**IN THE HIGH COURT OF SOUTH AFRICA**

**(EASTERN CAPE DIVISION, BISHO)**

**APPEAL CASE NO.: CA 17/2024**

**In the matter between:**

**AKHONA KOSI** **Appellant**

**and**

**MINISTER OF POLICE** **Respondent**

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**JUDGMENT**

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**ZONO AJ:**

**Introduction**

[1] This appeal emanates from the Zwelitsha Magistrate's court, court *a quo.* The appeal was lodged against the Judgment of the court *a quo* of 13th March 2024 dismissing appellants application for condonation of late service of a notice in terms of section 3(1)(a) of Act 40 of 2002[1]. Aggrieved by the judgment of the court *a quo,* the appellant delivered his notice of

[1] Institution of legal Proceedings Against Certain Organs of State Act 40 of 2002.

appeal. The appeal became ripe for hearing and same was heard on 20th September 2024.

**Background**

[2] On 19th June 2023 the appellant instituted action proceedings against the respondent in the Zwelitsha Magistrate's Court, under Case No 270/2023 for damages arising from his unlawful arrest and detention which allegedly took place on 22nd July 2022 at Tshatshu Location, King Williams Town.

[3] It appears that a notice to institute legal proceedings was issued on 22nd May 2023 in terms of a letter dated 19th May 2023. The letter was clearly late as the period of six (6) months from the date of the alleged arrest and detention had already expired.

[4] Having realized that the appellant was out of time in respect of the delivering notice of institution of legal proceedings, the respondent raised a special plea of non-compliance with the provisions of section 3 of Act 40 of 2002 which section requires that the notice must be served upon the organ of state within six (6) months of the date when the debt became due. The special plea was filed on 10th September 2023.

[5] The special plea prompted the launching of an application in terms of section 3(4) of Act 40 of 2002. On 20th November 2023 the appellant launched an application in terms of which the appellant sought condonation

of late delivery of a notice to institute legal proceedings in terms of section 3(1)(a) of Act 40 of 2002. The application was supported by an affidavit.[2]

[6] The application was opposed by the respondent. Both the notice to oppose and answering affidavit were filed of record. The appellant did not deliver his replying papers. The matter was then heard as an opposed matter on 01st February 2024 and 06th February 2024 respectively. The judgment of the court *a quo* was delivered on 13th March 2024.

[7] Aggrieved by the judgment, the appellant delivered notice of appeal on 03rd April 2024. In the notice of appeal, the appellant criticised the judgment for only looking at the prospects of success in the main action and for ignoring the explanation given for the delay and the bona fides of the appellant.

**Parties' versions**

[8] The appellant alleges that he was unlawfully arrested and detained by the members of South African Police Service on 22nd July 2022. The arrest was without a warrant. The appellant was released by the respondent's employees without having appeared in court. The appellant always knew that he had damages claim against the respondent but he is a lay and unsophisticated person. He always thought that the investigating officer would revert and advise them when the case was closed.

[2] Rule 6(1) of the Uniform Rules.

[9] The understanding that the investigating officer would come and announce if the matter was closed changed when his acquaintance advised him to approach an attorney who would assist him to institute legal proceedings. The appellant consulted his attorneys who advised him that his claim would be instituted by the Independent Police Investigative Directorate (IPID). The attorneys penned a letter to the Zwelitsha Police Station requesting copies of the docket under Cas No: 104/07/2022 to which no response was received. The attorneys advised of the possibility to pursue a request for documents in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA), but the appellant discouraged that route. A notice in terms of section Act 40 of 2002 dated 19th May 2023 was then sent to the National Commissioner, South African Police Service.

[10] On 09th June 2023 appellant's summons for recovery of damages arising from his unlawful arrest and detention was issued and service thereof was effected. The appellant concludes by saying his claim has not prescribed and that the respondent was not prejudiced by the delay or by the failure to timeously serve the notice. He concludes that his case enjoys prospects of success in the main case and therefore it is in the interests of justice that condonation be granted.

[11] The essence of the respondent's case is that the debt became due on 22nd July 2022 when the appellant became aware of the identity of the organ of state and the factors giving rise to the debt. The respondent states that the cause of action arose on 22nd July 2022 when the appellant was allegedly arrested and detained by the members of South African Police Service. He

knew of these facts and the fact that the arrest and detention were unlawful on 22nd July 2022.

[12] The respondent criticizes the appellant for his failure to set out the date when his acquaintance advised him that he must approach the attorney to institute a claim against the respondent. As a corrollary there is no explanation for the delay between the date when the appellant met the acquaintance and the date when he first approached his attorneys of record.

[13] The respondent states that the appellant always knew that he had a damages claim against the respondent. He disputes that the appellant reasonably believed that his claim would be launched by the IPID. The respondent further disputes the relevance of the closure of the criminal case as alleged by the appellant. According to the respondent what is important is the fact that there was an arrest and detention. The respondent concludes by saying the explanation proffered by the appellant for the late service of the notice was unreasonable and it failed to show a good cause in terms of the empowering provision.

**Judgment *a quo***

[14] The court *a quo* found the explanation given by the appellant to be insufficient and wholly unacceptable. The basis of the court *a quo's* finding was *inter alia* that, the appellant's explanation did not reveal the basis upon which the appellant expected the police to revert to him and report the progress of a case where he was not the complainant. It was also silent in

relation to the details of the arrest and release of the appellant. For instance, it was not stated whether the appellant was informed of the reason for his arrest and why he was released without appearing before court. It did not say whether the case docket was actually requested in respect of the matter. It also failed to refer to the date on which the appellant received the advice from his acquaintance to approach an attorney in order to lodge a claim against the respondent. In the court *a quo's* opinion, this date is relevant for calculating the six (6) month-period from then to the date of issuing of the notice.

[15] Secondly, the court *a quo* found that the appellant did not demonstrate any prospects of success in the main action. It found that it was not enough to allege that the arrest was unlawful merely because it was conducted without a warrant. Section 40(1) of the Criminal Procedure Act 51 of 1977 (CPA) authorizes arrest without a warrant. In the main action and condonation application, the appellant does not lay any factual foundation to substantiate his cause of action. The appellant was criticised for having failed to prove that the respondent did not meet the requirements of section 40(1)(b) and 50 of the CPA.

[16] It was on the basis of the two grounds outlined in paragraph 14 and 15 above that the court *a quo* dismissed appellant's application for condonation. It is against this judgment that a notice of appeal was filed. The appellant assails the court *a quo's* judgment on the basis that it erred in refusing to accept his explanation as sufficient. The fact that the delay was only four months, coupled with the fact that the appellant is a lay and unsophisticated person, should have been considered when considering the

appellant's explanation. The appellant further complains about the test applied by the court *a quo* in arriving at a conclusion that there was no *prima facie* case against the respondent. That affects, directly, the prospects of success in the main action.

**Discussion**

[17] With regard to the explanation of the delay the appellant offers the following explanation under the caption: "*Good Cause":*

> "*7.1 I always knew that I have damages claim against the respondent but I am a lay and unsophisticated person.*
>
> *7.2 I was always thought that the investigating officer would revert and advise us that the case against me was closed.*
>
> *7.3 My understanding of the legal position changed after my acquaintance informed me that I must approach an attorney to institute a claim against the respondent.*
>
> *7.4 On 03 May 2023 I managed to secure a consultation with Khaya Dywanisi Attorneys. Kayalethu Dywanisi of Khaya Dywanisi attorneys informed me that my claim against the respondent would not be launched by the IPID."*

[18] Firstly, it is not in dispute that the appellant is a lay and unsophisticated person. Although the appellant knew that what the police did to him was unlawful and that it could give rise to a claim for the recovery of damages, he harboured a belief that the Investigating Officer or IPID would assist him. After he was advised, the appellant approached the attorneys on 03rd May 2023. During consultation with an attorney the correct position of the law was articulated. The requisite notice dated 19th May 2023 was served on 22nd May 2023. This explanation did not find favour in the court *a quo*.

[19] The court *a quo*, rejecting appellant's explanation had the following to say:

> "*17. This explanation is, in my view, insufficient and wholly unacceptable. The explanation does not reveal the basis in which the applicant expected the police to revert to him and report the progress of a case where he was not the complainant. It is also silent on the details of the arrest and release of the applicant. For instance, it is not stated whether the applicant was informed of the reason for his arrest and why he was released without appearing before court. It does not say whether there was a case docket actually registered in respect of the matter. It also fails to refer to the date on which the applicant received the advice from his acquaintances to approach an attorney in order to lodge a claim against the respondent. This date is, in my opinion, relevant in calculating the six (6) months period from then to the date of issuing of the notice".* (sic)

[20] A combination of two attributes, *to wit,* laymanship and unsophistication, can lead one not to understand and approach things in a way and manner in which a lawyer and sophisticated person can. The court *a quo* has not dealt in its judgment with these two attributes, which I consider to be weighty considerations in this matter. The court *a quo*'*s* failure to deal with these aspects in its process of reasoning and analysis of evidence is serious.

[21] Gwala AJ in Macingwane[3] had the following to say:

> "*35…. A presiding officer, accounts for his or her judgment by giving an analysis of the facts before him or her leading to a conclusion ultimately reached. This is fair to both the complainant and the accused. Certainly, the accused person is entitled to know on the basis of what evidence is he or she found guilty and by what evidence did the state managed to discharge the onus resting on it. Sadly, it does not appear from the judgment of the Magistrate how the court was satisfied that the guilt of the appellant was proved beyond a reasonable doubt."*

[3] ***Macingwane v S*** (CA&R 20/18) [2019] ZAECMHC 76 (20 November 2019) Para 35.

[22] There is plethora of authorities to the effect that in the process of reasoning and analysis of evidence and facts presented before the court, in reaching its conclusion the court must account for all evidence. Some of the evidence might be found to be false, some of it might be found to be unreliable and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored.[4] Appellant's evidence or version that he is a layman and that he is unsophisticated is central to the explanation the appellant gave. His failures and shortcomings are attributable to those personal attributes.

[23] Ignorance, inexperience, and naiveté, individually or in any combination can reasonably lead to a belief that the state in the form of the members of South African Police Service, whose duty is to protect and secure the individual's rights, to uphold and enforce the law,[5] would revert back to the appellant and advise of the status of the case. If damages for unlawful arrest and detention had been suffered, he would expect the specialized police watchdog, IPID, an independant police complainants body,[6] to follow that up.

[24] The Supreme Court of Appeal in *Madinda*[7] appositely remarked as follows:

> *"18.3 ..... Ignorance, inexperience, naivete, and simple lack of intelligence, individually or in any combination, could it seems to me, conduce to a reasonable belief that, once a complaint has been laid, the State, with*

[4] ***Haarhoff and another v Director of Public Prosecutions, Eastern Cape*** 2019(1) SACR 371 SCA; 2019 (1) All SA 585 SCA Para 37; ***S v Van Der Meyden*** 1999 (1) SACR 447 (W) at 44J-450C; ***Macingwane v S*** (CA&R 20/18 )[2019] ZAECMHC 76(20 November 2019) Para 32.
[5] Section 205 (3) of the Constitution.
[6] Section 206 of the Constitution.
[7] ***Madinda v Minister of Safety and Security, RSA*** 2008 (3) All SA143 (SCA); 2008 (4) SA 312 (SCA) Para 18.3.

> *the resources at its disposal, and as what she described in her reply as 'the primary agent for the protection and enforcement of . . . legal rights', will follow it up; cf Mugwena's case, above, at 155H-156E. Indeed there is a provision in the Criminal Procedure Act (s 300(1)) which enables a court to make a compensatory order having the effect of a civil judgment, so that her belief finds some basis in law as well."*

Both the respondent's answering affidavit and the court *a quo's* judgment do not suggest that appellant's laymanship and unsophistication cannot contribute to a delay.

[25] The appellant was advised by his attorney, Mr Dywanisi on 03rd May 2023 that his claim against the respondent would not be launched by IPID. Putting it pointedly, the appellant became aware of his rights only when he consulted with the attorney. The appellant was at all material times aware that his arrest and detention were unlawful, but was unaware of how to proceed to enforce his right to freedom and security.[8] Appellant's awareness of his legal rights and the procedure to pursue his claim came to surface only after 03rd May 2023 when he had consulted with his legal representative. The appellant could not have known about the requirement of a notice to institute legal proceedings before meeting his legal representative. It is so because notice to institute legal proceedings is a legal requirement,[9] and it should be accepted that the appellant has no legal knowledge to enable him to understand court proceedings, processes and requirements.

[26] In conclusion on this aspect, a notice to institute legal proceedings is a statutory requirement which serves as a precursor to litigation. Those who

[8] Section 12(1) of the Constitution.
[9] Section 3 of Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002.

are not practising legal practitioners may not be privy to the intricate requirements of the provision that provides for the service of the notice. By way of example, they may not know, in the whole scheme of section 3 of the Act, the relevance and meaning of the principle of "*prescription,"* "*good cause,*" the person upon whom the notice must be served, the relevant time periods, etcetera. One does not need only a legal qualification, but also practical knowledge of the provisions of section 3 of Act 40 of 2002. A person, who is not only a lay person, but also an unsophisticated individual, cannot reasonably be expected to be astute with the requirements of a notice without the assistance of a legal representative. I find appellant's explanation to be sufficient and acceptable.

[27] With regard to the prospects of success the court *a quo* found:

> *"20. In terms of section 40(1)(b) a peace officer has a discretion to arrest any person whom he reasonably suspects of having committed a schedule 1 offence without a warrant. Section 50 makes provision for detention of arrested person at a police station. The section further stipulates that the arrested person must be brought to court as soon as reasonably possible but within 48 hours after the arrest, provided such arrested person is not released without being charged.*
>
> *21. I am unpersuaded that the applicant has demonstrated any prospects of success in the main action. It is not enough for the applicant to allege that the arrest was unlawful merely because it was conducted without a warrant. Section 40(1) of Act 51 of 1977, authorises arrest without warrant in seventeen circumstances, including the one in paragraph (b) of the section. In his founding papers, in the action and the condonation application, the applicant does not lay any factual foundation to substantiate his cause of action, that is, the alleged unlawful arrest and detention. He also failed to file any replying affidavit setting out facts to rebut the respondent's averments that the arrest and detention were justified. Consequently, he failed to prove that the respondent did not meet the requirements of sections 40(1)(b) and 50*".

[28] Good cause usually comprehends the prospects of success on the merits of a case.[10] Prospects of success must relate to the merits of the case or to the proposed action. The phrase "if *it is satisfied*" (referring to the court) in section 3(4)(b) has long been recognised as setting a standard which is not proof on a balance of probability. Rather it is the overall impression made on a court which brings a fair mind to the facts set up by the parties.[11]

[29] The appellant, in his founding affidavit alleges that:

> *"6.1.1 On 22 July 2022 at Tshatshu Location in King Williams Town I was unlawfully arrested without a warrant of arrest by various members of the South African Police Service who were at material times acting within the course and scope of their employment.*
>
> *6.1.2 After to my arrest on 22 July 2022 by members of the South African Police Services, I was detained at Zwelitsha Police Station and King William's Town Police Station.*
>
> *6.1.3 I was arrested by the members of the South African Police without reasonably or probable cause.*
>
> *6.1.4 I was released from detention by the employees of the respondent on 25 July 2022 without appearing in court"* (sic).

These allegations are similarly couched as those contained in paragraphs 4, 5, and 6 of the particulars of claim.

[30] It is plain from the aforesaid paragraphs that appellant's arrest was effected without a warrant of arrest. The appellant has pertinently alleged that his arrest was unlawful. These allegations are common cause. It is sufficient simply to plead that the appellant was unlawfully arrested and detained. It

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[10] ***Madinda v Minister of Safety and Security***, RSA 2008 (3) All SA 143 (SCA); 2008 (4) 312 (SCA) Para 12; ***Chetty v Law Society, Transvaal*** 1985 (2) SA 756 (A) at 765 D-E.

[11] ***Die Afrikaanse Pers Beperk v Neser*** 1948 (2) SA 295 (C) at 197; ***Madinda v Minister of Safety and Security*** (Supra) Paras 8, 10, and 12.

is so because interference with physical liberty is *prima facie* unlawful[12]. Once it is pleaded that a person was arrested and detained and that fact is admitted, the onus shifts to the respondent to justify the arrest.[13]

[31] The Constitutional Court in Zealand[14] had the following to say:

> *"24. There is another, more important reason why this Court should rule in the applicant's favour. The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken.*
>
> *[25] This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification. In Minister Van Wet en Order v Matshoba, the Supreme Court of Appeal again affirmed that principle, and then went on to consider exactly what must be averred by an applicant complaining of unlawful detention. In the absence of any significant South African authority, Grosskopf JA found the law concerning the rei vindicatio a useful analogy. The simple averment of the plaintiff's ownership and the fact that his or her property is held by the defendant was sufficient in such cases. This led that court to conclude that, since the common law right to personal freedom was far more fundamental than ownership, it must be sufficient for a plaintiff who is in detention simply to plead that he or she is being held by the defendant. The onus of justifying the detention then rests on the defendant. There can be no doubt that this reasoning applies with equal, if not greater, force under the Constitution."*

The appellant pleaded that he was unlawfully arrested and detained without a warrant by members of South African Police Service.

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[12] T.***N v Minister of Police*** (2579/2020) [2024] ZAECMHC 95 (17 December 2024) Para 12

[13] ***Minister of Safety and Security v Sekhoto and another*** 2011 (1) SACR 315 (SCA);2011(2) All SA 157(SCA); 2011 (5) SA 357 (SCA) Para 7-8, ***Minister of Law and Order v Hurley*** 1986 (3) SA 568 (A) at 589 E-F

[14] Zealand v Minister of Justice and Constitutional Development 2008 (2) SACR (1) (CC) Para 24-25

[32] I accordingly find that the appellant has succeeded in showing that he enjoys good prospects of success in his action. I say this for another reason. The purpose of arrest is to bring the suspect to trial or to justice.[15] This purpose was never intended to be achieved by the members of South African Police Service. The appellant was kept in custody without appearing before court for the duration of his detention. He was arrested and detained on 22nd July 2022 and was released on 25th July 2022 by the respondent's employees without appearing in court. In the light of the above I find that the appellant has good prospects of success.

[33] O'Regan J said in **S v Coetzee[16]:**

> *"159. These are separate questions. They raise two different aspects of freedom: the first is concerned particularly with the reasons for which the state may deprive someone of freedom; and the second is concerned with the manner whereby a person is deprived of freedom……. our Constitution recognises that both aspects are important in a democracy: the state may not deprive its citizens of liberty for reasons that are not acceptable, nor, when it deprives citizens of freedom for acceptable reasons, may it do so in a manner which is procedurally unfair. The two issues are related, but a constitutional finding that the reason for which the state wishes to deprive a person of his or her freedom is acceptable, does not dispense with the question of whether the procedure followed to deprive a person of liberty is fair."*

[34] In its plea the respondent states that the appellant was detained to secure his first attendance in court. He puts it thus:

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[15] ***Minister of Safety and security v Sekhoto and another*** (Supra) Para 42 and 44.

[16] ***S v Coetzee*** 1997 (3) SA 527 (CC), 1997 (4) BCLR 437 (CC); 1997 (1) SACR 379 (CC) Para 159.

*"5.2 In amplification of the above denial, the defendant pleads that the plaintiff was detained for purposes of securing his first attendance at court, in accordance with section 50 of the Act,"* (sic).

It is also known that the appellant never appeared in court. The reasons for the appellant's arrest and detention are illusive. The respondent's failure to bring the appellant to court needs to be explained, and the duty to do that lies with the respondent. On the face of it, the appellant was arrested for reasons that are not acceptable, unless the contrary is proved.

**Conclusion**

[35] To summarise, I found above that the appellant has reasonably and sufficiently explained his delay. The central issue that was a common cause is the fact that the appellant is a lay and unsophisticated person. This consideration is an anchor to all other allegations that are necessary to sufficiently explain the delay to serve a notice in terms of section 3 of Act 40 of 2002. It is of cardinal importance that the requisite notice is a legal notice or a notice prescribed by the law. The requirement of a notice, in its very nature, requires or calls for one to know the law in terms of which the said notice has to be sent or served. As an unsophisticated lay person the appellant could not be expected to know the legal requirements surrounding the notice to institute legal proceedings. It should be accepted that he became aware of the notice requirement only when and after he consulted with his legal representative on 03rd May 2023.

[36] The length of the period should be taken into account. The court *a quo* has accepted that the delay to serve the notice is a four-month delay, and therefore no prejudice has been or will be suffered by the respondent due to appellant's late notice. Technical objections to less than prefect

procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their merits[17]. Police excesses do lead to breaches of the peace[18] and they should not be allowed lightly. There is a higher duty on the State to respect the law, to fulfil procedural requirements and to tread carefully when dealing with rights.[19]

[37] The appellant has good prospects of success on merits or in the main action. The members of South African Police Service had has a burden legally placed on their shoulders to justify the violation of the appellant's right to freedom and security[20]. The slope is too steep for them to climb especially that the appellant was not even caused to appear in court. The legal purpose of arresting a person, which is to bring him to trial or justice, was not fulfilled. Failure to fulfil that purpose has to be explained by the members of the South African Police Service who were responsible for his arrest and detention. In the final analysis the appeal succeeds.

[38] It is appropriate to remember an injunction made by the Supreme Court of Appeal where Leach JA[21] remarked as follows:

> "*30…. The function of public servants and government officials at national, provincial and municipal levels is to serve the public, and the community at large has the right to insist upon them acting lawfully and within the bounds of their authority. Thus where, as here, the legality of their actions is at stake, it is crucial for public servants to neither be coy nor to play fast and loose with the truth. On the contrary, it is their duty to take the court into their confidence and fully explain the facts so that an informed decision can be taken in the interests of the public and good governance. As this court stressed in Gauteng Gambling Board and another v MEC for Economic Development, Gauteng, our present constitutional order imposes a duty upon state officials not to frustrate the enforcement by courts of constitutional rights."*

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[17] ***Trans-African Insurance CO Ltd v Maluleka*** 1956 (2) SA 273 at 277 A-B.
[18] ***Ngqukumba v Minister of Safety and Security*** 2014 (5) SA 112 Para 12.
[19] ***MEC for Health, Eastern Cape and Another v Kirkland Investments*** (Pty) Ltd 2014 (3) SA 481 (cc) Para 82.
[20] Section 12(1) of the Constitution.
[21] ***Kalil NO and Another v Mangaung Metropolitan municipality and Others*** 2014(3) All SA 291 (SCA), 2014 (5) SA 123 (SCA) Para 30.

[39] There is a *prima facie* case that the members of South African Police Service have failed to comply with this duty. It *prima facie* appears that they have failed to act lawfully and within the bounds of their authority. The respondent has not taken the court into its confidence. A four-month delay to serve a statutory notice, which does not present any form of prejudice to the respondent or his case, cannot be a good reason for serious opposition like this one.[22] Members of South African Police Service, like all organs of state, have a Constitutional duty "*to assist and protect the courts to ensure…. Effectiveness of the courts*[23]*"*. They must assist the court to find the truth and justly decide the matter. The court can do that if South African Police Service members are given an opportunity to fully explain the facts. This task lies ahead to be undertaken in the trial court.

**Costs**

[40] The general rule is that costs should follow the result. That rule can be deviated from if a litigant is seeking not a right, but an indulgence. Section 3(4) of the Act can only be invoked when a litigant seeks permission to enforce a right, which permission may be granted within prescribed statutory parameters, and such an application in terms of section 3(4) of the Act is only necessary if the organ of state has relied on a creditor's failure to serve a notice. In circumstances where an application for condonation is opposed, costs should follow the result.[24]

[22] ***Madinda v Minister of Safety and Security*** (Supra) Para 30.
[23] Section 165 (4) of the Constitution.
[24] ***MEC for Education KZN v Shange*** 2012 (5) SA 313 (SCA) Para 24; ***Premier, Western Cape v Lackay*** 2012 (2) SA Para 25.

[41] Accordingly, the respondent is liable to pay the costs of the appeal together with the costs of the application for condonation in the court *a quo;* such costs to include costs of the two counsel where employed.

**Order**

[42] In the circumstances I would make the following order:

**42.1 The appeal is upheld with costs, such costs to include the costs of two counsel where employed.**

**42.2 The order of the court *a quo* is set aside and replaced with the following:**

**(a) Late service of applicant's notice in terms of section 3(1)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 is hereby condoned.**

**(b) The respondent is ordered to pay costs of the application, such costs to include costs of two counsel where employed**.

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**A.S ZONO**
**ACTING JUDGE OF THE HIGH COURT**

I agree.

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**JGA LAING**
**JUDGE OF THE HIGH COURT**

**APPEARANCES:**

| | | |
|---|---|---|
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| **Matter heard on** | **:** | **20 September 2024** |
| **Date of delivery** | **:** | **4 March 2025** |