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IN THE HIGH COURT OF SOUTH AFRICA
BOPHUTHATSWANA PROVINCIAL DIVISION

In the matters between:-

[i] KEBOGILE LOBISA NGAMOLE v SOUTH AFRICAN SOCIAL SECURITY AGENCY, Case No. 1033/08;
[ii] MANTWA KLAAS MOTSHWAIWA v SOUTH AFRICAN SOCIAL SECURITY AGENCY, Case No. 1025/08;
[iii] KLAAS BAODIGILE LETEBELE v SOUTH AFRICAN SOCIAL SECURITY AGENCY, Case No. 1024/08;
[iv] MOSACHWAMAROPE LIZZY MATLAOPANE v SOUTH AFRICAN SOCIAL SECURITY AGENCY, Case No. 1038/08;
[v] ITATENG JOHANNES MODISE v SOUTH AFRICAN SOCIAL SECURITY AGENCY, Case No. 1039/08.

CIVIL MATTERS

COUNSEL FOR THE APPLICANTS : ADV ZWIEGELAAR
COUNSEL FOR THE RESPONDENTS : ADV GUTTA

DATE OF HEARING : 28 AUGUST 2008
DATE OF JUDGMENT : 18 SEPTEMBER 2008

JUDGMENT

HENDRICKS J

[A] Introduction:-

[1] Five opposed applications served before me on the 28th August 2008 in which the Applicants applies for orders compelling the South African Social Security Agency ("SASSA") to disclose the outcome of their applications for social security grants, and ancillary relief.

[2] The five cases are:-

[i] Kebogile Lobisa Ngamole v SASSA, Case No. 1033/08;

[ii] Mantwa Klaas Motshwaiwa v SASSA, Case No. 1025/08;

[iii] Klaas Baodigile Letebele v SASSA, Case No. 1024/08;

[iv] Mosachwamarope Lizzy Matlaopane v SASSA, Case No. 1038/08;

[v] Itateng Johannes Modise v SASSA, Case No. 1039/08.

[3] Apart from the different personal circumstances of each of the Applicants and the dates on which their applications for social security grants and subsequent follow-ups were made, these applications are similar.

[4] The same counsel appeared for all the respective Applicants on the one side and one counsel appeared for the Respondent in all five matters. The heads of argument by the respective counsels in all these matters are, save for the aforementioned

differences with regard to the personal circumstances and the application dates, ***verbatim*** the same.

[5] It is for these reasons that the five matters were dealt with as a group.

[B] **<u>Background</u>**:-

[6] The various Applicants applied for social security grants from the Respondent. Different reasons were advanced by the respective Applicants in their applications. They all underwent the required medical examinations. After submitting their applications on the respective dates, they were informed by officials of the Respondent to return within the space of a few weeks to be informed about the outcome of their respective applications, which they did.

[7] The results of their applications were by then not available and the respective Applicants were informed to return on different subsequent dates to enquire about the outcome of their applications. Again, the Applicants complied but to no avail.

[8] Being despondent about the failure of the Respondent's officials to inform them about the results of their applications, the Applicants consulted HST Administrasie (Pty) Ltd ("HST") for assistance and gave them powers of attorney to make inquiries and to act on their behalf.

[9] HST, believing that the Legal Proceedings against Organs of State Act 40 of 2002 applied, sent a notice in terms of section 3 of the Act to the Chief Executive Officer of the South African Social Security Agency (The Respondent). The notice in the first matter quoted abovementioned is herein repeated to serve as an example of these notices.

> "NOTICE OF INTENDED LEGAL PROCEEDINGS IN TERMS OF SECTION 3 OF ACT 40 OF 2002
>
> RE: APPLICATION FOR DISABILITY GRANT: KEBOGILE LOBISA NGAMOLE (ID : 661106 0739 081)
>
> We act on behalf of KEBOGILE LOBISA NGAMOLE in this matter (hereinafter referred to as "our client").
>
> Our client suffers from a permanent disability as she is HIV positive and is therefore totally incapable to work or earn a living and thus owing to physical disability unfit to obtain by virtue of any service, employment or profession the means needed to enable her to provide for her maintenance. She therefore qualifies for a disability grant in terms of Act 59 of 2002 alternatively Act 13 of 2004, read with applicable regulations.
>
> Our client duly submitted a complete application for a disability grant in terms of the Act and the Regulations on 23 November 2007 at the Schweizer Reneke offices of the Department of Social Development North West Province being a designated place and received a receipt, but lost it.

Our client was advised by employees of your Department/the Agency to enquire within a couple of weeks about the outcome of the application.

It is submitted that a period of three months was more than reasonable for your Department/the Agency to consider and decide on the application of our client.

Notwithstanding numerous visits and enquiries by our client, she did not receive any feedback on her application.

Due to the failure of your Department/the Agency to consider the application of our client, she is suffering financially and emotionally.

Our client intends to approach the High Court of the North West Province in Mmabatho for the following relief:

1. The Chief Executive Officer of the South African Social Security Agency (hereinafter referred to as “the respondent”), is hereby ordered:

    1.1 to consider and decide on the applicant’s application for a social grant.

    1.2 to advise the applicant’s attorney in writing of his decision within 15 days of date of this order.

2. In the event of the respondent refusing the applicant’s application for a social grant, the respondent shall provide the

applicant's attorney with written reasons for the decisions having been taken, within 15 days of date of this order.

3. In the event that the applicant's social grant is approved:

3.1 the respondent is ordered to pay the applicant the amounts which would have been paid to her as a social grant during the period 23 November 2007 and the date of approval of her social grant as if her grant had been approved on 23 November 2007;

3.2 the respondent is ordered to pay the applicant interest at the rate of 15.5% per year calculated on the basis that such interest accrued monthly on the monthly amounts that should have been paid to the applicant, starting on 23 November 2007 or 24 February 2008 to date of payment;

3.3 the respondent is ordered to continue paying the said grant to the applicant for as long as the applicant legally qualifies for it.

4. The respondent is ordered to pay the costs of this application.

5. Such further and/or alternative relief is granted to the applicant as the honourable Court deems fit.

If you do not consider and approve the applicants' application for a social grant and advise us in writing of your decision within 30 days of date of delivery of this letter or if you refuse the applicant's application for a social grant and do not provide us with full written reasons for the refusal within 30 days of date of delivery hereof we will instruct an attorney to proceed with the application.

For ease of reference we attach hereto:

1. A copy of our client's identity document as Annexure "A".

Yours faithfully
HST ADMINISTRASIE (PTY) LTD"

[10] The Respondent (SASSA) replied by letter dated 16 April 2008 (incorporating a list of names). The letter reads:

> "We refer to the above notices in respect of claimants listed below and advise that the Agency is obliged to protect the confidentiality of personal information contained in any grant application. We refer you to Act 9 of 2004, Act 13 of 2004 as well as Act 2 of 2000. The Agency can therefore only provide your office with the required information when the requisite power of attorney (written proof of consent by the applicant) in respect of each claim referred to is furnished to us. Compliance with these statutory requirements is therefore a prerequisite.
>
> Further note that in some of these matters and the previous ones referred to us your office, we are concerned that some of your "clients" have lodged an appeal and other are in receipt of the grant they have applied before your "consultation" with them. We advise that we have referred the list below to the relevant local office where they will be assisted and their visit registered and forwarded to us for monitoring."

[11] HST responded to SASSA's letter on 28 May 2008 and enclosed the powers of attorney which the various Applicants have signed on 08 February 2008. No response was forthcoming from the Respondent ("SASSA").

[12] Applications were then launched by the abovementioned Applicants on different dates claiming the following relief:-

"1. That the non-compliance with the time frames in Section 7(1) of Act 3 of 2000 be condoned insofar as is needed.

2. That the non-compliance with the time frames in Section 3 of Act 40 of 2002 be condoned insofar as is needed.

3. The respondent, or the appropriate official of his Department, is hereby ordered:

    3.1 to consider and decide on the applicant's application for a social grant;

    3.2 to advise the applicant's attorney in writing of his decision within 15 days of date of this order.

4. In the event of the respondent refusing the applicant's application for a social grant, the respondent shall provide the applicant's attorney with written reasons for the decision having been taken 15 days of date of this order.

5. In the event that the applicant's social grant is approved:

    5.1 the respondent is ordered to pay the applicant the amounts which would have been paid to her as a social grant during the period 23 April 2007 and the day of approval of her social grant had been approved on 23 April 2007;

    5.2 the respondent is ordered to pay the applicant interest at the rate of 15.5% per year calculated on the basis that such interest accrued monthly on the monthly amounts that should have been paid to the applicant, starting on 23 April 2007 or 24 July 2007 to date of payment;

    5.3 the respondent is ordered to continue paying the social grant to the applicant for as long as she legally qualifies for it.

6. The respondent is ordered to pay the costs of this application."

[13] The Respondent ("SASSA") opposes these applications. In its answering affidavits, two points were raised ***in limine***, namely:-

[i] the non-compliance with section 3 of Act 40 of 2000;

and

[ii] that in terms of section 14 (4) of the South African Social Security Act 9 of 2004 the Respondent is prohibited from divulging personal information about an Applicant and HST was therefore not entitled to such information.

[C] **First point *in limine***:-

[14] In the answering affidavits deposed to by the senior manager Legal Services of the Respondent, Khumo Thetele, in all these matters, it is submitted in paragraph 2 thereof that the Applicant failed to comply with section 3 of Act 40 of 2000 in particular section 3 (4) thereof.

[15] Act 40 of 2000 is the Meat Safety Act. Section 3 and in particular section 3 (4) of this act, has nothing to do with what is contended in paragraph 2 of the answering affidavits. I find it difficult to see how the Meat Safety Act can be applicable to these matters.

[16] Even if it may be that this is a typographical error, it proves that this was a mere reproduction of answering affidavits – maybe on a massive scale – hence the same mistake in all five answering affidavits. To further illustrate this point, all five answering affidavits have two paragraphs marked "3".

[17] Furthermore, the first point ***in limine*** in all these answering affidavits are also totally different from the submissions made in the different sets of heads of argument by counsel acting on behalf of the Respondent in all these matters. In the heads of argument, counsel refers to section 5 (1) of the Promotion of Administrative Justice Act 3 of 2000 and submitted that no request for reasons in terms of this act were made by the respective Applicants.

[18] This has nothing to do with the fact, as submitted in the answering affidavits as the first point ***in limine***, that the Applicants failed to advance sufficient reasons for their delay in bringing the applications timeously and the failure to show good cause for the delay coupled with the prospects of success in launching the applications in terms of section 3 of Act 40 of 2002 (wrongly stated as 2000). In other words, the first point ***in limine*** raised by the deponent to the answering affidavits is entirely different from what counsel for the Respondent argued.

[19] If it is that the deponent to the various answering affidavits had in mind section 3 of the Institution of Legal Proceedings Against

Certain Organs of State Act 40 of 2002, then it means that he must have raised as a point ***in limine*** the fact that no proper or timeous notice was given by the various Applicants before they instituted these applications. Again, this has nothing to do with the Promotion of Administrative Justice Act 3 of 2000 as quoted in the heads of argument on behalf of the Respondent.

[20] I think it is only fair for me to comment that these applications were not thoroughly prepared. I am sure that because of the volumes of these applications now days, their opposition comes in the form of mass reproduction, hence the occurrence of the same mistakes in all these matters.

[21] I am satisfied that in all five these matters, the Applicants advanced sufficient reasons for their delay in bringing these applications timeously. They have shown good cause and have good prospects of success in these applications. I therefore condone the non-compliance with the stipulated time frames in all five abovementioned matters.

[22] It was submitted by counsel acting on behalf of the Respondent in these matters that the Applicants, whose rights have been materially and adversely affected by the administrative action of the Respondent and who have not been given reasons for the action, should have applied for written reasons within 90 days from the date on which they became aware of the action, or might reasonably have been expected to have become aware

of the action in terms of section 5 (1) of the Promotion of Administrative Justice Act 3 of 2000.

[23] HST on behalf of the various Applicants requested the Respondent to consider the Applicants' applications and advance full written reasons for the refusal, in the event the applications are refused. This is evident from the contents of the letter which HST wrote to the Respondent which is quoted above.

[24] The decision whether or not to approve the social grant was not communicated to any of the Applicants. Therefore, it does not make sense that a request be made to have reasons advanced if the decision whether or not the applications are successful is unknown to the Applicants. HST did what was expected of them and requested that decisions be taken to approve the applications and in the event it be refused, to be supplied with full written reasons.

[25] There is in my view no merit in the submission raised in this point ***in limine***. The Applicants did not know until answering affidavits were filed that decisions were taken left alone what these decisions entail.

[26] There is also no merit in the submission that the Applicants failed to give the Respondent 90 days to reply but instead launched the applications prematurely.

[27] I reiterate, for the sake of clarity that the decisions that the grants are disapproved were not communicated, hence no further applications could have been made to be furnished with reasons for these decisions. HST drafted the letter, which in my view amounts to a notice of an intended application to the High Court for an order ***inter alia*** to compel, in such a way that the Respondent, in the event the Applicants' applications be refused, be supplied with full written reasons. This letter is dated 13 March 2008. Instead of simply replying to the letter by informing HST or the Applicants of the decisions of the assessment committee, the Respondent decided to delay the matter even further by not responding.

[D] The Second point *in limine*:-

[28] As a second point ***in limine*** is raised the fact that the Applicants were at first obliged to demand from the Respondent to be informed of the outcome of their applications for disability grants before they would be entitled to lodge their applications. In any event, so it is submitted, HST does not have the authority to act on behalf of the Applicants and are therefore not entitled to confidential information.

[29] In the answering affidavits, in paragraph 6 the following is stated:-

> "On the 25th March 2008, (in the Ngamole matter the date is 13th March 2008) the applicant represented by HST ADMINISTRASIE (EMS) BPK, addressed a letter to the Chief Executive Officer of the respondent giving him notice of their intended legal proceedings in terms of section 3 of Act 40 of 2002. On the 16th April 2008, the respondent replied to the said letter wherein the applicant was advised that the respondent could only provide the applicant's legal representative with the required information when the requisite power of attorney is furnished to them. Attached hereto is a copy of the letter marked "B". The applicant failed to reply to the said letter and failed to furnish the respondent with the power of attorney and proceeded to launch the application on the 7th May 2008. On the 15th May 2008, the respondent advised the applicant that their application was premature. A copy of the letter is attached hereto marked "C". Had the applicant furnished the respondent with the power of attorney, the respondent would have advised the applicant that the applicant's application had been considered by the assessment committee and that his grant had been disapproved. In support hereof, I attach hereto the applicants application together with the recommendation of the assessment committee, which recommendation was signed by the Director General, marked "D". I respectfully submit that the applicant's medical condition and the reasons why his application was disapproved is personal information which could only be divulged on receipt of a power of attorney signed by the applicant."

[30] In answer to these allegations, replying affidavits were filed stating that powers of attorney were indeed supplied. The powers of attorney are dated 08 February 2008. The letter

accompanying the powers of attorney is dated 28 May 2008 and was hand delivered on 03 June 2008 to the Respondent. The answering affidavits were all signed on the 24th June 2008.

[31] So, when the answering affidavits were signed on 24 June 2008, the powers of attorney were already supplied to the Respondent three weeks before this date. The allegation that the Applicants failed to furnish the Respondent with the required powers of attorney is devoid of any truth.

[32] There is therefore no merit in this second point ***in limine*** that the required information could not be supplied to the Applicants' representative HST due to failure on its part to supply powers of attorney.

[33] It is a fact that in none of these cases, did the Respondent inform the respective Applicants of the outcome of their applications for disability grants. Only in the answering affidavits is it stated that "_ *Had the Applicant furnished the Respondent with the power of attorney, the Respondent would have advised the Applicant that the Applicant's application had been considered by the assessment committee and that his grant had been disapproved*".

[34] As already stated, the powers of attorney were indeed timeously supplied. Counsel on behalf of the Respondent, contended that the outcome of the applications are now known

to the respective Applicants by means of what is contained in the answering affidavits. She submitted that it was therefore not necessary for the Applicants to proceed with their applications. I strongly disagree with this submission. It is abundantly clear to me that had the Applicants not launched their applications they would still not have known the outcome of their written applications. This is indeed a strange way (to say the least) of an institution such as the Respondent to communicate their decisions to the Applicants.

[35] No wonder this court is so inundated with applicantions of this nature. I fail to understand why it is so difficult merely to communicate the decisions to the Applicants by letters rather than to defend these numerous applications. It is mind boggling why the Respondent is content to incur such astronomic costs rather then to write a simple letter to inform an Applicant about the outcome of his/her application, which he/she is in any event entitled to know. What a waste of taxpayers money.

[36] Be that as it may, it is indeed true that the Applicants now know that their grants have been disapproved and they are found not to be disabled. Though, in the fifth matter (that of Modise) the last page of Annexure "D" containing the finding of the assessment committee and the Director-General or authorized person is not attached. But as already mentioned, paragraph 6 states that the grant had been disapproved.

[37] However, full reasons why the grants have been disapproved are not known (nor were it communicated). So, for example in the Matlaopane matter the reason for the non-approval of the grant is simply stated as "no complications". Full reasons for the disapproval of the grants must be communicated to the Applicants or the Applicant's attorneys of record.

[E] Costs:-

[38] On behalf of the Respondent it was submitted that a punitive costs order in the form of costs on an attorney and own client scale be awarded in the event the Respondent is successful in defending these applications. I am of the view that costs should follow the result and that a punitive costs order on the scale as suggested by the Respondent be awarded against the Respondent.

[39] I must strongly express my disapproval with the manner in which the Respondent conducted itself in the handling of these matters.

[40] At first it is discourteous (to say the least) of the Respondent not to inform the Applicants of the outcome of their applications. Instead of doing so, they send the Applicants from pillar to post and wasting the Applicants time to the extent that the Applicants had to engage the services of HST to assist them.

This, when the outcome must be communicated, because the Applicants are entitled to know the outcome of their applications.

[41] If this is not enough, the Respondent, instead of simply communicating it's decision per letter as they are duty bound to do, want to hide behind technicalities.

[42] Though, everybody has the right to defend any legal action or application, it was in my view not necessary to do so in these instances. This in my view is done with the sole purpose of delaying the matter and to frustrate the Applicants even further. If the outcome of the decision by the assessment committee was timeously communicated, all this could have been avoided.

[43] The fact that the Respondent disingenuously stated that the powers of attorney were not supplied when in fact it was long before the launching of these applications hand delivered to their offices is also a factor that I considered.

[F] Order:-

Therefore, I make the following orders in respect of all five matters:-

[1] Condonation is granted for the non-compliance with the time frames.

[2] The Respondent is ordered to provide the Applicant's Attorney with full written reasons for the decisions to refuse the Applicant's applications within fifteen (15) days of the date of this order.

[3] The Respondent is ordered to pay the costs in each of the abovementioned five matters on an attorney and client scale.

R D HENDRICKS

JUDGE OF THE HIGH COURT

ATTORNEYS FOR THE APPLICANTS: