REPUBLIC OF SOUTH AFRICA

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

Case Number: 1259/2017

1. REPORTABLE: YES/ NO	
2. OF INTEREST TO OTHER JUDGES: YES/NO	
3. REVISED.	
20/8/2021	**[SIGNED]**
DATE	SIGNATURE

In the matter between:

MEC FOR HEALTH, MPUMALANGA Applicant

and

MAKUNDI, C Respondent

In RE:

MAKUNDI, C Plaintiff

and

MEC FOR HEALTH, MPUMALANGA Defendant

This judgment shall be distributed electronically to the parties and published on the SAFLII website. The judgment is deemed to be delivered on 23/8/2021 at 09:00.

JUDGMENT

Roelofse AJ:

[1] The respondent instituted an action against the applicant for alleged medical negligence. The summons was issued on 30 June 2017 and served on or about 27 July 2017. In his particulars of claim the respondent alleges that he was admitted at the Rob Ferreira hospital[1] in Mbombela, Mpumalanga on 1 August 2016. In addition to the usual allegations made in claims for medical negligence, the respondent pleaded that he has complied with the provisions of section 3[2] of the Institution of Legal Proceedings Against Certain Organs of State, Act 40 of 2002 (*"the Act"*).

[2] As will appear from below, the applicant essentially seeks an order from this court which will shut the door of the court to the applicant, alternatively that the court compels the applicant to exercise his right to ask for condonation.[3]

[3] The applicant delivered a notice of intention to defend the action on 13 August 2017. Instead of delivering a plea, the applicant delivered a notice in terms of Rule 35(14), *inter alia*, seeking a copy of the "alleged" section 3 notice in terms of the Act and proof that same was delivered to the applicant.

[4] On 16 January 2018, the respondent replied to the plaintiff's Rule 35(14) notice.

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[1] The Rob Ferreira hospital is a provincial hospital falling under the control of the applicant.

[2] Section 3 imposes a duty upon a person intending to claim a debt from an organ of state to give the organ of state notice of the intended proceedings. See paragraph 9 below where the provisions of section 3 is reproduced.

[3] See paragraph 7 below where the relief that is sought in the notice of motion is reproduced.

The respondent furnished a faxed copy of the respondent's section 3 notice as well as an undated email sent to the respondent's attorneys by an official of the applicant. The fax transmission report records that the fax was sent on 11 April 2017 at 02:52 PM. In paragraph 1 of the email, a Thobile Matebula, with email address, ThobelaMat@mpuhealth.gove.za, who the respondent alleges is the applicant's employed at the applicant's legal services department, who wrote as follows:

> *"We refer to the above matter and confirm having received your Notice i.t.o Sec 3 of Act 40 of 2002."*

The reference given in the email is the same reference as on the faxed notice. It therefore clearly referred to the respondent's section 3 notice that was sent by fax.

[5] Nearly 18 months after the respondent's response to the rule 35(14) notice was delivered and on 14 November 2019, the applicant's attorneys wrote to the respondent's attorneys and recorded that the respondent has failed to comply with the provisions of "inter alia" section 3 of the Act, that the applicant does not condone the respondent's failure to comply with the provisions of the Act and that the respondent is still to launch an application for condonation [ostensibly in terms of section 3(4) of the Act].

[6] The letter of 14 November 2019 was followed up by no less than eleven further letters by the applicant's attorneys to the respondent's attorney spanning another period of more than 18 months before the application was launched.[4] No application for condonation was launched by the respondent nor has the applicant delivered a plea. The applicant was also not placed under bar to deliver a plea by the respondent.

[7] The aforesaid circumstances preceded the launching of this application. The

[4] The application was issued on 23 Jun3e 2021.

applicant seeks the following relief:

> *"1. Declaring that the Respondent did not comply with the provisions of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 ("the Act");*
>
> *2. Declaring that the Respondent failed to apply for condonation in terms of the Act, despite being called upon to do so since 14 November 2019;*
>
> *3. That the main action in the abovementioned matter be dismissed due to the Respondent's failure to comply with the provisions of the Act.*
>
> *4. Alternatively, that*
>
> *4.1 The main action in the abovementioned matter be stayed pending the outcome of a condonation application, which is to be brought within 10 (ten) days from the date of the order; and*
>
> *4.3 Should the Respondent fail to apply for condonation timeously, or at all, the Applicant will be entitled to approach court, on the papers duly amplified, to have the action dismissed with costs;*
>
> *5. Costs on an attorney and client scale de bonis propriis, such costs to include the costs of the application as well as the litigation to date; alternatively Costs of this application, including the cost of Counsel.*
>
> *6. ……"*

[8] In the founding affidavit, the applicant alleges that the applicant has failed to comply with certain of the provisions of sections 3 and 4 of the Act. For that reason, I set out the provisions of those sections.

[9] Section 3 reads as follows:

> *"3. Notice of intended legal proceedings to be given to organ of state.—(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).

(2) A notice must—

(a) within six months from the date on which the debt became due, be served on the organ of state in accordance with section 4 (1); and

(b) briefly set out—
(i) the facts giving rise to the debt; and
(ii) such particulars of such debt as are within the knowledge of the creditor.

(3) For purposes of subsection (2) (a)—

(a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the organ of state and of the facts giving rise to the debt, but a creditor must be regarded as having acquired such knowledge as soon as he or she or it could have acquired it by exercising reasonable care, unless the organ of state wilfully prevented him or her or it from acquiring such knowledge; and

(b) a debt referred to in section 2 (2) (a), must be regarded as having become due on the fixed date.

(4) (a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2) (a), the creditor may apply to a court having jurisdiction for condonation of such failure.

(b) The court may grant an application referred to in paragraph (a) if it is satisfied that—
(i) the debt has not been extinguished by prescription;
(ii) good cause exists for the failure by the creditor; and
(iii) the organ of state was not unreasonably prejudiced by the failure.

(c) If an application is granted in terms of paragraph (b), the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to

the organ of state as the court may deem appropriate."

[10] I shall refer to the notice prescribed in section 3 of the Act as "the section 3 notice" henceforth.

[11] The relevant part of Section 4 of the Act now[5] reads as follows:

> *"4. Service of notice.—(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;*
>
> *(b)* to *(f)* ……..;[6]
>
> *(2) If a notice has been sent by electronic mail or transmitted by facsimile as contemplated in subsection (1), the creditor must—*
>
> *(a) take all reasonable steps to ensure that the notice has been received by the officer or person to whom it was so sent or transmitted; and*

[5] Para. (a) was substituted by s. 32 of Act No. 8 of 2017. The amendment took effect on 2 August 2017. Before the substitution of paragraph (a), the section read as follows:

> *"(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;" The amendment was therefore subsequent to the respondent's section 3 notice which was sent per fax on 11 April 2017. The amendment is not material for purposes of this application."*

[6] Not in issue in this application.

(b) within seven days after the date upon which that notice was so sent or transmitted, deliver by hand or send by certified mail a certified copy of that notice to the relevant officer or person referred to in subsection (1), which must be accompanied by an affidavit by the creditor or the person who sent or transmitted the notice—

(i) indicating the date on which and the time at which, and the electronic mail address or facsimile number to which, the notice was so sent or transmitted;

(ii) containing any proof that it was sent or transmitted;

(iii) setting out the steps taken in terms of paragraph (a); and

(iv) indicating whether confirmation of the receipt of the notice has been obtained and, if applicable, the name of the officer or person who has given that confirmation."

[12] The applicant alleges that the respondent has failed to comply with the provisions of the Act in the following respects: the section 3 notice was addressed to the applicant instead of the Head of the Department of Health; the section 3 notice was delivered late; the section 3 notice did not comply with the provisions of section 3(2)(b) of the Act; the respondent has failed to comply with the provisions of section 4(2) of the Act.

[13] The respondent opposes the application and is of the view he has complied with the provisions of the Act and therefore that condonation is not required.[7] This stance was reaffirmed by counsel appearing for the respondent in his heads of argument as well as during the hearing of the matter. Later this stance changed when counsel said that condonation will only be applied for if the court finds that there was indeed non-compliance with the provisions of the Act. In addition, in an email, dated 25 March 2021, the respondent's attorney informed applicant's attorney that the respondent's intention is to apply for condonation. This email is also in direct contradiction with the belief the

[7] In paragraph 21.1 of the answering affidavit, the respondent states as follows:

> *"The Respondent avers that he does not have to apply for condonation herein, if the Applicant believes and wishes to deal with non-compliance may the applicant plead same, Respondent will be able to reply to the special plea. I submitted that this application seeks to be a short cut and brought on technicality. The Applicant can plead in this matter Applicant has documents to enable her to plead."*

respondent holds in the answering affidavit that condonation is not required.

[14] The applicant does not allege that no notice was sent in terms of section 3 of the Act. The applicant alleges other instance of non-compliance with the provisions of sections 3 and 4 of the Act. I proceed to deal with each of the instances of non-compliance that is alleged by the applicant.

The section 3 notice was addressed to the wrong person

[15] The applicant alleges that the section 3 notice was addressed to the applicant instead of the Head of the Department of Health as required in terms of section 4(1)(a) of the Act. In response thereto, the respondent alleges that the section 3 notice was sent to "*the Legal Services Department as a custodian and also a supporting unit for all departmental legal issues, including supporting the Head of the Department.*"[8] The respondent continues to allege that there was no prejudice as there was an acknowledgment of receipt of the section 3 notice and therefore not sent to the wrong department.

[16] In terms of the provisions of section 4(1)(a), the section 3 notice had to be served upon the Head of the Department of Health. The section 3 notice was addressed to the applicant and faxed to an official, who upon the respondent's version, is employed in the Province's legal department.

[17] I find that the respondent has failed to comply with the provisions of section 4(1)(a) of the Act in not serving the section 3 notice upon the Head of the Department of Health.

The section 3 notice was delivered late

[8] Paragraph 19.1 of the answering affidavit.

[18] In this regard the applicant alleges that the respondent's cause of action arose on 1 August 2016 when he was admitted in the hospital as pleaded in the particulars of claim.[9] In response to this application, the respondent alleges that although he was admitted on 1 August 2016, it was only after follow-up visits that he, on 27 January 2017 became aware of the cause of his injures[10]. If the respondent's version is accepted, the section 3 notice was delivered within six months from the date on which the debt became due as contemplated in section 3(2) of the Act. The section 3 notice was sent on 11 April 2017.

[19] In paragraph 19.2 of the answering affidavit, the respondent denies that the section 3 notice was sent out of time. In amplification of this denial, the respondent states as follows:[11]

> *"I mentioned that I went the to the Robs [sic] Ferreira Hospital first on the 1st August 2016 that is when I alleged that the oral/tactic [sic] started when I told the official at the hospital that I was feeling sever [sic] phones on the left side e [sic] off the body, at this stage this is when I was admitted in their books file opened [sic], treated and discharged with a follow up dates given to me for further check-ups. The injection was not broken on this date."*
>
> *"I was seen subsequently again on further dates on 27/09/2016, 18/01/2017, 24/01/2017 and on the 27th January 2017 it is on this Date [sic] that the treatment that caused my injuries arose as a follow up from previous treatment that started from 1 August 2016. I then consulted my attorneys on the 31st March 2017 and the section 3 notice was sent on the 11th April 2017. I therefore submit that the notice was sent on time".*

[20] The hospital records that were discovered under the applicant's rule 35(14) notice indicates that the respondent was first admitted in the hospital on 1 August 2016, possibly suffering from kidney stones. The respondent attended the hospital on several occasions subsequent to his visit on 1 August 2016. In January 2017, the respondent attended the

[9] Paragraph 4 of the particulars of claim.
[10] Incorrectly numbered paragraph 9.2.1 of the answering affidavit.
[11] In incorrectly numbered paragraphs 9.2.1 and 9.2.2.

hospital. It was recorded that the respondent complained of lower back lain and pain in his right leg. The respondent reported that he was injured "at the back during a procedure".[12] The record further indicates that the respondent complained of severe sensation in his right lower limb following a lumber puncture that was administered. The records show that the respondent previously had a lumber punch. The respondent was referred to the neurosurgery clinic[13] which he has visited but that there was no improvement in the respondent's condition and that the cause of the complaint is that the respondent's nerve root was injured[14]. In his particulars of claim, the respondent alleges that an injection was administered negligently. I accept, for purposes of this application that the respondent is referring to the lumber punch procedure that was administered upon him. In the section 3 notice, the respondent alleges as follows:

> *"Client indicates that when he went to Rob Ferriera hospital for further treatment as per referral, a doctor did an LP - through his spinal cord and he hear and injection sort of breaking inside him, he bled. He started having so much pain and complicated further to an extent that he is now using crutches."*

[21] The independent hospital records of the respondents and what is set out in the section 3 notice (albeit in an amateurish and inelegant manner) therefore tally up.

[22] In response to the respondent's aforesaid allegations, the applicant alleges that the respondent attempts to introduce a new version "*…at this late stage*".[15] The applicant furthermore alleges as follows:

> *"For the first time since the inception of this matter does the Respondent allege that the cause of action arose on 27 January 2017. This is also the first time that the Respondent alleges that "an injection was broken" which now seemingly appears*

[12] Page 124 of the record.
[13] Pag3 122 of the record.
[14] Page 134 of the record.
[15] Paragraph 35 of the replying affidavit.

to be his cause of action. If that is his case premised on this new cause of action, it is clear that such cause prescribed. On the other hand, and if the new cause of action serves the Respondent's actual cause, there is no purpose in condoning the non-compliance and to allow the matter to proceed. This application is therefore to succeed."

[23] The applicant is simply wrong in this regard. It is not a cause of action that prescribes but a claim. The respondent's claim was, when the action was instituted that he was admitted at the hospital where he was treated over a period of time which treatment the respondent alleges was negligent and caused him damages. The respondent's cause of action is founded on delict and is still so founded. There is therefore no merit in the applicant's contention that the respondent now relies on a new cause of action that as prescribed.

[24] In any event, a debt as contemplated in the Act becomes due only when the creditor has knowledge of the identity of the organ of state and of the facts giving rise to the debt by exercising reasonable care.[16] The applicant does not deny the respondent's version of the cause of the injury. I accept the respondent's version that the facts giving rise to the debt, on the papers, arose on 27 January 2017.

[25] In the premises, the section 3 notice was delivered in time, i.e within 6 months after the debt became due.

The notice was inadequate

[26] The applicant alleges that the section 3 notice did not comply with the provisions

[16] Section 3(3)(a) of the Act.

of section 3(2)(b) (i) and (ii) of the Act. The question therefore that needs to be answered is whether the facts giving rise to the debt and such particulars of such debt as were within the knowledge of the applicant was sufficiently set out. The Act requires that same must be briefly set out.

[27] The applicant attacks the notice in this regard on the basis that the Section 3 notice was *"…. divorced from sufficient facts giving rise to the alleged debt."*[17]

[28] The respondent meets this challenge by alleging that he did not have the hospital records at the time he consulted with his attorney but that the file reference number was specifically included in the section 3 notice therefore the applicant was able to establish efficiently what had transpired as it was documented. In addition, the respondent alleges that the applicant is the custodian of the medical records.[18]

[29] The applicant meets this allegation by stating that no mention is made in the section 3 notice of any further dates, nor any further treatment or admissions received at the hospital.

[30] The section 3 notice includes the respondent's hospital file number as well as his full names. The section 3 notice states that the respondent intends to institute an action against the applicant for medical negligence and proceeds to set out as follows:

> *"Client indicates that when he went to Rob Ferreira Hospital for further treatment as per referral, a doctor did an LP - through his spinal cord and he hear an injection sort of breaking inside him, he bled. He started having so much pain and*

[17] Paragraph 19.3 of the founding affidavit.
[18] Paragraph 19.3 of the answering affidavit.

complicated further to an extent that he is now using crutches"

[31] The section 3 notice further sets out that the hospital had the duty of care and that as a result of negligence the respondent has suffered damages *".... in a form of pain and suffering, he cannot walk normally without crutches he is in constant pain, and he has lost his job as he can no longer perform his duties he is now dependent on third parties."*[19]

In section 3 in notice, the respondent's payment on demand more of an amount of R 8 000 000.00.

[32] The purpose of giving a section 3 notice is to give an organ of state sufficient opportunity to investigate a claim laid against it, to consider same responsibly and to decide whether the claim should be accepted, rejected or settled.[20] This is the reason for the requirement that sufficient facts and those facts within the knowledge of the defendant must be set out for without sufficient facts the organ of state will be unable to investigate, consider and decide on the fate of the claim.

[33] I find that the respondent's section 3 notice, if same were properly considered, does set out sufficient facts for the applicant to have taken action in assessing the claim. The claim intended was set out, the hospital concerned and the records which could be interrogated by the applicant was properly identified. In the premises, I find that the section 3 notice complied with the provisions of section 3(2)(b)(i) and (ii) of the Act.

<u>Failure to comply with the provisions of section 4(2) of the Act.</u>

[34] It is common cause on the papers that the respondent did not follow the procedures

[20] Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd 2010 (4) SA 109 (SCA) at para [13]. See: Mohlomi v Minister of Defence 1997 (1) SA 124 CC at para. [9].

prescribed in section 4(2) of the Act. It has been held that these procedures are peremptory and condonation is required in the absence of compliance therewith – see: Gcam-Gcam v Minister of Safety and Security (187/11) [2017] ZAECMHC 31 (12 September 2017) at para. 19.

[35] In the premises, I find that the respondent has failed to comply with the provisions of section 4(2) of the Act.

[36] The last arrow in the applicant's bow is that the respondent has waived his right to apply for condonation. This is raised in the applicant's heads of argument. The applicant referred the court to Mutual Life Insurance Co of New York v Ingle 1910 TPD 540 at 55, where the following was said:

> *"Waiver is the renunciation of a right. When the intention to renounce is expressly communicated to the person affected he is entitled to act upon it, and the right is gone. When the renunciation though not communicated, is evidenced by conduct inconsistent with enforcement of the right, or clearly showing an intention to surrender it, then also the intention may be acted upon, and the right parishes."*

[37] In this regard the applicant relies upon the fact that the respondent says in the answering affidavit that he is not going to apply for condonation. However, what the applicant misses is this – the respondent expresses the view that no condonation is required and therefore the respondent does not intend to apply for condonation. This in my view does not amount to a waiver by the respondent of the right to apply for condonation. This view is fortified by counsel for the respondent's confirmation that condonation will be sought if the court finds that same is required. In any event, in the email of the respondent's attorney, the intention was clearly stated that the respondent intends to apply for condonation. If a party does not expressly waive a right, and waiver is to be inferred, the conduct relied upon must be such as are more consistent, on a reasonable view thereof,

with an intention to waive the right in question – see: Coppermoon Trading 13 (Pty) Ltd v Government of the Province of the Eastern Cape and Another (1949/05) [2019] ZAECBHC 16; 2020 (3) SA 391 (ECB) (18 June 2019) at para. 25. In para. 27 of Coppermoon, the following is said:

> *"The burden of proof is on the party who alleges that an election has been made, or that a right has been a waived. By reason of the fact that no-one is presumed to waive his rights, clear proof is required of an intention to do so. (Ellis and Others v Laubscher 1956 (4) SA 692 (A) at 902E). In Laws v Rutherford 1924 AD 261 (at 263) the position was stated as follows: "The onus is strictly on the appellant. He must show that the respondent, with full knowledge of her right, decided to abandon it, whether expressly or by conduct plainly inconsistent with an intention to enforce it." (Also Montesse Township & Investments Corporation v Gouws & Another supra at 381B; Borstlap v Spangeberg supra at 704; Feinstein v Niggli and Another supra at 698H, and The Road Accident Fund v Mothupi supra at para [19].) The conduct from which waiver is to be inferred, must be unequivocal, "that is to say, consistent with no other hypotheses" (The Road Accident Fund v Mothupi supra at para [19]).)"*

In my view, the applicant has not satisfied the onus resting upon her to prove that the respondent has waived his right to approach court for condonation.

The effect of the findings above

[38] Whether condonation should be granted or not is not at issue in this application. What is at issue is whether the court must shut the doors of court to the respondent on the findings that the section 3 notice was addressed to the wrong person and that the procedures provided for in section 4(2) have not been complied with and whether this court should force the respondent to apply for condonation for its remiss.

[39] In Maharaj and Others v Rampersad[21], the Appellate Court held that:

[21] 1964 (4) SA 638 (A) at 646C-D.

"The inquiry, I suggest, is not so much whether there has been 'exact' 'adequate' or substantial' compliance with this injunction but rather whether there has been compliance therewith. This enquiry postulates an application of the injunction to the facts and resultant comparison between what the positions is and what, according to the requirements of the injunction, it ought to be. It is conceivable that a Court might hold that, even though the position as it is not identical with what it ought to be, the injunction has nevertheless been complied with. In deciding whether there has been a compliance with the injunction the object sought to be achieved has been achieved are of importance..."

[40] What was the effect of the section 3 not addressed to the Head of the Department and instead to the applicant and sent to the legal department of the applicant. Receipt of the section 3 notice was acknowledged. The purpose of informing the department of the intended proceedings was achieved. Same applies with the respondent's failure to comply with the provisions of section 4(2) of the Act. The purpose of the provisions of that section is to ensure that the department to be sued has indeed received the notice. By acknowledgment of receipt of the section 3 notice by email demonstrates that the notice was received. What further purpose would compliance with the provisions of section 4(2) of the Act achieve that was not yet achieved? I say none.

[41] The Constitutional Court[22] held that:

"Assessing the materiality of compliance with the legal requirements in our administrative law is, fortunately, an exercise encumbered by excess formality. Formal distinctions were drawn between 'mandatory' or 'peremptory' provisions on the one hand and 'directory' ones on the other, the former needing strict compliance on pain of non-validity, and the latter only substantial compliance or even non-compliance. That strict approach has been discarded. Although a number of factors need to be considered in this kind of enquiry, the central element is to link the question of compliance to the purposes of the provision. In this regard O'Regan J succinctly put the question in ACDP v Electoral Commission as being 'whether what the applicant did constituted compliance with the statutory provisions viewed in the light of their purposes." [footnote omitted]

[22] In All-pay Consolidated v Chief Executive Officer, SASSA 2014 (1) SA 604 (CC) at para. 30

[42] In disregarding the strict approach to the enforcement of the provisions of the Act, I am of the view that it would be wrong to close the doors of the court to the respondent at this stage. The Act makes provision for condonation. Whether the respondent will cease this opportunity is up to the respondent.

[43] The court is empowered to determine its own process and is obliged to ensure the speedy finalization of matters. What must happen next is that the applicant must deliver its plea if so advised. The order I intend to make will provide for this.

Costs

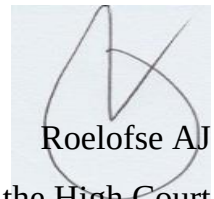
[44] There is no reason why costs should not follow the result.

[45] In the premises, I make the following order:

(a) The application is dismissed.

(b) The applicant is ordered to pay the respondent's costs.

(c) The respondent is ordered to file and deliver her plea within 10 days of the date of this order.



Roelofse AJ

Acting Judge of the High Court

DATE OF HEARING: 12 August 2021

DATE OF JUDGMENT: 23 August 2021

APPEARANCES

FOR THE APPLICANT:	Mr. Raath of Adendorff Theron Inc.
FOR THE RESPONDENT:	Adv. Lindhoudt
INSTRUCTED BY:	Mabasu Attorneys