

SOUTH AFRICA / JUDGMENT

Ndimande v MEC for Health for Mpumalanga Provincial Government (2905/2020) [2025] ZAMPMBHC 33 (23 April 2025) [2025] ZAMPMBHC 33

COURT

Mbombela High Court, Mpumalanga

BEFORE

H F Fourie

CASE / FILE NUMBER

2905/2020

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IN THE HIGH COURT OF
SOUTH AFRICA, MPUMALANGA DIVISION, (MBOMBELA MAIN SEAT)

Case No.: 2905/2020

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED YES/NO

DATE:

23/04/2025

SIGNATURE

In

the application between:

NDIMANDE,
ANDILE FAITH
APPLICANT
and
THE
MEC FOR HEALTH FOR THE
RESPONDENT
MPUMALANGA
PROVINCIAL GOVERNMENT

JUDGMENT

FOURIE AJ

INTRODUCTION:

[1] The Applicant is the Plaintiff in a suit in which she claims damages against the Respondent. In the current application, the Applicant seeks condonation for non-compliance with Section 3(2) of the Institution of Legal Proceedings against certain Organs of State, Act 49 of 2002 (“the Act”). The Application is brought under the auspices, correctly so, of Section 3(4)(a) of the Act. The application for condonation, as with the main action, is opposed by the Respondent.

[2] In this application, the Applicant seeks an Order in the following terms:

2.1. Condoning the Applicant’s letter of demand in terms of Section 3(4)(a) of the Institution of Legal Proceedings against certain organs of State Act, 40 of 2002.

2.2. That the Respondent be ordered to pay the costs of the application if opposed; and

2.3. Further and/or alternative relief.

[3] No further or alternative relief emanated from the hearing of the matter, and as such same is disregarded in totality.

[4] The Respondent, in opposing the application, seeks the application to be dismissed with costs.

HISTORY:

[5] In what is to follow, the history of the matter becomes crucially important.

[6] The history of the matter is concisely set out as follows:

6.1. On 29 September 2012, the Applicant gave birth to a child which process and the medical procedures involving and following same form the catalyst moment of the litigation between the parties.

6.2. On 29 July 2013, a Letter of Demand was drawn by the Applicant’s legal representative at the time, on the version offered by the Applicant. The Respondent denies the existence of the Letter of

Demand and denies that the letter of Demand was ever sent by the Applicant to the Respondent.

6.3. Summons in the matter was issued by the Applicant on 3 June 2015.

6.4. On 6 November 2015, the Respondent filed a Special Plea and Plea.

6.5. On 30 January 2023 the Applicant signed her Founding Affidavit accompanying the Application for Condonation currently serving before Court for adjudication to be enrolled on 27 February 2023.

6.6. On 14 February 2023, the current application was opposed by the Respondent.

6.7. On 2 March 2023, the Respondent filed its answering papers opposing the current application.

6.8. On 10 April 2024, the Applicant filed her Replying Affidavit to the Respondent's Answering Affidavit.

6.9. In the present matter, the date on which the Applicant's claim arose is not seriously disputed, and the Court accepts such a date to be 29 September 2012.

6.10. As such and flowing from the aforesaid, the Applicant had an opportunity of 6 (six) months from that date in which to file its statutory Letter of Demand

THE ACT:

[7] The Act and specifically Section 3 thereof prescribes the requirements for notice to be given to any Organ of State prior to legal proceedings being instituted and further sets out the power of Court to condone non-compliance with any of the provisions. For convenience's sake, I quote Section 3 in its entirety.

"Notice of intended legal proceedings to be given to an organ of state

3.

(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

(b) the organ of state in question has consented in writing to the institution of that her or its intention to institute the legal proceedings in question; or legal

(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."

STATUS OF BUNDLES:

- [8] The papers advanced by the Applicant both in the current application as well as in the main action can at best be described as incomplete.
- [9] Although not part of the current application, the Court, in trying to come to the assistance of the Applicant evaluated the indexed bundles insofar as they relate to the main action. This drastic step was taken by Court to try as much as possible, and in the interest of justice, to gather as much information to come to a just conclusion, even though the Applicant failed to advance their case properly.
- [10] The Applicant, in any event, annexed the Particulars of Claim and the Respondent's Special Plea and Plea to the current application, but importantly without the annexing of any annexures to such pleadings.
- [11] It is crucial to note that, although the Letter of Demand as alleged to be drawn is annexed as Annexure "AFN1" to the founding papers, the registered post slip proving service of the Letter of Demand on the Respondent had been omitted by the Applicant.

- [12] The Respondent proceeded to deny, in their opposition to the Application, that the Letter of Demand was served on the Respondent, to which the Applicant filed a Replying Affidavit. Yet, despite being well aware of the challenge to the Letter of Demand being in existence and being served, again failed to rebut any notion that the Letter of Demand was indeed served by again failing to annex proof thereof to the Replying Affidavit.
- [13] The Replying Affidavit filed by the Applicant further made mention of certain annexures marked Annexure “A” – “J”. Although referenced in the Replying Affidavit, they were not annexed to the affidavit when same was bound into the Court papers. The Court further received no indication from the Respondent that these annexures were indeed annexed to the Replying Affidavit when same was served on the Respondent.
- [14] The Applicant is dominus litis and it is for the Applicant to not only ensure that their papers are in order to the benefit of their opponents, but also to the benefit of Court. It is unreasonable of any litigant to expect the Court to accept Annexures, not annexed to affidavits and not bound into the Court Bundle from the bar in matters that are not urgent nor deserving of such exceptions to be made. The current matter was heard two years after the initial application for condonation was issued and more than a year after the Replying Affidavit was filed. The Applicant needed to ensure that their house was in order when their case was presented to Court.
- [15] The Applicant, seemingly upon realising that their papers were drawn in error and omitted certain crucial averments, attempted to rectify same by annexing to their Heads of Argument what purported to be a registered post slip. Counsel for the Applicant conceded during argument that the registered post slip was annexed to their Heads of Argument when he realised same did not form part of the application. Despite the registered post slip being merely illegible, the Court finds the annexing of evidence to Heads of Argument totally unacceptable. There exist justified reasons why the Courts expect facts and evidence to be confined to the affidavits and pleadings parties present. This is because it affords opponents the right to evaluate same, when made under oath, and to respond thereto, under oath themselves, in the manner in which they so believe appropriate. Barring the most exceptional of circumstances the Court will be reluctant to allow evidence not forming part of the affidavits of parties to be presented from the bar or in their Heads of Argument. The current matter is definitely, given the lapse of time not such an instance.
- [16] The existence and content of the registered post slip are crucially important for the relief the Applicant seeks, and it was similarly important for the Applicant to advance the registered post slip as part of the evidence upon which it wished to rely in order to obtain the relief it seeks.
- [17] Heads of Argument and Arguments from the Bar can never constitute evidence, and the Court ought to be slow to accept any evidence not contained in the pleadings. It might be that, from time to time and depending on the facts of each particular matter a situation arises where this practice of accepting evidence from the Bar might be acceptable. The

current matter is definitely not such a case, given the exorbitant amount of time that has lapsed since the start of the matter. All the parties concerned had more than enough time to get their house in order and to present their case as thoroughly and properly as possible. Their failure to do so ought to be at their own peril.

- [18] The Answering Affidavit of the Respondent was filed on 2 March 2023, and the matter was Case Managed in terms of the Form B where it was agreed that the Respondent would file their Replying Affidavit by 21 March 2023. Despite this, the Applicant only filed their Replying Affidavit on 10 April 2024. Nothing turns on this, however, as the Court found it to be in the interest of justice to have the Replying Affidavit form part of the record to provide as much and as detailed information as possible in order for the Court to come to a just conclusion in respect of the matter. Similarly, none of the parties could be prejudiced as the hearing of the matter was only approximately a year after the filing of the Replying Affidavit.

CENTRAL

ISSUES:

- [19] The central issues for determination are:

19.1. Whether the Applicant has shown good cause for her non-compliance with Section 3(2)(a) of the Act.

19.2. Whether the Respondent was unreasonably prejudiced by the Applicant's failure.

HAS THE APPLICANT SHOWN GOOD CAUSE FOR HER FAILURE:

- [20] It is by now an accepted position that the Courts continually avoid defining, as a principle set in stone, the concept of "good cause" as it remains a discretionary evaluation of each and every Court determining on the facts of each and every case presented before Court.

- [21] The Court is however guided by the principles as stated in the matter of MADINDA[1] where the Court stated at paragraph 10 thereof that:

"Good cause looks at all those factors which bear on the fairness of granting the relief as between the parties and as affecting the proper administration of justice. In any given factual complex, it may be that only some of many such possible factors become relevant. These may include prospects of success in the proposed action, the reasons for the delay, the sufficiency of the explanation offered, the bona fides of the Applicant, and any contributions by other persons or parties to the delay and the Applicant's responsibility therefore."

- [22] Good cause in all instances remains a "balancing act" and depending on the facts of each matter, more, or less, weight might be applied to any number of aspects.

- [23] In respect of the current matter, the most important aspects that the Court has taken into consideration to evaluate whether good cause has been shown are the following:

23.1. The time delay between the complained-of incident and the alleged sending of the Letter of Demand.

23.2. The time delay between receiving the Respondent's Special Plea and the bringing of the application; and

23.3. The Applicant's prospects of success.

INITIAL TIME DELAY:

[24] Insofar as the Court references the initial time delay, same is a reference to the delay in serving the Letter of Demand on the Respondent by the Applicant.

[25] The case for the Respondent is that the Applicant has not proven at all that the Letter of Demand has ever been served and that the Court ought not to grant condonation for the late service of a statutory notice premised upon the fact that such statutory notice has not been proven to have been served, at all and not event out of time.

[26] Paragraph 20 of the Plaintiff's Particulars of Claim aver that:

"20.

The Plaintiff has complied with the requirements of Section 3 of the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002".

[27] The Applicant fails to state how it has complied and on which date it has complied.

[28] In answer to the Plaintiff's Particulars of Claim, the Defendant has firstly filed a Special Plea which states that:

"2.

The Plaintiff has failed to comply with the provisions of Section 3 of the Institution of Legal Proceedings against certain organs of State Act by delivering the required Notice within 6 months after the cause of action arose."

[29] In answer to Paragraph 20 of the Plaintiff's Particulars of Claim the Defendant pleaded that:

"The contents of this paragraph are denied and the Plaintiff is put to the proof thereof."

[30] The Applicant proceeded to file a reply to the Special Plea, and in answer to the Special Plea the Applicant pleaded that:

"2.2. The Plaintiff's especially pleads that it has given notice to the Defendant of its intention to institute legal proceedings and further that such notice was given within a period of 6 (six) months of the cause of action arising. A copy of such notice together with proof of its convey are attached hereto marked Annexure "B"."

- [31] No Annexure “B” as far as the Court could establish, has been bound into the Court papers in the main action’s bundle. Similarly, no reference to this was made in the current application. The Court attempted to do so in the interest of justice and because the Court was not willing to merely accept the registered postage slip as an annexure to the Applicant’s Heads of Argument.
- [32] The Court cannot accept that the Applicant’s Particulars of Claim and Reply to the Defendant’s Special Plea was correct, in as far as it relates specifically to compliance with the Act, which is supported by the fact that the Applicant realised their non-compliance and found it necessary to make the application for condonation at a later stage.
- [33] The Court has however also evaluated the Defendant’s Special Plea and upon scrutiny thereof the Respondent’s claim has never been that the Letter of Demand was never received, simply that it was received outside the 6 (six) months’ time period allowed in the Act for the filing thereof.
- [34] Ultimately the parties are bound to their papers, and it would serve no purpose in the advancing of justice if a litigant is afforded the opportunity of advancing a defence, not contained in its main action, in an interlocutory application such as the current application, when it notices the application to be lacking on certain principles.
- [35] As such, the Court is willing to accept that a letter of demand was drawn by the Applicant’s legal representatives and that same was advanced to the Respondent upon a date after 29 July 2013, being the date on which it was drawn. The Court, in so accepting the existence of a Letter of Demand by no means does so to encourage litigants to act or to present their case as the Applicants have done so in the current matter.
- [36] The date on which the Letter of Demand was allegedly served remains unproven but it ought to be accepted that the Letter of Demand was filed out of time contrary to what is averred in the pleadings of the Applicant in the main action.
- [37] The Court’s view is that the explanation offered by the Applicant as to why the statutory notice was initially advanced out of time is acceptable. Although a non-observance of Court Rules or statute ought not to be summarily accepted, the initial time delay of approximately four months cannot be regarded as excessive, purely seen in the light of a calculation of time lapsed.
- [38] The Applicant lays the blame for the delay upon being a lay person and only being informed at a very late stage of her rights to claim from the Respondent. None of these aspects is rebutted by the Respondent in its Answering Affidavit, and accordingly, the court is bound to accept same. This is unfortunately not the end of the matter for the Applicant and the relief it seeks.

TIME DELAY IN MAKING THE APPLICATION:

- [39] Of great importance in the current matter is the time delay in the making of the current application.
- [40] At the very latest the Applicant knew on 6 November 2015, when receiving the Respondent's Special Plea and plea over on the merits, that the Respondent specifically raised the issue of non-compliance with the Act which would, if the Applicant at that stage still believed that it was in compliance with the Act, have necessitated the Applicant to make a thorough investigation on whether or not they were indeed compliant with the Act and whether or not condonation, by way of an application such as the current application would be necessary.
- [41] From the record it would seem as if the Applicant initially persisted with her position to state that the statutory notice was compliant if regard is had to the Reply to the Special Plea.
- [42] Astonishingly so, despite being made aware of the deficiencies in her case as far back as 6 November 2015 the Application took no remedial steps to seek condonation to rectify the irregularities and her non-compliance with the Act up until she signed her Founding Affidavit in the current application on 30 January 2023. This amounts to a more than seven-year delay in making the condonation application under circumstances where the Applicant would in no uncertain terms have known that the application was an absolute necessity.
- [43] The Applicant has not made a single attempt in its founding papers to place on record why such an exorbitant delay has come to be, has failed to give any explanation therefore and has seemingly adopted a position that the application for condonation could be made at any time before the hearing of the main action, alternatively, with the hearing of the main action. It is important to note however that in the main action, the Applicant does not seek condonation for the late filing of her statutory notice and as such even if this were the position for the Applicant, the position would be wrong.
- [44] The general principles pertaining to condonation are trite in that condonation is to be sought timeously upon a party realising that same is necessary and a full and thorough explanation for any delay is to be canvassed fully in their papers to enable the Court to establish how it really came to be that such a delay came into existence.
- [45] In the current matter the Court is left to speculate as to why a delay in excess of seven years has come into existence before the current application was made.
- [46] Advocate Dennis, on behalf of the Applicant, submitted from the Bar that the delay was caused due to the matter being transferred from the High Court of Pretoria to the current Court.
- [47] Although not contained in the founding papers the explanation cannot explain a delay in excess of seven years. An evaluation of the application to transfer the matter from Pretoria to the current Court also indicates that same was done out of convenience and for no other reason.

- [48] There simply exists no reason why the current application was brought more than seven years after the filing of the Respondent's Special Plea.
- [49] During argument, counsel for the respective parties further referred to certain judicial case management conferences held in Court and the Orders received in respect thereof. These judicial case management conferences and the Orders received pursuant thereto do not aid the Applicant as these conferences took place as from the end of 2022 when the Applicant attempted to have the matter certified as trial-ready.
- [50] An application for condonation such as the current application has always been a necessity for the Applicant herein as it can be accepted that the Letter of Demand was filed out of time and nothing in the actions or papers filed by the respective parties could lead the Applicant to believe that by taking no action in respect of the Special Plea relating to their non-compliance, such complaint would simply disappear.
- [51] Against this background, it is evident that the present application for condonation was launched:
- 51.1. Nearly ten years after the initial Letter of Demand was drawn.
- 51.2. More than seven years after the Special Plea pertaining to the Applicant's non-compliance was received by the Applicant.
- [52] Even though the Applicant failed to address the late filing of the current application in their founding papers it was highlighted to her by the Respondent in its answering papers, specifically paragraph 3.8 thereof, but despite same being highlighted and having the opportunity to do so, the Applicant remained silent as to the late filing of the current application in her Replying Affidavit.
- [53] The delay in making the current application cannot be regarded in any other way than being excessive.
- [54] The Applicant has failed to demonstrate diligence or take prompt steps having been made aware of her non-compliance. Even if the Applicant was not aware that compliance was necessary directly after the complained of incident, the moment she received legal assistance in respect of the matter, the non-compliance would have been expected to be brought to her knowledge. Even if it was not brought to her knowledge at that stage, the Special Plea as filed by the Respondent is clear and sets out her non-compliance which ought to have been remedied immediately.

PROSPECTS OF SUCCESS:

- [55] In all matters concerning condonation the prospects of success of a party need to be evaluated in order to establish if any reasonable or unreasonable delay ought to be condoned.

- [56] The Applicant has not addressed the prospects of success at all in her Founding Affidavit nor in her Replying Affidavit. In her Founding Affidavit, the Applicant merely states what she believes to be the facts of the matter in paragraphs 4 and 5 of her Founding Affidavit. The Applicant fails to address why the facts as averred by her constitute good prospects of success in the hearing of the matter in the main. In any event, the submissions made in the Founding Affidavit are countered by the Respondent in the Answering Affidavit by denying any negligence.
- [57] The Applicant tries to remedy this situation by attempting in her Replying Affidavit to make reference to an assessment report by a gynaecologist to indicate that she has prospects of success in the main trial.
- [58] The Court need not delve into the admissibility of the averments made in the Replying Affidavit, which ought to have been made in Founding Affidavits. The Applicant cannot simply make out her case in reply if she failed to do so in the body of her Founding Affidavit. To make matters worse, as stated previously, the Applicant has failed to annex the annexure referring to the gynaecologist report to her Replying Affidavit, and has further failed to bind same into the Court bundle for the Court's consideration.
- [59] As such, and insofar as the Court needs to make an inference from certain averments in the replying affidavit, same remains unsubstantiated and the Applicant has failed to prove that there are strong prospects of success that would counteract the exorbitant delay in the bringing of the current application.

PREJUDICE:

- [60] The Applicant avers, per her founding papers, that the Respondent suffers no prejudice due to the actions of the Applicant in respect of the Applicant's failure. The Applicant fails to set out why it makes this averment. The averments seem to be a mere generic statement utilised to try and prove compliance with the relevant Sections of the Act.
- [61] In addressing the prejudice that the Applicant would suffer if condonation is not granted she avers her right to dignity, right to life, right to family care, right to health care and healthcare services as well as potentially a right to justice as embedded in the Constitution are deserving to be protected and that as such condonation ought to be granted.
- [62] Whilst accepting the constitutional rights of the Applicant, those constitutional rights do not afford the Applicant the right to a non-observance of Court Rules as a so-called "free pass" to deal with the litigious process in a manner not justified or recognised by the court.
- [63] The Respondent avers prejudice as the matter dates back to 2012 and the possibility that certain medical records might not be available insofar as the period in question might relate.
- [64] Insofar as it relates to the availability of medical records, the Court is guided by Sections 13 and 17 of the National Health Act No 61 of 2003.

[65] Relevant Sections state that:

“Obligation to keep a record

13. Subject to National Archives of South Africa Act, 1996 (Act No. 43 of 1996), and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the person in charge of a health establishment must ensure that a health record containing such information as may be prescribed is created and maintained that health establishment for every user of health services.”

“17. (1) The person in charge of a health establishment in possession of a user’s health records must set up control measures to prevent unauthorised access to those records and to the storage facility in which, or system by which, records are kept.

- (2) Any person who
- (a) fails to perform a duty imposed on them in terms of subsection (1);
 - (b) falsifies any record by adding to or deleting or changing any information contained in that record;
 - (c) creates, changes or destroys a record without authority to do so;
 - (d) fails to create or change a record when properly required to do so;
 - (e) provides false information with the intent that it be included in a record;
 - (f) without authority, copies any part of a record;
 - (g) without authority connects the personal identification elements of a user’s record with any element of that record that concerns the user’s condition, treatment or history;
 - (h) gains unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person, or one part of a record-keeping system, to another;
 - (i) without authority, connects any part of a computer or other electronic system on which records are kept to-
 - (i) any other computer or other electronic system; or
 - (ii) any terminal or other installation connected to or forming part of any other computer or other electronic system; or
 - (j) without authority, modifies or impairs the operation of-
 - (i) any part of the operating system of a computer or other electronic system on which a user’s records are kept; or

(ii) any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which

a user's records are kept,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.”

[66] Specific obligations are placed on healthcare providers to keep medical records as per the National Health Act supra, and although the Court acknowledges the difficulties that certain public hospitals might experience in keeping records for an extensive period of time the keeping of medical records is critically important and ought to be strictly adhered to. The Court further accepts that it is not only medical records that will be important for the main action and that witnesses and other ancillary evidence might, in matters such as this, where an excessive delay has occurred, not be available to aid the Respondent in the presentation of their case.

[67] The Court is, however, also mindful that each and every litigant, the State included, is entitled to the speedy resolution of a litigious process and that parties in a litigious battle ought to be bound by the Rules of Court and the statutes regulating the processes to be followed by the respective parties.

[68] The Courts are regularly confronted with litigants complaining of the actions of the State in litigious processes and the non-observance of Rules and Regulations by the State Attorney. The Court cannot bind the State to strict compliance with rules and time frames, and allow unsubstantiated leniency to members of the public just at a mere asking. The Act was enacted for a specific reason, so to the Rules of Court and any non-observance of such Sections of the Act or the Rules of Court seeks an indulgence to have same condoned which indulgence ought to be sought as soon as possible upon realising that condonation needs to be requested.

CONCLUSION:

[69] The lack of an explanation for the substantial delay in bringing the current application for condonation leaves the explanation offered by the Applicant in respect of good cause unsatisfactory. Similarly, the Applicant has failed to show that her claim has reasonable prospects of success. Insofar as it relates to prejudice, the statements made by the Applicant are generic and speak nothing of the case at hand.

[70] The general non-observance of time frames and the failure by the Applicant as dominus litis to diligently move the main action and to attend to the action, similarly the current application, thoroughly, in order to ensure that the Applicant's case is properly before the Court, leaves much to be desired. The very least that can be expected of an Applicant when approaching the Court is to make sure that the relevant facts on which they rely are properly annexed to their papers and indexed and bound into the Court Bundle, which is presented to

the Court upon which the Court is to decide upon their fate.

- [71] The incompleteness of the papers advanced by the Applicant does very little to advance her case in seeking an indulgence from the Court.
- [72] Furthermore, an Applicant for condonation is required to give an explanation which covers the entire period of delay. This applies not only to the delay in instituting the statutory steps they so need to take, it applies also to the significant delay in seeking condonation itself.
- [73] The delay in instituting the current application has not been addressed at all by the Applicant in her application, nor has any fact or credible evidence been advanced that could lead the Court to come to the aid of the Applicant in granting condonation for the extraordinary delay.
- [74] The granting of condonation can never be a mere formality or granted by the mere asking of an Applicant.
- [75] The inaction of the Applicant upon being made known of its statutory non-compliance undermines her case.
- [76] For all of these reasons, the application for condonation must fail.

COSTS:

- [77] There is no reason why costs should not follow the result of the application.

ORDER:

- [78] In the premises, the following order is made:
1. The Application for Condonation for the late filing of the Applicant's Letter of Demand 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 is to pay the costs on the ordinary scale of party and party.

H F FOURIE AJ

ACTING JUDGE OF HIGH COURT, MBOMBELA

Counsel for the Applicant: Adv. D Dennis Instructed by: LEKHU PILSON ATTORNEYS Counsel for the Respondent: Adv. D Mosoma Instructed by: STATE ATTORNEY NELSPRUIT Judgment reserved on: 15 April 2025 Date of delivery:

- [1] *Madinda v Minister of Safety and Security* [2008] ZASCA 34; 2008 (4) SA 312 (SCA)

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