IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 743/2009

DATE: 9 DECEMBER 2010

In the matter between:

DANIE MARTHINUS MAART Applicant

and

MINISTER OF DEFENCE 1st Respondent

CHIEF OF SOUTH AFRICAN DEFENCE FORCE 2nd Respondent

COL LOUIS CORNELIUS HOFFMAN N.O. 3rd Respondent

J U D G M E N T

(Application for Leave to Appeal)

DAVIS, J:

This is an application for leave to appeal against the judgment of this Court on 2 September 2010. Reasons for dismissing the application was set out comprehensively in the written judgment and I do not intend to traverse the dispute save where it is strictly necessary.

The essence of the finding of the Court was that the delay in instituting review proceedings by applicant, was so unacceptably long, that a condonation application could not be justified in the circumstances. Mr Bodart, who appears again for the applicant, provided me with very comprehensive reasons as to why leave to appeal should be granted and has, in essence, honed in on the strongest possible point which applicant can raise.

It is this, even though the applicant appears to have been discharged from the South African Defence Force in 1989, that is more than 21 years ago, there was, as Mr Bodart put it, an interruption in the process. That interruption having been caused by the respondents instituting boards of inquiry as set out in the principal judgment. In other words, Mr Bodart submits that it would be unfair to take account of the full 21 year delay and that the delay is for a much shorter period. Given the injustice, which he submits has been suffered by applicant, it would only be in the interests of justice to condone a relatively short delay and allow the merits of the dispute to be canvassed.

As I noted in the principal judgment, whatever the dispute with regard to delay, the founding affidavit provides no explanation as to why between December 2006 and 26 June 2008,

applicant took no action to expedite the process, nor did he take the Court into his confidence as to the reasons for this delay. That in itself is a delay of more than 18 months, I might add a period significantly in excess of the period prescribed by the legislation for the institution of a review.

At the least it could have been expected from the applicant, given the fact that there was the longer delay of more than 21 years since his dismissal, was for an adequate explanation as to an excessive delay of more than 18 months. Mr Bodart was constrained to concede that no explanation was provided in this regard. A suggestion made both in the application for leave to appeal and in submission made by Mr Bodart during the hearing, was that this Court was incorrect to have taken account of the decision in Gqwetha v Transkei Development Corporation Limited & Others 2006(2) SA 603 (SCA), namely that not only is finality important, but when the delay takes place within the context of an employment relationship, the prejudice caused by that delay is exacerbated, given the kind of evidence that would be required to determine the fairness or otherwise of the dismissal.

Mr Bodart is correct when he submits that this dispute is strictly not one that falls within this context. However in substance, the dispute would have to canvass issues not

dissimilar from those which vexed Nugent, JA in Gqwetha to employment questions. Even if I do not take account of the inordinate delays prior to December 2006, the fact is that this Court would be asked to condone an application which would then require a determination of a dispute that took place more than two decades ago, and in which the applicant has never shown the kind of commitment to resolve the dispute which would justify a condonation; in particular the unexplained lengthy delay between 2006 and 2008.

To the submission by Mr Bodart that this Court overemphasised the policy considerations attendant upon granting a delay of such a nature, the riposte is this: Even he was constrained to concede that this was a most unusual case. To allow condonation in a case like this, would in effect be to gut the very purpose of reviews the provisions that brought expeditiously.

For these reasons, therefore, I cannot see how another court could reasonably come to a conclusion different to this Court. Accordingly **THE APPLICATION FOR LEAVE TO APPEAL IS DISMISSED**. I will not make a costs order in this regard.

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DAVIS, J

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