

SOUTH AFRICA / JUDGMENT

Horn v MEC Department of Health, Free State Province (5407/2019) [2021] ZAFSHC 184 (20 August 2021)

[2021] ZAFSHC 184

COURT

Free State High Court, Bloemfontein

BEFORE

C L Page

CASE / FILE NUMBER

5407/2019

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Source record

IN THE HIGH COURT OF SOUTH
AFRICA
FREE
STATE DIVISION, BLOEMFONTEIN
Case
No: 5407/2019
In the

matter between:

NDITHENI
GLORIA
HORN Applicant
and
MEC

DEPARTMENT OF
HEALTH:

FREE
STATE
PROVINCE Respondent

In re:

NDITHENI
GLORIA
HORN Plaintiff
And
FREE
STATE
PROVINCE Defendant

CORAM:

C
PAGE AJ
HEARD

ON: 29 July 2021.
DELIVERED
ON: 20
August 2021.

JUDGMENT

BY: C PAGE AJ

Background

[1] This is an interlocutory application during action proceedings instituted by the Applicant / Plaintiff against the Respondent / Defendant. The Applicant seeks an order declaring the letters and correspondence annexed to the particulars of claim in the main action to be compliant with Section 3 of Act 40 of 2002.

In the alternative, the Applicant seeks condonation for any non-compliance with Section 103 of Act 40 of 2002.

[2] The Respondent does not deal with the first part of the Applicant's request, i.e., that the annexures attached to the particulars of claim in the main action be declared as compliant with Section 3 of Act 40 of

2002. The Respondent deals only with the alternative request, namely condonation for non-compliance with the aforesaid Act.

[3] The Respondent disputes that good cause exists for the Applicant's failure to give the requisite statutory notice and argues that the Minister of Health has suffered unreasonable prejudice by the said failure.

Declaratory Order

[4] Section 3 of Act 40 of 2002 requires a party who wishes to institute legal proceedings for the recovery of a debt to give notice of the intended legal proceedings to an organ of state in writing within 6 (six) months from the date on which the debt became due. The notice should briefly set out the facts giving rise to the debt as well as the particulars thereof.

[5] In *Mohlomi v Minister of Defence* 1997(1) SA 124 (CC) at para 9 on page 128 D-F it was held that:

"The conventional explanation for demanding prior notification of any intention to sue such an organ of government is that, with its extensive activities and large staff which tends to shift, it needs the opportunity to investigate claims laid against it, to consider them responsibly and to decide, before getting embroiled in litigation at public expense, whether it ought to accept, reject or endeavour to settle them."

[6] Annexure “A” to the Applicant’s particulars of claim in the main action comprises of a handwritten letter of complaint dated 14 December 2016 wherein the events of 23 November 2016 which allegedly caused the death of the Applicant/Plaintiff’s baby, is set out. The said letter was delivered to the Department of Health at Bophelo

House in Bloemfontein.

[7] Annexure “B” is a formal acknowledgement of Annexure “A” from The Department of Health indicating the name of the patient, the institution, and the nature of the Applicant’s complaint.

Annexure “B” further states that the Applicant’s complaint is “viewed by management of this hospital in a very serious light and will be investigated accordingly.”

[8] These communications are not disputed by the Respondent. The Respondent does not dispute the further interactions between the staff of the hospital and Department of Health until the sudden non-responsiveness of the Department occurred.

[9] The Applicant has set out the facts and particulars giving rise to her claim in the letter. The matter had been investigated further by the Department of Health as is apparent from the meetings and interactions. The Department has acknowledged the Applicant’s letter dated 14 December 2016 which reached them within less than a month. The Department indicated that the matter will be investigated in writing.

[10] Based on the above, it is evident that the Department of Health has received notice of the Applicant’s claim. The Department had the opportunity to investigate the claim and was given the opportunity to consider it responsibly and in the process reach a decision as to whether the claim should be accepted or rejected.

[11] In the result, an order is issued in the following terms:

1. It is declared that the letters and correspondence annexed as annexure “A” to “E” to the particulars of claim in the main action under case number 5407/2019 constitute compliance with section 3 of Act 40 of 2002.
2. The Respondent is ordered to pay the costs of the application.

C L Page AJ

On behalf of Applicant: Adv:

M.B.J Steenkamp

Instructedby: MDP

Attorneys

Bloemfontein

On behalf of Respondent: Adv:

K. Motsuabi

Instructed by: State

Attorneys

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