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: 24 April 2026

Status: Immediate

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Van der Vyver Transport (Pty) Ltd v The Minister of Labour and Others (1117/2024) [2026] ZASCA 58 (24 April 2026)

Today, the Supreme Court of Appeal (SCA) handed down judgment in an appeal against the majority judgment of the Western Cape Division of the High Court, Cape Town (the full court), sitting as a court of appeal.

The appeal concerned the appellant's review application relating to the tariff used to calculate the amounts the appellant contributed annually to the Compensation Fund (the Fund). The high court dismissed the appellant's application for leave to appeal, which was subsequently granted by this Court to the full court. The majority of the full court dismissed the appeal, while the minority would have upheld the appeal. The appeal was with the special leave of the SCA.

In the high court, the appellant sought to review a failure to take a decision. The department averred that the appellant had failed to explain why its application was brought outside the 180-day period required by s 7(1) of Promotion of Administrative Justice Act (PAJA). This found favour with the high court, which held that the appellant had brought the application outside the 180-day period as required by s 7(1) of PAJA, without an application for extension of that period in terms of s 9 of PAJA. The high court dismissed the appellant's application without considering the merits of the application.

Before the full court, the majority dismissed the appellant's appeal on the basis that the review application was brought outside the 180-days period without an application for an extension of this prescribed period, in addition there was a failure to exhaust internal remedies as required by s 91 of the Compensation for Occupational Injuries and Diseases Act before instituting the proceedings. The minority would have upheld the appeal on the basis that condonation for the late filing of the review application was justified in the interests of justice. Regarding the exhaustion of internal remedies, the minority concluded that s 91 was not applicable in the circumstances of this case.

Before the SCA, being a threshold jurisdictional point, the issue concerning the appellant's late review application had to be determined first. The appellant submitted that, because it seeks to review a failure to take a decision, it is unclear when the 180-day period in terms of s 7(1) of PAJA would commence. In March 2015, Workers Compensation Assistance (WCA), on behalf of the appellant, had lodged a complaint with the Public Protector concerning the

department's failure to reconsider the impugned assessment rate. As of September 2018, three years later, without any positive response from the department, the WCA advised the appellant to consider legal action. At that point it would have been clear to the appellant that a dead end had been reached in its efforts to engage the department on the assessment rate.

Counsel for the appellant fairly accepted the proposition that the 180-day period started running from that point. The appellant, therefore, had at the very latest by March 2019, to bring a review application. It only did so in May 2020, some 20 months later. In terms of s 9 of PAJA, the 180-day period may be extended by the court on application where the interests of justice so required. Counsel for the appellant submitted that, notwithstanding the lateness of the application, the period should have been extended. It is also by no means clear that the appellant has demonstrated strong merits in the review application. It seeks a rebate for what it considers to be a surplus due to 'overpayment'.

The SCA held that, applications for an extension of the 180 days under s 9 of PAJA have been treated by our courts essentially as condonation applications. The principles relating to condonation applications are trite. They were restated by the Constitutional Court in *Van Wyk v Unitas Hospital.* In the present case, the appellant does not come out of the starting stalls. It provides no explanation at all for the entire 20-month period of delay. Counsel for the appellant contended that despite this, the SCA should nonetheless consider prospects of success, which, he submitted, could compensate for the lack of explanation for the delay. In addition, to also consider that the founding affidavit sets out all the steps taken by the appellant to engage the department.

The SCA further held that, there were two further considerations. The first related to the nature of the discretion exercised by the high court. The second concerns prejudice. Having regard to the judgment of the high court and the reasons underpinning it, there is no suggestion that it did not exercise its discretion judiciously. The full court could only interfere with the high court's discretion if it was not judicially exercised. It thus had no basis to interfere with the high court's discretion.

Regarding prejudice, the department asserted that it is not possible to recover documents dating back more than five years, thereby precluding review of the information before the Director-General for the years 2010-2018. The department further stated that the only available documents are for 2019. There is nothing to gainsay the department's assertions.

The SCA was of the view that the majority of the full court was correct to dismiss the appeal. The appeal must meet the same fate. It was not necessary to consider whether appellant failed to exhaust internal remedies. Given the Fund's important legislative mandate and the constitutional injunction of s 195, the disarray and lack of responsiveness in its administration, so clear from the record in these proceedings, are particularly concerning. It is deemed necessary for independent bodies to consider investigating its affairs to ensure that the Fund discharges its mandate efficiently and serves the purpose for which it has been established. The Auditor-General and the Public Protector are eminently suited to do so.

For these reasons, the appeal was dismissed with costs including costs of two counsel where so employed. The Chief Registrar of this Court is directed to bring this judgment to the attention of the Auditor-General; and the Public Protector.

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