


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 82407/2014

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
<div style="display: flex; justify-content: space-between;"> <div> <u>30/9/16</u> DATE </div> <div>  SIGNATURE </div> </div>	

4/10/2016

In the matter between:

CONSTANCE MUTALE**APPLICANT**

and

BRONKHORSTSPRUIT MAGISTRATE**FIRST RESPONDENT****MR KLAUS HOCH****SECOND RESPONDENT**

Heard: 24 March 2016

Delivered 4 October 2016

JUDGMENT

A.A.LOUW J

Introduction

[1] In case number 109004/09 in the magistrate court for the district of Pretoria judgment was granted in favour of a judgment creditor Mr Hoch against a judgment debtor Mr Wahab.

[2] In execution of that judgment and in the district of Bronkhorstspuit movable goods which the present applicant alleged to have been hers were attached by the Sherriff.

[3] The applicant notified the Sheriff of her claim to ownership of the relevant goods and an interpleader hearing was held before the first respondent, Mr MJ Kruger, on 10 December 2010. He dismissed the applicant's interpleader claim.

[4] It is that decision which the applicant now wants to have reviewed and set aside. This case was heard in the unopposed motion court on 24 March 2016. During argument before me, the applicant who appeared in person, said that she wanted to have the judgment reviewed in order that she can claim compensation from the Department of Justice for the loss of her property, which since the judgment of the first respondent have been sold. Her goods were sold on auction in early 2011.

[5] All the papers herein were also drafted by the applicant personally and she has no legal knowledge. I have tried my best to figure out what her case against the first respondent is and how she can obtain compensation from the Department of Justice for the decision in the interpleader proceedings. The applicant's case is not clear to me.

[6] In the absence of *mala fides* a decision by a judicial officer does not give rise to a damages claim.

[7] The applicant has a further more fundamental problem. This is the extent of her delay in instituting this review after the judgment in December 2010. This application was issued by the registrar on 11 November 2014. That is nearly four years after the decision by the first respondent.

[8] In *OUTA*,¹ the SCA summarised the principles that apply to delay under PAJA:

*"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. 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. 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."*² (our underlining)

[9] I find the delay of the applicant to have been extreme, that is, the period of nearly four years. Especially so, if one considers that the purpose of the review is not an end in its self but, as applicant sees it, the first step in claiming compensation for the

¹ *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others* [2013] 4 All SA 639 (SCA)

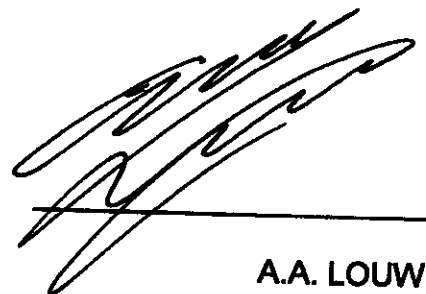
² *OUTA* (supra) at para 26

loss of her goods against the Department of Justice. I have already above pointed out the problems that she has in that regard.

[10] The applicant has not provided reasons and set out any facts which show that the delay was reasonable in all the circumstances.

[11] I therefore order as follows:

"The application is dismissed with costs."

A handwritten signature in black ink, consisting of several overlapping, fluid strokes, positioned above a horizontal line.

A.A. LOUW

Judge of the High Court