

SOUTH AFRICA / JUDGMENT

Segodi v MEC for the Mpumalanga Department of Health (1779/2020) [2023] ZAMPMBHC 66 (28 December 2023) [2023] ZAMPMBHC 66

COURT

Mbombela High Court, Mpumalanga

BEFORE

Mashile

CASE / FILE NUMBER

1779/2020

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(MPUMALANGA DIVISION, MBOMBELA)

REPORTABLE:NO

OF INTEREST TO OTHER JUDGES:YES

REVISED: YES

Date: 28/12/2023

CASE NO: 1779/2020

In the matter between: SYDWELL SEGODI Applicant and MEC FOR THE MPUMALANGA
DEPARTMENT OF HEALTH Respondent

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 28 December 2023 at 10:00.

J U D G M E N T

MASHILE J:

INTRODUCTION

- [1] This is a condonation application launched in terms of Section 3(1) of the Institution of Legal Proceedings against certain Organs of State, Act 40 of 2002 (“the Act”). The application emanates from an action that the Applicant (“Segodi”) instituted against the Respondent (“the Department”) on 26 August 2020 following an injury resulting from a severe windowpane cut on his right wrist during the night of 17 October 2018.
- [2] Segodi was conveyed to Tintswalo Hospital (“the hospital”) where he received treatment as an in-patient from 17 to 29 October
2018. Segodi alleges that the medical treatment that the hospital and its personnel administered on him during the period aforesaid was sub-standard and had directly contributed to the amputation of part of his right forearm, which has left him permanently disfigured, disabled and unable to earn a living to take care of the financial obligations of his family.
- [3] Segodi only served the notice in terms of Section 3(1) of the Act (“The Notice”) upon the Department on 17 July 2020, a little over twenty-two months after discharge from hospital. It is not contested that the notice was served out of time and that as such, Segodi was required to furnish an explanation for the delay. Apart from the notice having been delivered late, contends the Department, Segodi neither explains the unconscionable delay nor does

he give full account of it. Segodi has also failed to give the notice to the requisite person in terms of the Act thus making the notice subsequently lodged, though late, invalid. The Department contends further that Segodi lacks the necessary mandate as the Power of Attorney filed is defective because it gives his Attorneys mandate to institute action against the Road Accident Fund and not the Department.

FACTUAL MATRIX

- [4] On 15 October 2020, almost a year after his discharge from hospital, Segodi consulted with his attorney of record with a view of suing the Department for damages occasioned by the amputation of part of his right forearm. On 20 February 2020, his attorney prepared the notice albeit that this was not served on the Department until 17

July 2020.

- [5] On 26 August 2020, Segodi instructed his attorney to institute the action against the Department for damages arising from the amputation of part of his right forearm. The Department defended the action and raised a special plea that Segodi had failed to comply with the provisions of the Act insofar as he did not notify the Department of his intention to institute a damages action within six months from the date on which the cause of action arose.

- [6] Subsequent to discharge from the hospital on 29 October 2018, alleges Segodi, he fell into deep depression. He stayed home for months, avoided contact with people and had suicidal ideation. Furthermore, he experienced phantom limb pains on his amputated right forearm. He lost self-confidence. He stopped going out with friends or family. He felt embarrassed to be seen in public and spent most of his time indoors. He was unable to play with his children like he did previously.
- [7] His family convinced him to stop hiding and to seek assistance. As a result, on 15 October 2019 he consulted with his attorneys of record to seek advice. The attorneys obtained medical records from Tintswalo Hospital following which, he instructed Dr Vlok ("Vlok"), an Orthopaedic Surgeon, to provide an opinion on whether there was any negligence relating to the treatment that he received from the hospital.
- [8] In late November 2019, Vlok prepared and supplied Segodi's attorney with his opinion. The essence of his findings were that the hospital administered a sub-standard treatment, was negligent and had breached the duty of care that it owed him. In January 2020, Segodi again consulted with his attorney during which the opinion of Vlok was discussed. His attorney told him that prospects that he would succeed against the Department were he to sue for damages arising from the amputation were good.
- [9] Approximately three months thereafter, 20 February 2020, his attorney prepared the notice and then briefed Counsel to draft particulars of claim. Among the documents with which Counsel was briefed was the notice. In July 2020, Counsel asked if he could be provided with proof of service of the notice. It was only at this juncture that Segodi's attorney discovered that the notice that he drafted on 20 February 2020 was still lying in the file. Following the discovery and on 17 July 2020, the attorney posted the Section 3 notice by registered mail.
- [10] On 27 October 2020, the attorneys of the Department requested Segodi's identity number, which was supplied on 5 November
2020. On 4 February 2021, the attorneys of the Department served notices in terms of Uniform Rules of Court 7(1), 35(14) and 36(4). The notices required Segodi's attorneys to show that he had authority to represent Segodi in the matter and to make available for inspection medical records respectively. Ultimately, the attorneys launched this condonation application on 26 April 2022.

ASSERTIONS ADVANCED BY THE PARTIES

- [11] It was contended on behalf of Segodi that to get to the nub of this matter, it is significant not to lose the purpose for which the Act was designed. Its objective is described in the Act as being to regulate the prescription and to harmonise the periods of prescription of debts for which certain Organs of State are liable; to make provision for notice requirements in connection with the institution of legal proceedings against certain Organs of State in respect of the recovery of debt;

- [12] Referring this Court to the case of *Mohlomi v Minister of Defence*[1], it was further argued that the Act was introduced following a few Court decisions holding that certain statutes that required notices to be given to Organs of State before instituting legal proceedings, were inconsistent with the right to access to Courts and declared invalid. The requirements were as such and principally, meant for the benefit of the Organ of State concerned. Against the above context, Segodi concludes that the requirements were not meant to be a hindrance especially in circumstances where the Organ of State involved does not have a defence on the merits.
- [13] Stating that it is common cause that the issue of prescription does not arise in this condonation application, it is for Segodi to show good cause why the delay should be condoned and that the Respondent will not necessarily be prejudiced by such condonation. Good cause for the delay ought not to be considered in isolation from prospects of success. The various factors, so continued the argument, do not carry weight individually but ought to be determined together.
- [14] The Court was referred to the matter of *Madinda v Minister of Safety and Security* [2] for the justification of the aforesaid proposition. Insofar as Segodi is concerned, the reasons for the delay together with prospects of success, that the Respondent has not stated how he will be prejudiced and that the fact that the Respondent's defences are mainly technical in nature should entitle him to condonation.
- [15] While the Respondent agreed with the legal position put forward by Segodi especially the requirements prescribed in Section 3 of the Act, he was of the firm belief that Segodi has dismally failed to account for the inordinate delay in launching this application. Moreover, it is trite that where the delay is unconscionably protracted without appropriate excuse, no matter how good the prospects of success are, the condonation ought to be refused. On the other hand, where the prospects of success are good but the delay is short and not necessarily well accounted, the Court can lean in favour of granting the condonation.
- [16] Other than Segodi failing to account for the delay, the Respondent also pointed out to the fact that the founding affidavit is replete with inadmissible hearsay material. Most of the evidence in the founding affidavit is not buttressed by confirmatory affidavits hence it is inadmissible. Moreover, there is no application in terms of the Civil Proceedings Evidence Act, 25 of 1965 why unvalidated evidence in the founding affidavit should nonetheless be admitted.

ISSUES

- [17] The parties are agreed that prescription does not feature in this application. Accordingly, what stand for determination is whether or not:

17.1 To condone his omission to serve the Notice upon the Department within 6 months of the date of incident from which the debt arose as contemplated in Section 3(4)(a) and (4)(b) of the Act;

17.2 To declare that the action instituted by Segodi against the Department on 26 August 2020 was validly and properly instituted;

17.3 To declare the service upon the MEC for Health: Mpumalanga and not the Head of Department to be adequate service upon the Department;

17.4 The Department has adequately addressed how it will suffer prejudice were the Court to grant condonation.

LEGAL FRAMEWORK

STATUTORY PROVISIONS

[18] This application is founded entirely on the provisions of Section 3 of the Act. It will therefore be instructive to refer to those provisions in the Act. Section 3 provides:

“(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).”

[19] Section 3(2) stipulates that 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.”

[20] Segodi having failed to give notice of his intention to institute legal proceedings against the Department within the prescribed period of six months and the Department having not waived service of the notice in terms of Section 3(1)(b), he now applies to Court in terms of Section 3(4) that his failure be condoned. Section 3(4) lays down that:

“(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.”
- [21] Turning to the question whether service upon the MEC for Health: Mpumalanga is adequate or not, Section 4 deals with service of the notice and it provides as follows;

“(1) A notice must be served on an organ of state by delivering it by hand or by sending it by certified mail or, subject to subsection (2), by sending it by electronic mail or by transmitting it by facsimile, in the case where the organ of state is—

- (a) a national or provincial department mentioned in the first column of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), to the officer who is the incumbent of the post bearing the designation mentioned in the second column of the said Schedule 1, 2 or 3 opposite the name of the relevant national or provincial department: Provided that in the case of the Department of Police, the notice must be sent to the National Commissioner and the Provincial Commissioner of the province in which the cause of action arose, as defined in section 1 of the South African Police Service Act, 1995”;

CASE AUTHORITY

- [22] The period subsequent to the introduction of the Act was accompanied by a flurry of litigation on the time bar contained in Section 3(2)(a), on Section 3(4)(b), which concerns condonation and Section 3(4) (b)(i) to (iii) being the conditions that a Court hearing the application ought to satisfy itself that they have been established prior to granting the condonation. Acknowledging the pertinence of the time bars in the Act, the Constitutional Court in *Mohlomi* case *supra* stated at Paragraph 11:

“Rules that limit the time during which litigation may be launched are common in our legal system as well as many others. Recognising the significance of ordinate 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.”

- [23] A Court needs to be satisfied that all the three prerequisites set out in Section 3(b)(i) to (iii) have been observed prior to granting

condonation. In this regard, it could be instructive to mention paragraph 11 of *Minister of Agriculture and Land Affairs v C J Rance Pty) Ltd*[3] where the Court stated:

“[11] As can be seen, s 3(4)(b) circumscribes a court’s power by requiring that it be satisfied that: (i) the debt has not been extinguished by prescription; (ii) good cause exists for the failure by the creditor, i.e. to serve the statutory notice according to s 3(2)(a) or to serve a notice that complies with the prescripts of s 3(2)(b); and (iii) the organ of State was not unreasonably prejudiced by the failure. These requirements are conjunctive and must be established by the applicant for condonation.” See also the case of Madinda v Minister of Safety & Security supra”.

- [24] In *Gumede v Road Accident Fund*[4], it was held that a Court possesses an extensive discretion when deciding whether or not an Applicant has shown good cause, which it must apply fully conscious of the merits of the matter seen in their entirety. This approach was endorsed by the Constitutional Court in the matter of *Ferris v FirstRand Bank Ltd* [5]where it was stated that precision is not the only consideration in determining whether an application for condonation may be granted.

The test for condonation, said the Court, is whether it is in the interest of justice to grant it. Pertinent factors to determine the interest of justice are the Applicant’s prospects of success and importance of the issue to be decided.

- [25] In *Grootboom v National Prosecuting Authority and Another* [6]the Court held that:

“Although the existence of prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation. The interest of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interest of justice.”

- [26] Of further significance on the issue of discretion on whether or not a litigant has shown good cause is the statement in *Vlok NO v Sun International South Africa Ltd* [7]that the broad discretion enjoyed by a Court when considering whether or not a litigant has shown good cause does not extend to incorporate

ignorance of an Act of Parliament nor is it a free-floating power to condone non-compliance with statutory time periods. The power ought to be exercised circumspectly and judiciously.

- [27] The above pronouncement was fortified in *Mabaso v National Commissioner of Police and Another* [8] Where the following was said on the interpretation of Section 3 of the Act:

“Interpretive framework

- [20] A resolution of the present dispute requires a consideration of a proper construction of s 3 of the Act, read contextually. The principles which should inform that exercise are trite. The starting point is the Constitution. It commands Courts in s 39(2), when interpreting any legislation, to promote the spirit, purport and objects of the Bill of Rights. Courts must also adopt a generous and purposive approach.”
- [28] While it is manifest that the provisions of Section 4(1) of the Act are peremptory insofar as service of the notice ought to be upon the Head of Department in the case of a Provincial Department, it is so that Courts often condone this failure. As pointed out by Segodi, this was the case in MEC Education, KZN v Shange [9] in a situation where the notice was served on the National Minister of Education instead of the Provincial Head and again, in this Court in the matter of MN & Others v MEC for the Department of Health: Mpumalanga Province [10]. In the latter case it was served on the MEC and not the Head of department, and was granted without opposition from the opposing

party.

EVALUATION

WHETHER OR NOT TO CONDONE SEGODI'S FAILURE TO SERVE THE NOTICE WITHIN SIX MONTHS OF THE CAUSE OF ACTION ARISING

- [29] It is stated in the Grootboom case *supra* that as a general proposition, the issue whether to condone or not should be assessed as a conglomerate of all relevant factors and not in isolation from each other. The issue of prescription, as one of the prerequisites with which Segodi must comply, is not in contest. This leaves the other to, good cause and prejudice, envisaged in Section 3(4)(b)(ii) and (iii) of the Act respectively for consideration. Segodi's assertions why he did not serve the notice within six months from the date of the cause of action arising, 17 October 2018, is that shortly after discharge from hospital, 29 October 2018, he fell into depression until his family told him to face reality and do something about his changed circumstances.
- [30] Of significance to note from the foregoing is Segodi's reference to his family and alleged depression. To start with depression, this is a medical condition that can affect a person who, like him, has undergone a major medical change leading to amputation of a limb. Surprisingly, Segodi is silent on who diagnosed him with the depression, he gives no details of treatment, if any, nor does he say anything about his prognosis. The evidence as per his founding affidavit seems to be that he snapped out of the depression simply by his family telling him to do so. Without evidence elaborating on the type of depression, Segodi makes it impossible for this Court to assess his assertion that he was indeed depressed. Similarly, his reference to members of his family without a confirmatory affidavit from one of them means that this Court cannot determine the authenticity of his argument in that regard. Against that background, the period from 17 or 29 April 2019 to 15 October 2019 remains unexplained.

- [31] This Court is entitled to assume that when Segodi consulted his attorneys on 15 October 2019, the legal position regarding his claim against the Department was fully laid out to him. His attorneys were already aware on that date that the six months period prescribed in the Act had already come and gone. Service of the notice and not issuing of summons should have been afforded priority as it was obviously urgent. The attorneys obtained medical records from Tintswalo Hospital yet there is no date on which this was done. Equally, the Court is told that in late November 2019 the attorneys sought and secured Dr Vlok's opinion, and again, no date has been provided.
- [32] The attorneys then waited for another period of about three months before deciding to prepare particulars of claim and the notice in February 2020 for purposes of briefing Counsel to settle them. The Court is also not told why Counsel only discovered in July 2020, five months later, that the notice was not among the papers with which he was briefed. The secretary who told the attorneys that the notice was inadvertently not sent to the Department did not file a confirmatory affidavit. Thus the evidence provided in that respect is unavoidably hearsay. Segodi would have this Court believe that the delay around this time was caused by COVID-19 because movement of people was restricted as a result of the declaration of the State of Disaster during the first quarter of 2020.
- [33] While it is correct that restrictions were imposed as a result of the State of Disaster, it cannot explain the entire period between March 2020, the month during which the State of Disaster was declared, and 26 August 2022, the date on which this application was ultimately launched. The first is that the State of Disaster notwithstanding, Segodi successfully managed to consult with his Counsel in July 2020. Additionally, on 26 August 2020, he was able to institute the main action from which this application emanates. Thus, the impression under which he wants everyone involved in this matter to labour is not sustainable because the truth is that measures limiting movements of people were imposed during COVID-19 but the Court remained functional by publishing COVID-19 Directives, which allowed it to still operate albeit on a limited basis. This is why Segodi was able to institute the action without any glitches.
- [34] The above are not the only instances that demonstrate that Segodi cannot hide under the State of Disaster declared in March 2020. The Department served and filed the Notice in terms of Uniform Court Rule 7(1) and requested more information from Segodi in 2021. Segodi responded to these notices in 2021, which would have been in the middle of COVID-19. That said, he only launched this application for condonation on 26 August 2022. There is no account on why the application was not launched between April 2019 and 26 August 2022, a period of approximately three years. This goes to show that COVID-19 cannot be a panacea for all the delays that occurred in this matter.
- [35] I am required to consider good cause not in isolation but together with prescription and prejudice to the Department. I have stated elsewhere in this judgment that it is common cause that prescription is not a hurdle for Segodi. So having dealt with good cause, the Court now turns to the issue of prejudice, which Segodi claims the Department failed to

demonstrate. Segodi has referred to the Constitutional Court matter of Malome supra and argued that the Act was introduced following a few Court decisions holding that certain statutes that required notices to be given to Organs of State before instituting legal proceedings, were inconsistent with the right to access to Courts and declared invalid. Satisfaction of the prerequisites before a Court can exercise its discretion whether to grant condonation or not are mainly designed for the benefit of the Organ of State concerned and should as such, not be utilised to deny claimants their right to sue more particularly

where the Organ of State seems not to have a well-grounded defence.

- [36] The argument advanced aforesaid seems to suggest that the Mohlomi case was against prescription of time bar notices within which claims can be instituted against Organs of State. Perhaps it is necessary to refer to Paragraph 11 of the Mohlomi case, which I have cited in full at Paragraph 22 of this judgment. The Court opens the paragraph by acknowledging that rules that limit the time during which litigation may be launched are common in our legal system as well as many others. This is so because some of these Organs of State are so large that by the time the matter comes to Court, personnel may have changed making it difficult to trace or even if within reach, relevant papers may have been lost or memories of the personnel may have been erased for one reason or another.
- [37] In the wisdom of the legislature, it was felt that six months was an adequate period that a litigant against an Organ of State should be obliged to furnish the notice prior to instituting an action to mitigate the possibility of the above happening. Accordingly, there are legitimate and sound reasons why these time bars are necessary. Where a litigant dismally fails to account for an inordinate delay, as is the case here, the Grootboom case guides that where the delay is unconscionable, some of the factors that are part of the overall consideration for what constitutes the interest of justice may justifiably be ignored to arrive at a decision. Granting condonation in circumstances where the prospects of success are good but the explanation of the delay is not forthcoming, may on its own be prejudicial to the Organ of State.
- [38] The situation that confronts this Court in this instance is that the explanation for the unreasonable delay is woefully pathetic while the prospects of success are good. The injustice of depriving Segodi the medical treatment that he deserved needs to be deplored in the strongest terms possible. However, the Court cannot overlook the dissatisfactory manner in which he attempts to explain his delay in launching this application. It is inevitable to conclude that Segodi has been extremely lackadaisical and somewhat blithe, the gravity of his situation notwithstanding. There is an estimated period of three years that is poorly explained or the account is inadequate. This finding is with a heavy heart and wish that it could be different especially given the disability with which Segodi must tolerate for his entire life.

ADEQUACY OF SERVICE OF THE NOTICE UPON THE MEC FOR HEALTH: MPUMALANGA AND NOT THE HEAD OF DEPARTMENT;

- [39] Section 4(1)(a) of the Act makes provision for different forms of delivery of the notice upon the Organ of State. It can be effected by delivering it by hand or by sending it by certified mail or, subject to subsection (2), by sending it by electronic mail or by transmitting it by facsimile. It is peremptory that it be directed to the Head of Department of the Organ of State concerned. If for some reason, it is directed to some other official besides the Head of Department of the Organ of State, the potential claimant must apply for condonation, which is usually granted especially in circumstances where the notice has nonetheless reached the head of department.
- [40] It is common cause that the notice in this instance was forwarded to the MEC for the Department and not the Head of the Department. The papers of Segodi are silent on whether or not he requires condonation for not directing the notice to the Head of Department. Segodi's silence on condonation means that this Court has nothing to consider regarding the defective service. As a result, the cases of Shange and MN and others supra cannot find application. This is notwithstanding that the notice has obviously reached the Head of the Department of Health. The issue is about whether the Court has been asked to condone or not. Given the foregoing, the conclusion that the service on the MEC was inadequate is inexorable.

THE VALIDITY AND APPROPRIATENESS OF THE ACTION INSTITUTED BY SEGODI ON 26 AUGUST 2020

- [41] The finding of this Court that Segodi has failed to properly account for the delay and that the Department has suffered prejudice as a result renders the institution of the action nugatory. The action would have been appropriately instituted if it was preceded by delivery of the notice within the prescribed six months period or would be ratified validly and properly instituted if this Court were to grant condonation. As such, the action is invalid until condonation is granted.

THE DEPARTMENT HAS ADEQUATELY ADDRESSED HOW IT WIL SUFFER PREJUDICE WERE THE COURT TO GRANT CONDONATION

- [42] I have already stated that this case fits into the mould of the Grootboom case supra, which held that where a litigant fails to sufficiently and satisfactorily account for the delay, no matter how good his prospects of success are, it may be in the interest of justice to refuse condonation. Additionally, granting condonation in those circumstances will be prejudicial to the Organ of State. The legitimate expectation of Organs of State is that parties that intend to initiate proceedings against them will, in line with the provisions of the Act, comply with the terms described in the Act. Besides, it is necessary to add that it was incumbent upon Segodi to show that he has satisfied all the prerequisites laid down in the Act prior to criticising the case of the Department. In other words, a party cannot present an unsustainable case and then turn around and say that it should be favourably considered because the other party lacks a defence.

[43] In the result, the application for condonation fails and I make the following order;

The application is dismissed with costs.

B A MASHILE

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

APPEARANCES: Counsel for the Applicant: Adv P Nonyane Instructed by: Mashego P Attorneys C/
O Combrink Greyling Attorneys Counsel for the Respondent: Adv T Chavalala Instructed by:
Adendorff Theron Inc Date of Judgment: 28 December 2023

[1] 1997

(1) SA 124 (CC)

[2]

[2008] ZASCA 34; 2008

(4) SA 312 (SCA) at paras 10 and 12

[3]2010

(4) SA 109 (SCA)

[4] 2007

(6) SA 304 (C)

[5] 2014

(3) SA 39 (CC) at 43 G-44A

[6] 2014

(2) SA 68 (CC) at par 50 – 51.

[7] 2014

(1) SA 487 (GSJ)

[8] (1222/2017)

[2019] ZASCA 43; 2020 (2) SA 375 (SCA) (29 March 2019)

[9] 2012

(5) SA 313 (SCA) [16]

[10] (2038/2017; 2617/2017; 2040/2017)

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