

SOUTH AFRICA / JUDGMENT

Sindane v Sentinel Retirement Fund and Others (93656/2016)

[2019] ZAGPPHC 274 (27 June 2019)

[2019] ZAGPPHC 274

COURT

North Gauteng High Court, Pretoria

BEFORE

RG Tolmay

CASE / FILE NUMBER

93656/2016

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
(1)

REPORTABLE:

YES/NO
(2)
OF
INTEREST TO OTHER JUDGES: YES/NO
(3)
REVISED.
Case number: 93656/2016
Date: 27/6/2019
In

the matter between:

THEMBISILE
SINDANE
APPLICANT
AND
SENTINEL
RETIREMENT FUND
FIRST RESPONDENT
XSTRATA
COLLIERY LTD
SECOND RESPONDENT
THE
PENSION FUNDS ADJUDICATOR
THIRD RESPONDENT
SANTY

PRETTY MASINA
FOURTH RESPONDENT
LETTIE
MPHANGA
FIFTH RESPONDENT
NOMTHANDAZO
MTHETHWA
SIXTH RESPONDENT
S
L
MTHETHWA
SEVENTH RESPONDENT

JUDGMENT

TOLMAY, J:

INTRODUCTION

[1] The Applicant sought an order reviewing and setting aside the determination of the Third Respondent, the Pension Fund Adjudicator ("the Adjudicator") which determination was made in terms of section 30M of the Pension Funds Act 24 of 1956 ("The Act") and handed down on 26 March 2015.

[2] In the Applicant's application launched on 1 December 2016, the Applicant sought the following:

2.1 An order substituting the determination of the Adjudicator with an order declaring the Applicant a dependant and spouse of Aaron Sipho Mthethwa ("the deceased");

2.2 An order that the benefit of the deceased be calculated and distributed in a manner to include the Applicant as a beneficiary;

2.3 An order declaring the Applicant, as a spouse to a marriage entered into in terms of Customary Law with the deceased, is the owner of half of the proceeds of the pension/provident fund held by the deceased with the First Respondent, the Sentinel Retirement Fund ("the Fund");

2.4 An order that the Applicant is further entitled to a spouse's portion of the deceased's interest in the pension fund as contemplated in the Intestate Succession Act;

2.5 An order that the Fund should within ten days of the order sought, pay to the Applicant the sum of R 219 355-97, being half of the proceeds of the entire provident fund in the name of the deceased;

2.6 An order directing the Fund, in addition to prayer 6 (para 2.5 above) to pay to the Applicant any further pension related benefits in terms of the Rules of the Fund as may be payable to a dependant spouse; and

2.7 Costs.

[3] On 16 January 2018, the Applicant served an amended notice of motion, without having filed any notice of intention to amend, requesting the following amended relief:

3.1 Condoning the Applicant's non-compliance with the provisions of section 30P(1) for the late lodging of the application against the decision of the Adjudicator.

3.2 Setting aside the determination by the Adjudicator handed down in case number PFA/MP00011606/2014TD on 26th March 2015.

3.3 Substituting the determination of the Adjudicator with an order declaring that the Applicant is a dependant and a spouse of the deceased;

3.4 An order that the benefit of the deceased be calculated and distributed in a manner to include the Applicant as a beneficiary;

3.5 An order declaring the Applicant, as a spouse to a marriage entered into in terms of Customary Law with the deceased, is the owner of one third of the proceeds of the pension/provident fund held by the deceased with the Fund;

3.6 An order that the Applicant is further entitled to a spouse's portion of the deceased's interest in the pension fund as contemplated in the Intestate Succession Act;

3.7 An order that the Fund should within ten days of the order sought, pay to the Applicant the sum of R 146 237.31, being half of the proceeds of the entire provident fund in the name of the deceased;

3.8 An order directing the Fund to pay to the Applicant any further pension related benefits in terms of the Rules of the Fund as may be payable to a dependant spouse; and

3.9 Costs.

[4] The Fund opposed the Applicant's application.

POSTPONEMENT

[5] Prior to the hearing Applicant indicated that she would seek a postponement and brought a substantive application to that effect. The reason for the postponement was based on the allegation that no notice of set down was served on the Fourth Respondent (Ms Masina). The Fund filed an answering affidavit setting out the long delays that occurred, and indicated that the matter has been pending for approximately seven years. A letter was also attached indicating that Ms Masina will not be opposing the application. The application for postponement was dismissed.

NON-JOINDER OF INTERESTED PARTIES

- [6] The Fund initially raised the issue of joinder in its answering affidavit to the Applicant's application as the Applicant failed to join certain interested parties. As a result the Applicant proceeded to join the deceased's civil law spouse and his dependants and nominees as parties. They are the Fourth to Seventh Respondents. None of the parties joined opposed the application.

BACKGROUND

- [7] The deceased was a member of the Mine Employees Pension Fund until he passed away on 23 October 2012. On 1 July 2013, the Mine Employees Pension Fund was merged into the Fund, with the result that its assets and liabilities vested in the Fund.

- [8] Upon the deceased's death, a lump-sum death benefit of R 438 711.94 became available for distribution to the deceased's dependants and nominees in terms of section 37C of the Act and the Rules of the Fund.

- [9] The death benefit payable in this case was a lump sum benefit to be distributed in terms of section 37C of the Act and a spouse's pension payable to the deceased's spouse as defined in the Rules of the Fund.

- [10] Following the death of the deceased and the Fund's investigations, claims for a share of the lump sum benefit were received by the Fund in respect of:

10.1 Ms S P Masina, the deceased's civil law spouse;

10.2 The Applicant, Ms E T Sindane; the deceased's alleged customary law spouse;

10.3 Ms LO Mphanga, the deceased's alleged co-habiting partner;

10.4 Ms S L Mthethwa, the deceased's alleged daughter from his relationship with Ms Mphanga; and

10.5 Ms N L Mthethwa, the deceased's allegedly dependant sister and nominee.

- [11] The Fund rejected Applicant's claim and the Applicant lodged a complaint with the Adjudicator. The Applicant essentially contended in her complaint to the Adjudicator that:

11.1 She was married to the deceased in terms of customary law;

11.2 She lived with the deceased from the time they were married until the deceased died; and

11.3 The deceased supported her financially.

- [12] The answering affidavit and annexures thereto including the Adjudicator's determination revealed that the investigation of the Fund indicated that the deceased had purported to marry the Applicant in terms of customary law on 13 November 2010. The Fund concluded that due to the deceased's then existing civil law marriage to Ms Masina, which was concluded during 2004, that the customary marriage between the deceased and the Applicant was void ab initio and therefore invalid.

- [13] The Fund's investigation also revealed that there was no proof that the said customary marriage between the deceased and the Applicant was registered in terms of the Recognition of Customary Marriages Act 120 of 1998 ("RCMA") and further that the deceased and the Applicant had been estranged since 2011. Since then the deceased began to co-habit with Ms L O Mphanga.
- [14] The Fund concluded, based on its investigations that the Applicant had failed to provide satisfactory proof to the Fund that she qualified for either the spouse's benefit or a portion of the lump sum benefit payable.
- [15] The Applicant was invited to provide proof to the Fund in support of her allegations that she was a dependant of the deceased, but she failed to do so. The Fund concluded that probabilities were overwhelming that she was not dependant on the deceased as she and the deceased had been estranged since 2011.
- [16] The Fund accordingly made a decision on 7 August 2014 in terms of which no portion of the spouse's pension or lump sum death benefit was awarded to the Applicant. The decision was communicated to the Applicant on 8 August 2014.
- [17] The Applicant was aggrieved by the Fund's decision and lodged a complaint with the Adjudicator in terms of section 30A of the Act on 26 September 2014.
- [18] On 4 February 2015 Applicant's attorney sent a letter, and for the first time attached affidavits purportedly by the deceased's brother, cousin a friend and a person who alleged that she witnessed the marriage, confirming her version of events. In this letter the deceased's father's version that contradicted the Applicant's version was rejected on the basis that it was alleged that he was deceased. The Adjudicator stated inter alia that an official contacted the deceased's father, who was indeed alive and well and stated in an affidavit dated 18 February 2015 that the deceased was living with Ms Mphanga at the time of his death.
- [19] After considering the Applicant's complaint together with submissions by the Fund, the Adjudicator dismissed the Applicant's complaint in a comprehensive determination dated 26 March 2015. The Adjudicator set aside some of the other decisions of the Fund, but those are not relevant to this application.

THE DELAY IN BRINGING THE APPLICATION

- [20] In terms of section 30P of the Act, a party who feels aggrieved by a determination of the Adjudicator may apply within six weeks after the date of the determination, to apply to the division of the High Court, which has jurisdiction for relief.
- [21] Section 30P of the Act provides as follows:

"30 P Access to court

- (1) Any party who feels aggrieved by a determination of the Adjudicator may, within six weeks after the date of the determination, apply to the division of the High Court which has jurisdiction, for relief, and shall at the same time give written notice of his or her intention so to apply to the other parties to the complaint.
 - (2) The division of the High Court contemplated in subsection (1) may consider the merits of the complaint made to the Adjudicator under section 30A (3) and on which the Adjudicator's determination was based, and may make any order it deems fit.
 - (3) Subsection (2) shall not affect the court's power to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that no further evidence shall be adduced."
- [22] The Applicant did not expressly rely on section 30P in her original notice of motion and founding affidavit when her application was first launched in 2016. It was only in January 2018 when the Applicant filed an amended notice of motion, that she stated that it was her intention to rely on section 30P of the Act. This was only done after the Fund filed its answering affidavit. It must be noted that the Fund filed its answering affidavit on 6 September 2017. It was submitted that the amended notice of motion was defective and irregular in that no notice of intention to amend was filed in terms of Rule 28(1) of the Uniform Rules of Court.
- [23] Section 30P provides that the application to the High Court must be brought within six weeks, after the date of the determination. The Adjudicator's determination was made on 26 March 2015. The Applicant's application was launched on 1 December 2016 and was served on 8 December 2016. The Applicant's application was therefore launched approximately 20 months after the date of the determination.
- [24] It was submitted by the Fund that, even if the Applicant's application was brought in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") or the common law, it would still be out of time. Section 7 of PAJA provides that review applications must be brought within 180 days, whereas under the common-law review applications must be brought within a reasonable time. What is reasonable will depend on the circumstances of the case.[1]
- [25] Section 9(1) of PAJA provides that the 180-days may be extended for a fixed period, by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned. Such an application will be granted if it is in the interest of justice.[2]
- [26] Initially the Applicant failed to provide any reasons for the delay. Only long after the answering affidavit was filed (on 6 September 2017), an amended notice of motion was served on 18 January 2018. The Applicant in this amended notice of motion asked this Court to condone the lengthy delay in bringing her application.

[27] In the supplementary founding affidavit, which was attached to her amended notice of motion, she merely stated that she could not bring the application in the six weeks required by the Act, "in such haste." She also blamed financial constraints for the delay, as she alleged that she was unemployed and the deceased took care of all her household needs.

Interestingly enough she was represented by an attorney throughout the process, despite her alleged financial constraints. The same attorneys who appeared for her at this hearing have been representing her as far back as February 2015, and prior to that she was represented by another firm of attorneys. No explanation whatsoever was given why these attorneys failed to timeously launch the application. One would

have expected an affidavit by the attorneys to confirm the fact that Applicant did not have the necessary finances to proceed with the application. One would also have expected more detail about her alleged financial constraints.

[28] This Court is empowered to grant condonation for the late filing of a section 30P application. [3] However, as the SCA said in *Urban Tolling Alliance v South African National Roads Agency Limited*[4] with regards to statutory time limits, absent the extension of the statutory time-limit, the Court has no jurisdiction to entertain the review.

"[26] At common law application of the undue delay rule required a two stage enquiry. First, whether there was an unreasonable delay and, second, if so, whether the delay should in all the circumstances be condoned (see eg *Associated Institutions Pension Fund and others v Van Zyl and others* 2005 (2) SA 302 (SCA) para 47). Up to a point, I think, s 7(1) of PAJA requires the same two stage approach. The difference lies, as I see it, in the legislature's determination of a delay exceeding 180 days as per se unreasonable. Before the effluxion of 180 days, the first enquiry in applying s 7(1) is still whether the delay (if any) was unreasonable. But after the 180 day period the issue of unreasonableness is pre-determined by the legislature; it is unreasonable per se. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been 'validated' by the delay (see eg *Associated Institutions Pension Fund* para 46). That of course does not mean that, after the 180 day period, an enquiry into the reasonableness of the applicant's conduct becomes entirely

irrelevant. Whether or not the delay was unreasonable and, if so, the extent of that unreasonableness is still a factor to be taken into account in determining whether an extension should be granted or not (see eg *Camps Bay Ratepayers' and Residents'*

Association v Harrison [2010] 2 All SA 519 (SCA) para 54)."

[29] In *Darries v Sheriff, Magistrate's Court, Wynberg and another*,[5] the guiding principles applicable in the exercise of the Court's discretion to grant condonation were set out and it was stated that:

"I will content myself with referring, for present purposes, only to factors which the circumstances of this case suggest should be repeated. Condonation of the non-observance of the Rules of this Court is not a mere formality. In all cases some acceptable explanation, not only of, for example, the delay in noting an appeal, but also, where this is the Case, any delay in seeking condonation, must be given. An appellant should whenever he realises that he has not complied with a Rule of Court apply for condonation as soon as possible. Nor should it simply be assumed that, where non-compliance was due entirely to the neglect of the appellant's attorney, condonation will be granted. In applications of this sort the appellant's prospects of success are in general an important though not decisive consideration. When application is made for condonation it is advisable that the petition should set forth briefly and succinctly such essential information as may enable the Court to assess the appellant's prospects of success. But appellant's prospect of success is but one of the factors relevant to the exercise of the Court's discretion, unless the cumulative effect of the other relevant factors in the case is such as to render the application for condonation obviously unworthy of consideration. Where non-observance of the Rules has been flagrant and gross an application for condonation should not be granted, whatever the prospects of success might be."

[30] In *Gqwetha v Transkei Development Corporation Ltd and others*,^[6] the following was said regarding the importance of bringing a review application within a reasonable time:

"[22] It is important for the efficient functioning of public bodies (I include the first respondent) that a challenge to the validity of their decisions by proceedings for judicial review should be initiated without undue delay. The rationale for that longstanding rule - reiterated most recently by Brand JA in *Associated Institutions Pension Fund and Others v Van Zyl and Others* 2005 (2) SA 302 (SCA) at 321 - is two-fold: First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Secondly, and in my view more importantly, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions. As pointed out by Miller JA in *Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) at 41E-F (my translation) :

'It is desirable and important that finality should be arrived at within a reasonable time in relation to judicial and administrative decisions or acts. It can be contrary to the administration of justice and the public interest to allow such decisions or acts to be set aside after an unreasonably long period of time has elapsed - interest reipublicae ut sit finis litium. . . . Considerations of this kind undoubtedly constitute part of the underlying reasons for the existence of this rule.'

[23] Underlying that latter aspect of the rationale is the inherent potential for prejudice, both to the efficient functioning of the public body and to those who rely upon its decisions, if the validity of its decisions remains uncertain. It is for that reason in particular that proof of actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration that might even be decisive where the delay has been relatively slight (*Wolgroeiers Afsfaers*, above, at 42C)."

- [31] Some seven years have passed since the deceased died and four and a half years since the Adjudicator made her determination. A perusal of the papers in this instance point to a total lack of information regarding legitimate causes for the delay in bringing the application. Such failure cannot be merely overlooked. The delay was not only devoid of sound reasons, but was also for an unreasonable long period of time, which militates against the principle of bringing administrative matters to finality. Not only the rights and duties of the Fund are at stake, but also those of the beneficiaries, who could be prejudiced by the delay.
- [32] The Applicant did not place any persuasive information before the Court to enable the Court to exercise its discretion to grant condonation for the delay and as a result the application should be dismissed on this basis alone, but it is appropriate to deal with her chances of success on the merits before coming to a final conclusion.

DISTRIBUTION OF DEATH BENEFITS UNDER THE ACT AND THE RULES OF THE FUND

- [33] Section 37C of the Act deals with the distribution of death benefits payable upon the death of a member. It provides as follows:

"37C Disposition of pension benefits upon death of member

- (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19 (5) (b) (i) and subject to the provisions of sections 37A (3) and 370 , not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:
- (a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the fund, to one of such dependants or in proportions to some of or all such dependants"

- [34] Section 37C prescribes the manner in which lump-sum benefits must be dealt with, and provides that it will be distributed between the deceased member's dependants and nominees in such proportions as determined by the board of the Fund in the exercise of its discretion. Section 37C further provides that benefits payable as a pension to spouses and children shall be paid in terms of the Rules of the Fund.

- [35] A "dependant" is defined in section 1 of the Act as follows:

"dependant', in relation to a member, means-

- (a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person-

- (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
- (ii) is the spouse of the member;
- (iii) is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock;
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;"

[36] The term "spouse" is defined as follows in the Rules of the Fund:

"SPOUSE" shall mean at the date of the death of the MEMBER, PENSIONER or FLEXIBLE ANNUITANT the person who was his/her:

- (a) legal spouse; or
- (b) partner of a union according to customary law; or
- (c) partner of a union recognised as a marriage under any religion; or
- (d) life partner in a relationship which the TRUSTEES regard as having been permanent, provided that in making such determination the TRUSTEES must have regard to whether or not there was, at the relevant date or dates, cohabitation as well as other factors which they, in their sole discretion, regard as being relevant;

at the time that the PENSIONER retired or at the date that the MEMBER or FLEXIBLE ANNUITANT died, provided that:

- (i) the SPOUSE of a PENSIONER shall be the SPOUSE as notified by him to the FUND at the date of his/her retirement;
- (ii) the MEMBER or FLEXIBLE ANNUITANT notified the FUND of the existence of a SPOUSE prior to his/her death; unless the TRUSTEES, in their sole discretion, decide that such notification was not necessary in the particular circumstances;
- (ii) the SPOUSE of a FLEXIBLE ANNUITANT shall be the SPOUSE at the date of his/her death unless notified differently by him to the FUND;
- (iii) there may be more than one (1) person qualifying as SPOUSE"

[37] The Applicant alleged that she was dependant on the deceased until his death, but could not provide any supporting evidence, notwithstanding the Fund having requested her to provide such evidence, prior to it making a final allocation. Neither in her founding papers or in her supplementary founding papers, did the Applicant provide acceptable proof that she resided with the deceased and that he supported her financially.

- [38] As the Fund pointed out in its answering affidavit, the Applicant failed to produce evidence in the form of letters sent jointly to her and the deceased, joint-accounts, proof of things purchased together, proof of the Applicant being a dependant in any insurance policy or medical aid, proof of any financial support of any kind, and proof that they co- owned any property, movable or immovable. If the Applicant lived with the deceased, as she alleged in her founding affidavit, one would have expected that she would be able to provide this proof. The Applicant therefore failed to show that she qualified as a dependant of the deceased at the time of the deceased's death.
- [39] That leaves the question of whether the Applicant qualified as the deceased's spouse. In her founding affidavit, the Applicant relies only on the allegations that she was married to the deceased in terms of customary law in November
2010. The deceased was however married to Ms Masina, in terms of civil law, they got married on 30 September
2004. The Fund stated that due to the deceased's then existing marriage to Ms Masina, the customary marriage between the Applicant and the deceased was void ab initio and therefore invalid.
- [40] Section 10 of the Recognition of Customary Marriages Act 120 of 1998 reads as follows:
- "10 Change of marriage system
- (1) A man and a woman between whom a customary marriage subsists are competent to contract a marriage with each other under the Marriage Act, 1961 (Act 25 of 1961), if neither of them is a spouse in a subsisting customary marriage with any other person.
- (2) When a marriage is concluded as contemplated in subsection (1) the marriage is in community of property and of profit and loss unless such consequences are specifically excluded in an antenuptial contract which regulates the matrimonial property system of their marriage.
- (3) Chapter III and sections 18, 19, 20 and 24 of Chapter IV of the Matrimonial Property Act, 1984 (Act 88 of 1984), apply in respect of any marriage which is in community of property as contemplated in subsection (2).
- (4) Despite subsection (1), no spouse of a marriage entered into under the Marriage Act, 1961, is, during the subsistence of such marriage, competent to enter into any other marriage."
- [41] In *Kambule v The Master and Others*[7] the Court referred to an unreported judgment of *Mvunelo v Minister of Home Affairs* (unreported Transkei Division case No 744/2002, dated 20 July 2005)), where the following was stated:

"In my opinion it is the aim of s 10(4) of the Act to prohibit a party who is a spouse in a marriage entered into under the Marriage Act, 1961, to enter into any other marriage, which includes a customary marriage, obviously as from the commencement of that Act, ie, as from 15 November 2000..."[8]

[42] The Applicant's alleged customary marriage was therefore unlawful and invalid. She failed to prove that she was a spouse as defined in the Rules of the Fund or section 1 of the Act. Accordingly, the Applicant failed to prove that she was either a dependant on, or a spouse of the deceased.

CONCLUSION

[43] There is accordingly no legal basis to interfere with the Adjudicator's decision to exclude the Applicant as a beneficiary of the deceased's death benefit. There is equally no basis on which the Adjudicator's determination can be reviewed and set aside. The Applicant failed to convince the Court that the condonation application should be granted as there was no proper explanation for the delay, nor did she have a reasonable prospect to succeed on the merits. Consequently the application must fail.

[44] The Applicant's application should thus be dismissed with costs.

[45] The following order is made:

1. The application for postponement is dismissed.
2. The application is dismissed.
3. The Applicant is to pay the costs of the First Respondent, which costs will include the costs of the application for postponement. The costs will also include the costs of senior counsel.

RG TOLMAY

JUDGE OF THE HIGH COURT

DATE OF HEARING:

13 JUNE 2019

DATE OF JUDGMENT:

27 JUNE 2019

ATTORNEY FOR PLAINTIFF: ZEHIR OMAR

ADVOCATE FOR PLAINTIF: ADV PW SPRINGVELDT

ATTORNEY FOR FIRST

DEFENDANT:

SHEPSTONE & WYLIE

ADVOCATE FOR FIRST

DEFENDANT:

ADV S KHUMALO & AND D GONDO

[1] Associated Institutions Pension Fund and others v Van Zyl and others 2005 (2) SA 302 (SCA) at paragraph 46 -48.

[2] Beweging vir Christelik-Volkseie Onderwys and others v Minister of Education and others [2012] 2 All SA 462 (SCA) para 31.

[3] See , Samancor Group Pension Fund v Samancor Chrome and others

[2010] 4 All SA 297 (SCA) at p301 para 20 where the SCA described the source of the Court's power as follows: "[20] The high court, because of its inherent jurisdiction, has powers to governments own procedures. The said jurisdiction pertains not only to non-compliance with the Rules of Court but also to statutory time limits "

[3] See , Samancor Group Pension Fund v Samancor Chrome and others

[2010] 4 All SA 297 (SCA) at p301 para 20 where the SCA described the source of the Court's power as follows:

"[20] The high court, because of its inherent jurisdiction, has powers to governments own procedures. The said jurisdiction pertains not only to non-compliance with the Rules of Court but also to statutory time limits "

[4]

[2013] 4 All SA 639 (SCA) par 26

[5] 1998 (3) SA 34 (SCA) at 40H-41E (also reported at (1998) JOL 2154; Saloojee & another NNO v Minister of Community Development 1965 (2) SA 135 (A) at 138H

[6] Gqwetha v Transkei Development Corporation Ltd and others 2006

(2) SA 603 (SCA) paras 22- 23 [also reported at [2006] 3 All SA 245 (SCA) - Ed]. See too Associated Institutions Pension Fund and others v Van Zyl and others 2005 (2) SA 302 (SCA) para 46 (also reported at (2004] 4 All SA 133 (SCA) - Ed).

[7] 2007 (3) SA 403 (E) at p411 at par E-1

[8] See also, Cronje and Heaton, South African Family Law, Second Edition, Lexis Nexis, at p207.

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Prepared on 12 October 2026 · Esheria