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

Not reportable

Case no: 1523/2025

In the matter between

GROEN MINTIRHO (PTY) LTD **APPLICANT**

(Registration Number: 2009/012223/07)

and

FREE STATE DEPARTMENT OF ECONOMIC, SMALL BUSINESS DEVELOPMENT, TOURISM & ENVIRONMENTAL AFFAIRS **RESPONDENT**

Neutral citation: *Groen Mintirho (Pty) Ltd v Free State Department of Economic, Small Business Development, Tourism & Environmental Affairs* (1523/2025) [2026] ZAFSHC 379 (3 Augustus 2026)

Coram: STEYN AJ

Heard: 23 July 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand-down is deemed to be 3 August 2026

Summary: Prescription – institution of legal proceedings against an organ of state – condonation – meaning of 'process' in terms of the Prescription Act 68 of 1969 – principles restated.

ORDER

1 The applicant's application for condonation in terms of s 3(4)*(a)* of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 is dismissed.

2 The applicant's application for leave to proceed with the action under Case Number 1532/2025 is dismissed.

3 The applicant is ordered to pay the costs of this application on Scale B.

JUDGMENT

Steyn AJ

Introduction

[1] This is an opposed application brought by the applicant in terms of s 3(4)*(a)* of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 (the Act). The applicant seeks:

(a) Condonation for its failure to serve the notice contemplated in s 3(2)*(a)* of the Act within the prescribed six-month period;

(b) Leave to proceed with the pending action instituted against the respondent under Case Number 1523/2025; and

(c) Costs.

[2] The respondent opposes the application on the following grounds:

(a) The applicant's claim has prescribed;

(b) Good cause does not exist for the applicant's failure;

(c) The respondents have suffered unreasonable prejudice; and

(d) The applicant has failed to satisfy the jurisdictional requirements of s 3(4)*(b)* of the Act.

Factual background

[3] On 20 December 2018, the parties concluded a Service Level Agreement (SLA) in terms of which the applicant was appointed to implement a Portable Waste Management System and related waste-management initiatives over a period of three years. In fulfilment of its contractual obligations, the applicant allegedly rendered

services, including the provision of Enterprise Incentive Support and the delivery of approximately 1.5 million liters of home-based sanitiser solution to beneficiary municipalities.

[4] On 2 February 2021, the respondent issued a Notice of Suspension, directing the applicant to suspend all services and operations under the SLA with immediate effect. The suspension was attributed to financial constraints and budget reductions.

[5] On 7 April 2021, the applicant formally accepted the suspension. In that correspondence, the applicant attached statements, invoices, and a reconciliation schedule reflecting an aggregate amount of R21 446 350.10 alleged to be due and payable for services rendered prior to the suspension.

[6] On 20 May 2022, the applicant's erstwhile attorneys served a formal letter of demand on the respondent, which purported to constitute notice in terms of s 3(1) of the Act. This notice was served more than a year after the debt became due. On 26 March 2025, the applicant instituted action against the respondent by way of combined summons. The summons was served on the respondent on or about 31 March 2025.

Legal framework

The Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002

[7] Section 3(1) provides that no legal proceedings for the recovery of a debt may be instituted against an organ of state unless:

(a) The creditor has given notice in writing of his/her intention to institute legal proceedings; or

(b) The organ of state has consented in writing to the institution of such proceedings.

[8] Section 3(2) provides that a notice must:

(a) Be served within six months from the date on which the debt became due;

(b) Briefly set out the facts giving rise to the debt; and

(c) Set out such particulars of the debt as are within the knowledge of the creditor.

[9] Section 3(4) provides that a court may grant condonation if it is satisfied that:

(a) The debt has not been extinguished by prescription;

(b) Good cause exists for the failure to serve the notice timeously; and

(c) The organ of state was not unreasonably prejudiced by such failure.

[10] These jurisdictional requirements are cumulative. Failure to satisfy any one of them is fatal to the application.[1]

The Prescription Act 68 of 1969

[11] Section 11*(d)* provides that a debt arising from a contract prescribes after three years. Section 12(3) provides that prescription commences as soon as the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises. In *Truter v Deysel,*[2] the court held that knowledge of the material facts is sufficient. Knowledge of the legal conclusion is not required.[3] Further, in *Minister of Finance v Gore*,[4] it was held that a debt is due when the creditor is in a position to institute action.[5] Section 15(1) provides that prescription is interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.

[12] The Supreme Court of Appeal confirmed in *Santam Ltd v Ethwar*[6] that once prescription has run its course, the debt is extinguished and cannot be resuscitated. In this regard, the Constitutional Court has previously held that:

'Rules that limit the time during which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigating damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can still be obtained may have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They thus serve a purpose to which no exception in principle can cogently be taken.'[7]

Application to the facts

---

[1] *Madinda v Minister of Safety and Security* [2008] ZASCA 34; 2008 (4) SA 312 (SCA) para 16.
[2] *Truter v Deysel* [2006] ZASCA 16; 2006 (4) SA 168 (SCA).
[3] Ibid para 19.
[4] *Minister of Finance v Gore* [2006] ZASCA 98; 2007 (1) SA 111 (SCA).
[5] Ibid para 17.
[6] *Santam Ltd v Ethwar* 1999 (2) SA 244 (SCA).
[7] *Mohlomi v Minister of Defence* 1996 (12) BCLR 1559 (CC) para 11.

Has the debt been extinguished by prescription

[13] The applicant's cause of action arose on 2 February 2021 when the respondent issued the notice of suspension. Alternatively, at the very latest, the debt became due on 7 April 2021 when the applicant accepted the suspension and quantified the alleged debt at R21 446 350.10.

[14] The applicant concedes in its heads of argument that the debt became due and enforceable on 7 April 2021. In the absence of any allegation to deviate, the three-year period had lapsed on 7 April 2024. It is common cause that the applicant had only instituted action during March 2025.

[15] The applicant served its s 3 notice on 20 May 2022. This, however, does not interrupt the running of the prescription period as this notice or letter of demand does not qualify as 'process' as required by the Prescription Act. This much was confirmed in *Seleka and Others v Minister of Police and Others*.[8]

[16] The reliance of the applicant on the matter of *Makate v Vodacom (Pty) Ltd*[9] I find to be misplaced. The factual and legal circumstances are materially different to the matter in *casu*. The central holding in *Makate* was that the obligation to negotiate a reasonable compensation did not constitute a debt under the Prescription Act and was therefore not subject to prescription. The nature of the applicant's claim is a clear 'debt'. It seeks payment for services rendered and is a classic claim for a liquidated sum of money. The Constitutional Court explicitly stated that a 'debt' is an obligation to pay money, deliver goods or render services and found further that a claim to negotiate was not a 'debt' because the obligation could not be extinguished by a simple payment.[10]

[17] I therefore find that the debt has been extinguished by prescription. While the court is mindful of the importance of access to justice, that access cannot be secured by ignoring the clear legislative framework. Section 3(4)*(b)* of the Act demands satisfaction of all three requirements.[11] The applicant has failed on the first. To proceed considering

---

[8] *Seleka and Others v Minister of Police and Others* [2014] ZAGPJHC 417; 2015 (4) SA 376 (LP) para 14.
[9] *Makate v Vodacom (Pty) Ltd* [2016] ZACC 13; 2016 (4) SA 121 (CC).
[10] Ibid para 92. Also see *Electricity Supply Commission v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A).
[11] *Ethekwini Municipality v Crimson Clover Trading 17 (Pty) Ltd t/a Island Hotel* (280/2020) [2021] ZASCA 96 (1

the remaining two would be to indulge an academic exercise that the law does not require and that the facts do not permit. I accordingly refrain from doing so.

Costs

[18] I do not find, nor have I been asked to deviate from the practice that costs should follow the result. In respect of the scale of costs, I find that this matter is not sufficiently complex to justify costs on Scale C.

Order

[19] Accordingly, the following order is made:

1 The applicant's application for condonation in terms of Section 3(4)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 is dismissed;

2 The applicant's application for leave to proceed with the action under Case Number 1532/2025 is dismissed;

3 The applicant is ordered to pay the costs of this application on Scale B.

[redacted]

L STEYN
ACTING JUDGE OF THE HIGH COURT

July 2021); *NMZ obo SFZ v MEC for Health and Social Development of the Mpumalanga Provincial Government* (1149/2020) [2021] ZASCA 184 (24 December 2021).

Appearances

For the applicant:	M Ramaili SC
Instructed by:	Kgobokoe and Company Inc c/o Mayet and Associates Bloemfontein.
For the respondent:	R Ramawele SC
Instructed by:	State Attorney Bloemfontein.