



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 1 JULY 2021

Status: Immediate

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Ethekwini Municipality v Crimson Clover Trading 17 (Pty) Ltd t/a Island Hotel
(Case no 280/2020) [2021] ZASCA 96 (1 July 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the KwaZulu-Natal Division of the High Court, Durban (high court).

The issue before the SCA was whether condonation ought to have been granted to the respondent, Crimson Clover Trading 17 (Pty) Ltd t/a Island Hotel, for its failure to serve on the appellant, Ethekwini Municipality, a notice in terms of s 3(2) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 (the Act).

On 8 May 2016, the Island Hotel, owned by the respondent and situated on a spur of land bordered by the Isipingo Estuary and the Isipingo Riverfront, was flooded and suffered extensive damage. Santam Limited (Santam), the insurer of the respondent, instructed loss adjustors to determine the cause of the incident. On 19 July 2017, the respondent served on the appellant a notice in terms of s 3(2) of the Act. By then it had ascertained that the cause of the flooding was attributed to the Isipingo River mouth being blocked by a sand bar. The respondent held a view that the appellant was responsible to excavate the sand bar. On 12 September 2018, the respondent launched its application for condonation for failure to serve the appellant with the s 3(2) notice within the prescribed period of six months. The high court noted that there was a considerable and unexplained delay by the respondent. Despite this, the court granted the respondent condonation for the late service of its s 3(2) notice.

The SCA held that that the delays occasioned by the respondent could not be explained. Furthermore, the SCA held that there were no compelling reasons to persuade the Court that there were good prospects of success on the merits.

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