, whereupon the claim became transmissible to the estate. I am unable to accept it, for four reasons.
- [21] First, the argument equivocates between two different senses of "joinder". *Litis contestatio* — in the older usage, "joinder of issue" — is the **close** of pleadings, the moment at which the parties' cases are fixed.¹⁹ Joinder of the NDPP *as a party* is the opposite: it is the event that **opens** the pleadings against that party. Once joined, the NDPP still had to be served, to enter appearance and to plead before issue could be joined with it. The joinder of 12 August 2021 was thus the beginning of the lis against the NDPP, not its *litis contestatio*. No authority equates the joinder of a defendant with the close of pleadings; the two are distinct concepts and cannot be collapsed.
- [22] Secondly, and decisively, the point is temporal. The rule requires *litis contestatio* to have been reached *in the lifetime of the claimant*. The deceased died on 21 February 2021. Whichever date the plaintiff selects for *litis contestatio* against the NDPP — joinder (12 August 2021), expiry of the bar (late September 2021), or the

¹⁸Defendants' pre-trial questions, answer to question 7 (CaseLines, pre-trial minute of 5 September 2023).

¹⁹Rule 29(1)(a). The plaintiff invokes *Milne NO v Shield Insurance Co Ltd* 1969 (3) SA 352 (A) at 359F–G and *Moghambaram v Travagaimmal* 1963 (3) SA 61 (D) for the proposition that issue may be joined otherwise than by a replication, and that pleadings are considered closed when a party is barred.

subsequent set-down (2022 to 2023) — every one of them is post-mortem. It is therefore unnecessary to decide whether closure of pleadings by bar amounts to *litis contestatio* for the purpose of transmissibility: even on the assumption most favourable to the plaintiff, the closure came after death, and so came too late. The position is *a fortiori* that in *Mtshwene*, where a notice of bar served within a month of the plaintiff's death did not avail the estate; here, at the death, the NDPP had not even been joined.²⁰

[23] Thirdly, the argument inverts the logic of the maxim. It assumes the claim was alive and needed only to be carried across the *litis contestatio* threshold. But a purely personal claim is extinguished *ipso iure* at the instant of death. After 21 February 2021 there was no claim against the NDPP capable of being pleaded to, barred, or closed. *The notice of bar, the set-down and the eventual plea all operated upon nothing.* One cannot reach *litis contestatio* upon a cause of action that has ceased to exist; and the rationale of the exception — to protect proceedings already underway at death — has no purchase where, at the date of death, no proceedings against the party in question were underway at all.

[24] Fourthly, the joinder is, if anything, self-defeating of the plaintiff's case. Far from rescuing the claim, the post-death joinder is the very fact that confirms its abatement as against the NDPP. It also raises a difficulty the plaintiff does not confront: the joinder order was granted on 12 August 2021, when the deceased was already dead and no executor had been appointed (the letters of executorship issued only on 10 November 2022). Whether a defendant may competently be joined to a personal action after the plaintiff's death and before any representative of the estate exists is, to put it no higher, doubtful. I need not decide the action on that footing; it suffices that the joinder cannot bear the weight the plaintiff places upon it.

The attorney's ignorance of his client's death

[25] The plaintiff sought to meet the difficulty by invoking the rule that acts done in good faith by an attorney who is ignorant of his client's death are valid: the attorney was, on his unchallenged affidavit, unaware of the death until 29 July 2022; the notice

²⁰*Mtshwene* (n 17 above), where a notice of bar served on the defendant within a month after the plaintiff's death did not avail the estate, *litis contestatio* not having been reached at the date of death.

of bar of 13 September 2021 was therefore valid; the NDPP was duly barred; pleadings closed; and the claim became transmissible.

- [26] The general rule, which both parties accept, is that the mandate between client and attorney — a species of mandate — terminates on the death of the principal. In *Du Toit v Bornman*, with reference to Voet 17.1.15, the court confirmed the general rule and recognised a limited exception where the agent has in good faith carried on the principal's business in ignorance of his death, an exception resting on the protection of third parties who deal with the agent without knowledge of the death.²¹
- [27] Even granting the exception its fullest scope, it cannot assist the plaintiff. The exception concerns the validity of the *acts of the agent*; it says nothing of the survival of the *rights of the principal*. The deceased's personal claim was extinguished at his death. The bona fide ignorance of his attorney may protect the formal validity of steps taken vis-à-vis third parties and the court; it cannot preserve, still less revive, a right of action that the substantive law extinguished on 21 February 2021. A formally valid notice of bar could not close pleadings on a claim that no longer existed, nor produce a *litis contestatio* capable of rendering transmissible a claim that had abated months earlier. To hold otherwise would let the fortuity of an attorney's ignorance confer on an estate substantive rights the law denies it.
- [28] It is therefore unnecessary to decide whether the exception extends to the exercise of a coercive procedural right — the delivery of a notice of bar — at a time when no executor had been appointed and no person was competent to take litigation decisions for the estate. Even assuming the notice of bar was not on that account a nullity, it could have no effect on the anterior extinction of the claim. The plaintiff's reliance on rule 7, and the submission that the NDPP is precluded from challenging the attorney's authority, are misplaced for the same reason: the point is not a challenge to the attorney's authority but a matter of law going to the existence of

²¹Du Toit v Bornman and Another (cited in the plaintiff's heads as 1992 (4) SA 257 (C) at 261F–H, and in the fourth defendant's supplementary heads as 1991 (1) SA 158 (W)) [NOTE TO CHAMBERS: the parties cite conflicting references for this decision — to be verified against the law reports]; Voet Commentarius ad Pandectas 17.1.15–16; Herbstein & Van Winsen The Civil Practice of the High Courts of South Africa 5 ed Vol 1 at 286.

the claim. As *Stransham-Ford* holds, where there is no longer a claim, “there [is] nothing left on which the court [can] pronounce”.²²

The independent claim of a dependant

[29] Our law recognises an independent action by a dependant — for example, for loss of support occasioned by a wrongful death — which is not derived from the deceased’s estate and is unaffected by the maxim. That recognition does not assist the plaintiff. She sues as executor, advancing the deceased’s *own* personal claim for the injury done to *him* by his arrest, detention and prosecution. No claim for loss of support, and no independent dependant’s action, is pleaded or before me. The distinction confirms, rather than qualifies, the conclusion: the only claim in issue is the deceased’s personal claim, and it is precisely such a claim that the maxim extinguishes on death before *litis contestatio*.

Prescription

[30] The plaintiff’s supplementary heads meet the court’s question not with the maxim but with prescription, contending that the claim “remains live” because the deceased lacked knowledge of the identity of the debtor and of the facts giving rise to the debt, and that the onus to prove the running of prescription rests on the NDPP.²³ Prescription, however, is a different and later question. The extinction of the claim with which I am concerned arises not from the lapse of time under the Prescription Act but from the death of the claimant before *litis contestatio*. A claim may be unprescribed and yet have abated by death; the two doctrines operate independently. Because the claim against the NDPP abated on 21 February 2021, it is unnecessary to decide whether it had also prescribed, and I refrain from doing so. The plaintiff’s prescription argument, even if correct, cannot revive a claim already extinguished by death.

The consequences for the two applications

²²Stransham-Ford (n 14 above) para 20.

²³Section 12(1) and (3) of the Prescription Act 68 of 1969; *Gericke v Sach* 1978 (1) SA 821 (A) at 828; and, on the incidence of the onus, *President of the Republic of South Africa and Another v Tembani and Others* 2025 (2) SA 371 (CC) para 58, relied upon in the plaintiff’s supplementary heads.

- [31] The rule 30 application rests on the premise that the NDPP was under an automatic bar from late September 2021 and could not plead without the bar being lifted. The premise fails at every level. When the notice of bar was delivered there was no living plaintiff and no extant claim against the NDPP; the notice could compel nothing, and there was nothing in respect of which pleadings could close. Moreover, rule 30 avails only a party who shows prejudice in the conduct of the cause; an applicant whose underlying claim has been extinguished suffers no cognisable prejudice from the delivery of a plea, however late. Whether the plea was in fact out of time does not arise. The application must be dismissed.
- [32] The condonation application fares no better. Section 3(4)(b) empowers the court to condone the failure to serve the statutory notice only where, among other things, the debt has not been extinguished — and condonation is, as *Premier, Western Cape v Lakay* explains, permission to enforce a right.²⁴ Here the debt — the deceased's personal claim — has been extinguished, not by prescription, but by death before *litis contestatio*. To condone the want of notice would grant the plaintiff leave to pursue a claim that no longer exists. That would be an exercise in futility, and the application must likewise be dismissed.
- [33] In the light of these conclusions I do not decide the NDPP's further contentions — the validity of its joinder, the regularity of service upon it, the absence of any amendment of the particulars to plead a case against it, or prescription. I expressly leave them open.

The scope of this judgment

- [34] Only the two interlocutory applications, each directed at the NDPP, are before me, and my findings are confined to the claim against the NDPP. Whether the deceased's claims against the first and second defendants had reached *litis contestatio* before his death — the plaintiff contends that pleadings closed against those defendants upon a replication, the date of which is not common cause — is not a question I am called upon to decide, and I refrain from doing so. The further conduct of the action, and the consequences of this judgment for it, are matters for the parties and, if necessary, for the trial court.

²⁴*Premier, Western Cape v Lakay* 2012 (2) SA 1 (SCA) para 25.

Costs

- [35] Costs should follow the result. The NDPP employed one counsel, of senior status. The issues — the transmissibility of personal claims, the termination of an attorney's mandate on death, and the interplay of rules 7, 15, 26, 29 and 30 with section 3 of the Act — were of sufficient complexity and importance to warrant the fees of counsel being allowed on scale C, as prayed.

Order

- [36] In the result the following order is made:

1. The plaintiff's application in terms of rule 30 of the Uniform Rules of Court is dismissed.
2. The plaintiff's application in terms of section 3(4)(b) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 is dismissed.
3. The plaintiff is ordered to pay the costs of both applications, including the costs of counsel, such costs to be allowed on scale C as contemplated in rule 67A read with rule 69.


VAN DER WESTHUIZEN AJ

Acting Judge of the High Court of South Africa
Gauteng Division, Pretoria

This judgment was prepared and authored by the judge whose name is reflected above and is handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 17 JUNE 2026.

Appearances

For the plaintiff: Adv M Mlisana with Adv M M Sono

Instructed by: TI Mothoa Attorneys, Pretoria

For the NDPP (fourth defendant): Adv J F Barnardt SC

Instructed by: The State Attorney, Pretoria

Date of hearing: 8 June 2026

Supplementary heads delivered: 8 and 9 June 2026

Date of judgment: 17 June 2026