Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No: 893/2016
Heard on: 05/08/2016
Delivered on: 23/09/2016

In the matter between:

JOSEPH REED	**APPLICANT**
And	
MEC FOR ECONOMIC DEVELOPMENT TOURISM AND ENVIRONMENTAL AFFAIRS, NORTHERN CAPE	**1ST RESPONDENT**
CHIEF EXECUTIVE OFFICER CAPE LIQUOR BOARD	**2ND RESPONDENT**

JUDGMENT

MAMOSEBO J

[1] On 03 May 2016 the applicant, Mr Joseph Reed, applied for a declaratory order in the following terms:

(a) That the applicant complied with the provisions of s 3(1) and 3(2) of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002 (the Act);

(b) Alternatively, condonation for non-compliance with the provisions of s 3(1) and 3(2) of the Act; and

(c) costs of suit.

The first respondent is the MEC for Economic Development Tourism and Environmental Affairs (the MEC) and the second respondent is the Chief Executive Officer, Cape Liquor Board (the CEO). The respondents opposed the application.

[2] On 30 May 2003 the High Court, Tlaletsi AJ, made the following order in Case No 26/2003:

"Na aanhoor van Meneer Erasmus namens die applikant [Joseph Reed] en na deurlees van die betrokke stukke:

Word gelas:

1. *Dat die besluit van die eerste respondent [the Liquor Board] om applikant se aansoek om 'n spesiale dranklisensie (binneverbruik) ten opsigte van 1ste Vloer, 2-8 Markplein, hoek van Markplein en Jonesstraat, Kimberley te weier, tersyde gestel word.*
2. *Dat die aansoek van applikant om 'n spesiale dranklisensie (binneverbruik) ten opsigte van 1ste Vloer, 2-8 Markplein, hoek van Markplein en Jonesstraat, Kimberley, na respondent no.1 terugverwys word wat dit de novo moet oorweeg en daaroor besluit.*
3. *Dat elke party sy eie koste betaal."*

[3] Section 3 of the Act stipulates:

"(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 proceeding(s) –

(i) without such notice; or

(ii) upon receipt of a notice which does not comply with all the requirements set out in ss (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 s 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 ss (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 s 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 ss (2)(a), the creditor may apply to

a court having jurisdiction for condonation of such failure." (emphasis added)

[4] From the above the applicant undoubtedly knew the identity of the organ of state and the facts giving rise to the debt. The applicant's contention, however, is that a claim for R40 million damages against the respondents is not a debt and that, therefore, prescription does not apply to his claim. It was also argued by his counsel, Mr Kammies that prescription does not apply to a court order. The applicant further contended that the Liquor Board is not an organ of state as envisaged in the Act and further questioned the authority of Mr Kebaeng Timothy Makhale to depose to the answering affidavit on behalf of the respondents.

The Authority of Mr Makhale

[5] The applicant stated the following in his Replying Affidavit:

"The identity of the author of the first and second respondents' answering affidavit is unknown to me as I never had any previous dealings with him and I am unaware of his position with the second respondent."

This contention is unclear as the deponent unambiguously stated under oath that he is Mr Kebaeng Timothy Makhale, Chief Financial Officer of the Northern Cape Liquor Board, and was duly authorised to depose to the affidavit. The applicant should have provided a basis for his contention. His statement is inadequate to make out a case for lack of *locus standi.* **I therefore find that this argument lacks merit and stands to be dismissed.**

Are the respondents organs of state?

[6] The applicant makes the averment at para 12 of his founding affidavit:

"During consultation with my attorney and in line with the decision of ***Nicor IT Consulting (Pty) Ltd v North West Housing Corporation*** 2010 (3) SA 90 (NWM), *I was advised that the 1st and 2nd respondent do not qualify as organs of state as envisaged in the Act but it would be safe to give notice of institution of legal action proceedings. Due notice was given by my attorneys, marked annexure "JR2". I further submit that the damages in this matter do not constitute a debt as envisaged by the Act which will reflect from the quoted case law supra."*

[7] Section 1 of the Act defines an organ of state as:

"(a) any national or provincial department;

(c) any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in s 142 of the Constitution;

(g) any person for whose debt an organ of state contemplated in paragraphs (a) to (f) is liable."

See ***Dirk Links v Member of the Executive Council, Department of Health, Northern Cape Province*** [2016] ZACC 10 also reported as 2016 (5) BCLR 656 (CC)*;* 2016 (4) SA 414 (CC); ***Rehoboth Development CC and Others v Sol Plaatje Municipality Case No 2147/2010 delivered (10.10.2014).***

In my view, the MEC and the Liquor Board are organs of State and were therefore entitled to be given a notice as envisaged in s 3(a) of the Act.

[8] "JR2" is not a notice but the ***Nicor IT Consulting*** judgment (supra) that was attached to the Founding Affidavit. On 27 May 2016 the respondents issued a notice to the applicant in terms of s 35(12) and (14) of the Act requesting the applicant to produce the notice in terms of s 3(4) of Act 40 of 2002 referred to as "JR2" in para 12 of the Founding Affidavit dated

03 May 2016. It can be safely inferred that when this request was made the required notice was not yet issued or received by the respondents because the said notice was filed with the Registrar on 07 June 2016. I have noted, however, that the notice was sent by Justin Pillay Attorneys to the CEO of the Liquor Board by registered post on 08 April 2014.

[9] A simple calculation shows that from 31 March 2004 when the outcome of the unsuccessful application was confirmed to Theunissen Attorneys to 08 April 2014, when the notice was dispatched by registered mail, a period of 10 years has lapsed. In addition, the respondents only received the filed copy of the notice by 23 June 2016, a further two years later. The question is can it be declared, as sought by the applicant in the relief claimed, that he has complied with the provisions of secs 3 (1) and (2) of Act 40 of 2002? The Act requires the notice to be issued within the 6 months from the date on which the debt became due. In my view, the debt became due by 31 March 2004.

The **Condonation issue**

[10] Section 3(4) (b) stipulates:

"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."

[11] The applicant's submission is that the dispute arose in 2002 when he applied for a liquor licence which was declined by the MEC: Northern

Cape Liquor Board. His then legal representative, Mr Erasmus, launched an application within six months of the decision. He does not say when he served the respondents with a notice or that he did so within the six months.

[12] The applicant claims not to have received a copy of the Court order nor had any sight thereof. He does not elaborate on why he could not obtain a copy of the order upon its issue or shortly thereafter except to state that: "*the said order must have been removed by either the second respondent [the Liquor Board] or their attorney of record at the time and the content of the said order was never communicated to me due to the fact that* ***my attorney of record at the time*** *withdrew before the order was issued.*" Remarkably, the applicant does not mention who his attorney of record was who withdrew before the order was issued. It was incumbent upon him, or any interested party for that matter, to obtain the order from the Registrar. It is a public document.

[13] The applicant says that he realised that a third party was selling liquor from the same premises that he had applied to operate from. He approached the office of the Registrar of the High Court and subsequently filed this application. He makes this averment at para 11 of the Founding Affidavit:

"As a result of the non-compliance [by the MEC and the Liquor Board] with the court order I suffered severe financial damages which mean the debt that I am trying to recover only arose recently. I want to add that only five (5) months prior to the notice to the 1st and 2nd respondent of intended legal proceedings, I received notice that the licence on the premises for which I applied was issued to a third person in direct

[disregard] of an existing court order. At all relevant times I was awaiting the 1st and 2nd respondent to comply with the court order."

[14] On 07 April 2014 Mr Justin Pillay of Justin Pillay & Associates addressed a letter to the CEO of the Liquor Board under the subject **JOSEPH REED/YOURSELF: LIQUOR LICENSE: PUB NO NAME – CASE NUMBER: 26/03** the contents of which are quoted in full:

"14.1 We refer to the abovementioned matter and confirm that we are acting on behalf of Mr Joseph Reed.

14.2 It is our instructions that during May 2002 Mr Reed [was] trading as Pub No Name from 1st Floor, 228 Markplein, Corner of Markplein and Jones Street, Kimberley on a temporary license.

14.3 He subsequently, during May 2002, applied to this Board for a permanent liquor license in respect of the premises described in paragraph 2 above, which application was declined by the Board.

14.4 The Board's decision subsequently led to a civil matter in the High Court Kimberley under Case Number 26/03. After hearing counsel for both applicants and respondents in the said matter, the court reversed the [decision] of the respondent (Liquor Board) ordering that the matter should be referred back to the Liquor Board to reconsider their decision de novo.

14.5 Since the granting of that court [order] up until today, the Board has failed to comply with the court order and instead issued a license to a different applicant in respect of the same premises.

14.6 During the time that our client operated from the premises in dispute, client had a turnover between R100 000 and R150 000 per month and as a result of the negligence of the Board, suffering a severe loss which resulted in his complete bankruptcy.

14.7 We submit that the damage incurred by our client is the result of your sole negligence.

14.8 We further submit that prescription does not run in respect of a court order and client was at all stages adhering to the court order by awaiting your reconsideration of his original application.

14.9 Furthermore, client was defamed by yourself through newspaper articles which articles also misled the public, indicating that no license will ever be issued in respect of the property in dispute.

14.10 As a result [of your] negligence our client suffered extensive damages in the amount of R40 million, which amount is calculated as follows:

14.10.1	*Loss of income*	*R15 million*
14.10.2	*Loss of property*	*R4 million*
14.10.3	*Legal costs*	*R1 million*
14.10.4	*General damages*	*R20 million*

14.11 In the light of the above it is our instruction to claim from you the amount of R40 million in damages as stipulated above, which amount is payable within thirty (30) days of delivery of this notification."

[15] Mr Makhale, the CFO, of the Liquor Board, deposed to the Answering Affidavit on behalf of the respondents. According to him the applicant was issued with temporary liquor licences which were issued by a Magistrate in terms of s 28 of the Liquor Act, 27 of 1989, (Liquor Act 27 of 1989 was amended by Act 60 of 1989, 40 of 1993, 105 of 1993 and 57 of 1995. It was later repealed by s 46 of Act 59 of 2003). He explained that a temporary licence could only be renewed to a maximum six times for a period not exceeding one month on each occasion. The application for a permanent liquor licence by the applicant was considered by the

Liquor Board and pending the decision, a hearing was conducted. The application was met with objections from the stakeholders or interested parties and was unsuccessful.

[16] Mr Makhale's assertion is correct. On 08 April 2004 Mr Theunissen, an attorney, addressed a letter to the Liquor Board following up on the unsuccessful application. He asked the Board to expatiate on the phrase *"public interest"* which is *" egter 'n baie wye begrip en graag verneem ons van u u redes ten opsigte van in watter opsigte dit nie in die 'public interest' is nie".*

The applicant therefore flatly contradicted his own attorney. It will be noted that Mr Theunissen certainly received the Liquor Board's report to the applicant because the concept or phrase "public interest" is used in para 5 of the Liquor Board's report quoted immediately below (para 17).

[17] On 22 April 2004 the Northern Cape Liquor Board addressed its response to Theunissen Attorneys under the subject **"JOSEPH REED/NORTHERN CAPE LIQUOR BOARD - REASONS FOR REFUSAL OF APPLICATION".** The attorneys were informed that the transcript of the proceedings would be furnished to them in due course. They were informed on 31 March 2004 that the applicant's application was unsuccessful. At para 3 the letter reads:

"*(3) In arriving at its unanimous decision of not granting the application, the Liquor Board took the following matters into consideration:*

3.1 There were objections raised by the business community, the representatives of whom gave oral testimony before the Board and were cross-examined by you [meaning Mr Theunissen].

The gist of the objections by this sector of the community is to the effect that on a previous occasion, your client operated a liquor license similar to the one applied for on a temporary basis.

Temporary licences, as you are aware, are issued by the Magistrate without reference to the Provincial Liquor Board. It is during the course of this temporary operation that the businesses in and around the area experienced the following problems:

3.1.1 Patrons urinating in public;

3.1.2 Vomiting on the pavements;

3.1.3 Dirt and all sorts of refuse dumped on the pavements and in the surrounding streets;

3.1.4 Noise emanating from loud music played from the liquor outlet; and

3.1.5 Patrons would come with their braai stands and braai meat on pavements.

It was a further contention of the business community that as a result of all these factors, business houses in the area were left with filthy surroundings and, their clients and customers were no longer attracted to the business district.

The effect again of all these circumstances would be very adverse to the well-being of the city of Kimberley from a tourism point of view as well. The overall view of the business community appears from the oral evidence of Hendrick Louw and Mrs Parsons, and is also documented in the letter/fax dated 25 March 2004 and hereto attached marked "AA". A copy of this letter was faxed to you on 29 March 2004 before you appeared before the Liquor Board on behalf of your client.

3.2 The City of Kimberley falls under the jurisdiction of Sol-Plaatje Municipality. The Liquor Board deemed it fit to act in terms of section 12 of the Liquor Act, 1989 (29 of 1989)(the Act) and caused officials of that

council to be present at the meeting where the application was heard. The said council in the person of Ms Marlene Viljoen, attended the meeting. Ms Viljoen is the CBD Manager of the City council, and in her capacity she had received numerous complaints during the existence and tenure of your client's temporary licence. Needless to say, these complaints are also well documented in a letter dated 25 March 2004 hereto attached and marked "BB". A copy of this letter was also faxed to you before the meeting where your client's application was heard by the liquor board. Ms Viljoen also gave oral evidence and was cross-examined at length by you.

3.3 The police were also invited to the meeting vide s 12 of the Act in order to enlighten the Board on the issue of crime in and around the area in question. The document hereto attached and marked "CC" was handed in at the meeting by Inspector Witbooi of the Kimberley Drank and Vuurwapen Unit without you objecting to the contents thereof.

4. The premises from which your client wishes to carry on trade for which he has applied are situated in the central business district of the city of Kimberley. It was a matter of common cause during the course of the proceedings that the premises do not belong to him and that at the time of the hearing of the application, your client did not hold any title to the said premises.

In reply to a question by the Deputy Chairperson of the Liquor Board regarding your client's right to occupation of the premises, your response was that your client was about to enter into an agreement of lease of the premises with the owner of the premises.

When the Board finally took its decision not to grant the licence, this matter had not been canvassed to the satisfaction of the Board that the applicant/your client has the right to occupy the premises.

5. The objections and concerns raised by the business community, the city council and the police are such that in the mind of the Liquor Board it could not be decided that the granting of the Licence would be in the ***public interest****. On the contrary, there is evidence before the Board, which indicates that it would be to the inconvenience of the public and therefore not their interest if this application is granted."*

[18] Mr Makhale contended, correctly, that based on the unsuccessful application, the applicant was not a licence holder and could not have suffered damages through a liquor licence he never possessed. He maintained that the applicant's legal representatives had a duty to communicate the outcome to him. I did not discover any termination of Mr Theunissen's mandate from the papers; neither did the applicant make such intimation. Mr Theunissen was allegedly removed from the roll to practice as an attorney at some stage. The onus rested on the applicant to notify the respondents of the terminated mandate or him being struck from the roll and to provide a new address for the service of court processes. This was not done.

[19] It is also evident from the papers that the applicant was legally represented by Mr Theunissen who entered into correspondence with the Liquor Board on his behalf who even attended the enquiry where he cross-examined all the people who testified before the Board. Mr Theunissen was also furnished with the transcript of what transpired. The applicant therefore lied. He is not even a good liar.

Has the debt been extinguished by prescription?

[20] R40 million is an astronomical amount of money. It is incomprehensible that the applicant argued that a claim for R40 million in damages is not a

debt as contemplated in s 3 of the Act. The question is when did it become due and payable? The applicant claims that the cause of action arose in May 2002 when the Board declined to grant him a permanent liquor licence, which makes his task even more onerous. On 12 March 2004 Adv TI Rakgoale, in his capacity as the Chairperson of the Board, wrote a letter to Mr CJ Theunissen, the applicant's attorney and agent, extending an invitation to him to attend the enquiry to consider the application for a liquor licence in respect of : Pub No Name: Mr Joseph Reed. It was stated in that letter that the Board wished to determine if granting the licence would be in the interests of the public.

[21] As pointed out earlier all processes were served on Mr Theunissen or correspondence directed to him. Of relevance is Rule 4 (1)(aA) of the Uniform Rules of Court in respect of which the remarks by Flemming DJP in ***Eskom v Soweto City Council*** 1992 (2) SA 703 (WLD) at 705H –I are apposite:

"As to when and how the attorney's authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See Rule 7(1). Courts should honour that approach. Properly applied, that should lead to elimination of the many pages of resolutions, delegations and substitutions still attached to applications by some litigants, especially certain financial institutions."

[22] The second requirement is that good cause for the delay has to be shown. Heher JA in ***Madinda v Minister of Safety and Security*** 2008 (4) SA 312 (SCA) at 317B – G made the following remarks:

"'Good cause for the delay' is not simply a mechanical matter of cause and effect. The court must decide whether the applicant has produced acceptable reasons for nullifying in whole, or at least substantially, any culpability on his or her part which attaches to the delay in serving the notice timeously. Strong merits may mitigate fault; no merits may render mitigation pointless. There are two main elements at play in s 4(b), viz the subject's right to have the merits of his case tried by a court of law and the right of an organ of state not to be unduly prejudiced by delay beyond the statutorily prescribed limit for the giving of a notice. Subparagraph (iii) calls for the court to be satisfied as to the latter. Logically, subparagraph (ii) is directed, at least in part, to whether the subject should be denied a trial on the merits. If it were not so, consideration of prospects of success could be entirely excluded from the equation on the ground that failure to satisfy the court of the existence of good cause precluded the court from exercising its discretion to condone. That would require an unbalanced approach to the two elements and could hardly favour the interests of justice. Moreover, what can be achieved by putting the court to the task of exercising a discretion to condone if there is no prospect of success? In addition, that the merits are shown to be strong or weak may colour an applicant's explanation for conduct which bears on the delay: an applicant with an overwhelming case is hardly likely to be careless in pursuing his or her interest, while one with little hope of success can easily be understood to drag his or her heels. As I interpret the requirement of good cause for the delay, the prospects of success are a relevant consideration."

[23] The learned judge added at para 14:

"[14] One other factor in connection with 'good cause' in s 3(4)(b)(ii) is this: it is linked to the failure to act timeously. Therefore subsequent

delay by the applicant, for example in bringing his application for condonation, will ordinarily not fall within its terms. Whether a proper explanation is furnished for delays that did not contribute to the failure is part of the exercise of the discretion to condone in terms of s 3(4), but it is not, in this statutory context, an element of 'good cause'."

[24] It is apparent that the Board invited representation from the business community, the local municipality, the South African Police Services as well as the applicant's legal representative to participate in reconsidering the application as the Court has ordered. It is therefore misleading for the applicant to state that: *"It is only recently that I have realised that the 2nd respondent must have issued a liquor licence on the same premises that I have applied for when I noticed a different person operating from the same premises and that part of that business was the sale of liquor."* The applicant does not specify when exactly is "recently". He further states that on an unspecified date he approached the Registrar of the High Court to establish whether there was any other order under the previous case number.

[25] The outcome of the unsuccessful application was communicated to the applicant's attorney by 31 March 2004 he waited until 03 May 2016 when he filed the Notice of Motion, 12 years later. This was not the first available opportunity for him to activate the matter. Reasonable time in my view, taking into account all the circumstances, would have been about three months later. In any event, the unexplained period of 12 years is an eternity. I am also of the view that the applicant does not have any, let alone reasonable, prospects of success on the merits. The applicant's explanation is flimsy to the point of being laughable.

The Prescription Period

[26] The Court may grant condonation for failure to serve an organ of state with a notice **if the court is satisfied** that: (i) the debt has not been extinguished by prescription. See s 3(4)(b) of the Act. The applicant is incorrect to assume that his claim is not amenable to prescription. Sec 12 of the Prescription Act 68 of 1969 stipulates:

"(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.

(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

[27] In ***Links v MEC for Health, Northern Cape*** [2016] ZACC 10; 2016 (5) BCLR 656 (CC); 2016 (4) SA 414 (CC) Zondo J writing for the unanimous court remarked as follows at para 26:

"The provisions of section 12 seek to strike a fair balance between, on the one hand, the need for a cut-off point beyond which a person who has a claim to pursue against another may not do so after the lapse of a certain period of time if he or she has failed to act diligently and on the other the need to ensure fairness in those cases in which a rigid application of prescription legislation would result in injustice. As already stated, in interpreting section 12(3) the injunction in section 39(2) of the Constitution must be borne in mind. In this matter the focus is on the right entrenched in section 34 of the Constitution."

[28] The question is when did the applicant gather knowledge or become aware of the facts from which the debt arose? It is clear from the letter addressed to Theunissen Attorneys dated 22 April 2004 that Mr Theunissen was informed on 31 March 2004 that the applicant's application for the licence was unsuccessful. That Mr Theunissen was struck from the roll of practicing attorneys should have been conveyed to the Liquor Board by the applicant and should have informed the Board where to direct his processes or communications to. To sleep for 12 years and then to blame a non-existent attorney is fallacious. To make matters worse is that Mr Theunissen's statement was not obtained for his version of the events. If he refused to depose to an affidavit the applicant must then have said so. In ***Salojee & Another v Minister of Community Development*** 1965 (2) SA 135 (A) 140H – 141C Steyn CJ said:

"I should point out, however, that it has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with his attorney. There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations ad misericordiam should not be allowed to become an invitation to laxity. In fact this Court has lately been burdened with an undue increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are."

[29] I could not discern any communication from the papers that Mr Theunissen was not mandated to receive any communication or processes on behalf of the applicant and also to participate at the enquiries conducted. In truth I hold Mr Theunissen blameless because he seems to have discharged his mandate diligently.

[30] Zondo J said the following in the ***Links v MEC for Health, Northern Cape*** (supra) at para 30:

"The first issue is what the facts are from which a debt arises. Obviously, these are facts that are material to the debt. Counsel for the respondent submitted that the ordinary meaning of the phrase "debt is due" is that a debt is "owing and already payable." In support of this submission he referred to Lagerway [Lagerway v Rich and Others 1973 (4) SA 340 (T) at 345]. He also referred to Drennan [Drennan Maud & Partners v Town Board of the Township of Pennington [1998] ZASCA 29; 1998 (3) SA 200 (SCA) at 212 G and I] where Harms JA said:

'In short, the word 'debt' does not refer to 'cause of action', but more generally to the 'claim'... In deciding whether a 'debt' has become prescribed, one has to identify the 'debt', or, put differently, what the 'claim' was in the broad sense of the meaning of the word.'"

[31] Having regard to all the factors discussed above I am satisfied that the application had no substance on the merit and was bad in law and must fail. The applicant must incur the wasted costs.

[32] In the result the following order is made:

1. **The application for condonation for the failure to comply with section 3 of the Institution of Legal Proceedings against certain Organs of State Act, 40 of 2002 is refused.**
2. **The application is dismissed with costs.**

MAMOSEBO J
NORTHERN CAPE DIVISION

For the applicants:	Adv EJP Kammies
Instructed by:	Thomas Kouter Attorneys
For the 1st & 2nd respondents:	Adv SE Motloung
Instructed by:	Office of the State Attorney