THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 179/2025

In the matter between:

LEGAL PRACTITIONERS' FIDELITY FUND BOARD	**APPELLANT**
as successor-in-law to the	
ATTORNEYS FIDELITY FUND BOARD OF CONTROL	

and

RODNEY ADRIAN LOVE	**FIRST RESPONDENT**
THE MINISTER OF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA	**SECOND RESPONDENT**

Neutral citation: *Legal Practitioners' Fidelity Fund Board v Rodney Adrian Love and Another* (Case no 179/2025) [2026] ZASCA 120 (17 September 2026)

Coram: SCHIPPERS, KOEN and VALLY JJA and REINDERS and MOOKI AJJA

Heard: 1 September 2026

Delivered: 17 September 2026

Summary: Constitutional Law – principle of legality – High Court issuing order contradicting finding of appellate court that claim against fidelity

fund filed out of time – unlawful exercise of judicial power – no observance of *stare decisis* – high court's order extending time to file claim against fund set aside.

Civil Procedure – litigant not claiming relief in single cause of action – non-compliance with once-and-for-all-rule – abuse of process.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Van Nieuwenhuizen AJ, sitting as court of first instance):

1 The appeal is upheld with costs, including the costs of two counsel where so employed.

2 The order of the High Court is set aside and replaced with the following:

‘The application is dismissed with costs, calculated in accordance with Scale C in rule 69(7) of the Uniform Rules of Court.’

JUDGMENT

Schippers JA (Koen and Vally JJA and Reinders and Mooki AJJA concurring)

[1] In 2013 the appellant, the Legal Practitioners’ Fidelity Fund Board (the Fund), in terms of s 26 of the former Attorneys Act 53 of 1979 (the Act),[1] received a claim for repayment of R10 million by the respondent, Mr Rodney Love (the claim). The claim was submitted by Mr Love’s former attorneys, together with his affidavit made on 28 November 2012, in terms of rule 8(5) of the Uniform Rules of Court (the rule 8(5) affidavit). In April 2011 Mr Love deposited R10 million into the trust account of a firm of attorneys, Turnbull and Associates

[1] Section 26 of the Act provided:
‘Subject to the provisions of this Act, the fund shall be applied for the purpose of reimbursing persons who may suffer pecuniary loss as a result of-
(a) theft committed by a practising practitioner, his clerk or employee, of any money or other property entrusted by or on behalf of such persons to him or to his clerk or employee in the course of his practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in another similar capacity.’

Incorporated (Turnbull), held with Nedbank, at the instance of Mr Alberto Pavoncelli. That amount had to be utilised for the purchase of shares in Sword Fern Trading (Pty) Ltd (Sword Fern Trading), of which Mr Pavoncelli was a director. The sale did not materialise. The R10 million was stolen.

[2] In 2014 the Fund rejected the claim on the basis that the requirements of s 48(1)*(a)* of the Act had not been met: Mr Love failed to give the Fund written notice within three months after becoming aware of the theft. The main reason for rejecting the claim was that in the rule 8(5) affidavit, filed in provisional sentence proceedings instituted against Mr Pavoncelli in the Gauteng Division of the High Court, Johannesburg (the High Court), Mr Love states that the R10 million had been transferred out of Turnbull's trust account 'into the [business] account of Turnbull'; and that Mr Pavoncelli had misappropriated that amount.

[3] On 3 March 2015 Mr Love launched a review application in the High Court against the Fund's decision to reject the claim; seeking an order that the Fund reconsider the claim on the basis that 'sufficient notice was given thereof'; and alternatively, that the Fund's 'decision not to extend the period referred to in s 48(1)*(a)* of the Act', be reviewed and set aside (the impugned decisions). Further alternatively, Mr Love sought an order that s 48(1)*(a)* of the Act be declared unconstitutional, because it infringes the fundamental rights to equality, property and a fair trial. Mr Love has not, in his written submissions nor oral argument, persisted with his constitutional challenge.

[4] The High Court (Van Nieuwenhuizen AJ) made an order in terms of which the period within which Mr Love had to lodge the claim, was extended to 7 October 2013. The central issue on this appeal is whether that decision is correct. The appeal is with the leave of this Court, the Supreme Court of Appeal (SCA).

The facts and litigation history

[5] Although the basic facts are uncontroversial, this case has a complex history. In February 2011, following discussions with Mr Pavoncelli and others relating to the purchase of shares in Sword Fern Trading, Mr Love was given a memorandum of understanding regarding that transaction.

[6] In April 2011, before a written agreement for the purchase of the shares was signed, Mr Love paid the purchase price (R10 million) into the trust account of Turnbull. The founding affidavit states that subsequently, Mr Love ascertained that Mr Pavoncelli was allowed to use Turnbull's trust account as if it were his own, which was irregular and unlawful. Mr Love also lent the sum of nearly R4.3 million to Sword Fern Trading. This loan was facilitated by Mr Pavoncelli.

[7] By August 2011 Mr Love became concerned about finalisation of the share agreement and his dealings with Mr Pavoncelli; and asked for repayment of his money. When it was not repaid, in October 2011 he applied for the liquidation of Sword Fern Trading and instituted an action against Turnbull for repayment of the R10 million in the High Court.

[8] On 15 May 2012, and to avert the liquidation of Sword Fern Trading, Mr Pavoncelli gave Mr Love a written undertaking to repay the loan made to that company as well as the R10 million paid into Turnbull's trust account, by 17 May 2012. In the rule 8(5) affidavit Mr Love states that Mr Pavoncelli furnished the undertaking 'because he . . . personally misappropriated the R10 million'.

[9] Mr Pavoncelli did not comply with the undertaking. In June 2012 Sword Fern Trading was placed under final liquidation. Based on the undertaking, Mr Love obtained provisional sentence against Mr Pavoncelli for payment of the R10 million and the loan to Sword Fern Trading. He also obtained judgment

against Turnbull for payment of R10 million. Writs of execution were issued but, in both instances, the sheriff found no property to attach to pay off the debt.

The action for repayment of R10 million

[10] On 13 August 2015, and without withdrawing the review application, Mr Love instituted an action in the High Court against the Fund, for payment of the R10 million, interest and costs, on the basis that he had submitted the claim, which the Fund unjustifiably rejected (the action). The allegations in the particulars of claim are the same as those in the review application, specifically that the Fund should not have rejected the claim because Mr Love became aware of the theft of the R10 million only on 2 September 2013, when he obtained copies of Turnbull's business account statements. The only difference between the review application and the action is that in the review Mr Love alleges that the Fund ought to have exercised its discretion under s 48(2) of the Act and extended the period of three months envisaged in s 48(1).

[11] The Fund raised a special plea that the claim had rightly been rejected, because it had not been submitted within three months after Mr Love became aware of the theft, as contemplated in s 48(1)*(a)* of the Act. The claim was submitted on 7 October 2013. The Fund contended that as early as 15 May 2012 and no later than 28 November 2012, Mr Love knew that Mr Pavoncelli had stolen his money.

[12] The trial came before Mokose AJ who dismissed the special plea. On 19 June 2017 the High Court made an order, inter alia, declaring that Mr Love had complied with s 48(1)*(a)* of the Act, since he had notified the Fund of the claim within three months of becoming aware of the theft. Leave to appeal was refused.

[13] On 7 March 2018 and on petition, the SCA granted the Fund leave to appeal to a full court of the High Court. The leave to appeal was limited to the order dismissing the special plea.

[14] On 25 October 2019 the Full Court (Francis J, Grant AJ and Strijdom AJ) dismissed the appeal with costs. The Fund then applied to the SCA for special leave to appeal against the order of the Full Court, which was granted on 5 February 2020.

[15] On 14 April 2021 the SCA, in a unanimous judgment, upheld the appeal with costs. It held that the claim had not been submitted within three months after Mr Love became aware of the theft as envisaged in s 48(1)*(a)* of the Act. Consequently, the SCA set aside the Full Court's order and replaced it with an order in terms of which (i) the appeal to the Full Court was upheld with costs; and (ii) the special plea was upheld with costs (the SCA order).

The appeal to the Constitutional Court and subsequent events

[16] On 6 May 2021 Mr Love applied to the Constitutional Court for leave to appeal the SCA order. That Court issued directions concerning the review application, which had not been heard by the High Court.

[17] On 11 February 2022 the Constitutional Court dismissed the application for leave to appeal. It stated that it was not in the interests of justice to hear the matter at that stage.

[18] On 18 May 2022 Mr Love proceeded with the review by applying for condonation of the late filing of his heads of argument in that application. The review application was heard on 7 August 2023 by the High Court (Van Nieuwenhuizen AJ) and judgment was delivered on 18 January 2024.

The High Court's judgment

[19] The High Court's judgment may be summarised as follows. In terms of s 48(2) of the Act, Mr Love had requested the Fund to extend the period of three months referred to in s 48(1)*(a)* and provided substantive reasons in support of that request. However, the Fund failed to exercise its discretion in terms of s 48(2) of the Act to extend the period within which written notice of the claim had to be given.

[20] The court held that '[i]t is clear on the facts that Mr Love's claim was submitted as soon as practicable'; and that he could only submit his claim 'once he subjectively believed that the funds had been stolen, which occurred on 2 September 2013'. The indisputable facts, namely that Mr Love had in the rule 8(5) affidavit stated that Mr Pavoncelli had personally misappropriated the R10 million; that bank statements attached to that affidavit showed that the money had been transferred from Turnbull's trust account to its business account; and that Mr Pavoncelli had undertaken to repay the R10 million which had been misappropriated, the court said, did not demonstrate that it was practicable to submit the claim within the prescribed period. The court stated that it was essential to 'contextualise' those facts.

[21] After the so-called contextualisation, the High Court held that the Fund's failure to exercise the discretion conferred by s 48(2) of the Act was materially influenced by an error of law. The Fund failed to consider the reasons for the extension properly or at all and its decision was unconstitutional and unlawful, as envisaged in the Promotion of Administrative Justice Act 2 of 2000 (PAJA).

[22] The court accepted the submission by Mr Love's counsel that the SCA judgment deals with (i) the requirements for compliance with s 48(1)*(a)* of the Act; (ii) the factual errors in the findings of the trial court and the Full Court on

the special plea; and (iii) whether that plea ought to have been upheld. The issue before it, the court said, was 'the failure of the Fund to consider the extension application'.

[23] The High Court was correct in principle that s 48(2) constitutes a distinct statutory inquiry. But that does not mean that the court could revisit a factual question which the SCA had already finally determined. And this, when there were no facts before it – other than the fact that it was not practicable for Mr Love to submit the claim before obtaining Turnbull's business accounts – to support an extension of the three-month period. I revert to these aspects below.

[24] The High Court concluded that it was in as good a position as the Fund to decide, in accordance with s 48(2) of the Act, whether to extend the period contemplated in s 48(1)*(a)*. Consequently, it made an order of substitution in terms of s 8 of the PAJA and extended the period within which Mr Love had to lodge the claim, to 7 October 2013 (the substitution order).

Was the High Court correct to grant the substitution order?

[25] The Fund contends that the High Court was mistaken in granting the substitution order because that order directly contradicts the SCA order. Mr Love disputes this. He submits that the High Court decided an entirely different question, namely whether the Fund had complied with s 48(2) of the Act. Section 48(1)*(a)* concerns the point in time when a claimant became aware of the theft of trust funds or should have become aware of the theft by exercising reasonable care. Section 48(2) on the other hand, grants the Fund discretion to extend the period within which a claim may be lodged. The Fund's contention, so it is submitted, elides the distinction between the two.

[26] Section 48 of the Act provided:

'Claims against fund: notice, proof and extension of periods for claims.

(1) No person shall have a claim against the fund in respect of any theft contemplated in section 26 unless–

> *(a)* written notice of such claim is given to the council of the society concerned and to the board of control within 3 months after the claimant became aware of the theft or by the exercise of reasonable care should have become aware of the theft; and
>
> *(b)* within 6 months after a written demand has been sent to him by the board of control, the claimant furnishes the board with such proof as the board may reasonably require.

(2) If the board of control is satisfied that, having regard to all the circumstances, a claim or the proof required by the board has been lodged or furnished as soon as practicable, it may in its discretion extend any of the periods referred to in subsection (1).'

[27] When the claim was submitted to the Fund, Mr Love did not in the covering letter by his attorneys request an extension of the period within which it had to be lodged. However, after the Fund had conducted its inquiry at which Mr Love was present, in a subsequent letter dated 31 July 2014, his attorneys expressed the following opinion:

'[W]e can see no reason why our client's claim can be rejected in terms of the provisions of section 48 nor, in the event that factually our client's claim was submitted outside of the three-month period (which is denied), that there exists good reason not to extend the applicable time limits, having regard to the merits of our client's case.'

[28] In the review application, it was argued that this was a request to the Fund, in terms of s 48(2) of the Act, to extend the period referred to in s 48(1)*(a)*. But that is not the issue. Rather, it is whether the High Court could, in deciding the s 48(2) question, make a factual finding directly at odds with a factual finding that was essential to the SCA's final judgment, concerning the same parties and the same R10 million.

[29] In this regard, Mr Love faces two insurmountable hurdles. The first is that the High Court had no power to issue the substitution order; and the second, that the substitution order is precluded by the once-and-for-all rule.

The High Court had no power to issue the substitution order

[30] The Fund's reasons for rejecting the claim, based on the rule 8(5) affidavit, are quoted in the High Court's judgment. In sum, the reasons are the following. Mr Pavoncelli had personally misappropriated the R10 million. He had signing powers on Turnbull's trust account (copies were attached to the claim). On 4 April 2011 the balance in the trust account was R10 060 322.30. No further noteworthy deposits were made into that account. Between 4 April 2011 and 28 July 2011 large amounts had been transferred periodically to Turnbull's business account. By the end of July 2011, the entire R10 million deposited by Mr Love had been stripped out of the trust account. On 15 May 2012, and because he had misappropriated the R10 million, Mr Pavoncelli offered to pay that amount to Mr Love. Thus, by no later than 28 November 2012 and probably as early as 15 May 2012, Mr Love knew that Mr Pavoncelli had stolen the R10 million. Accordingly, the claim was submitted well outside the three-month period prescribed in s 48(1)*(a)* of the Act. It was therefore rejected.

[31] These facts are recorded in the SCA's judgment, to which the High Court referred extensively. The High Court also quoted the following findings by the SCA:

'On 15 May 2012 Mr Pavoncelli undertook to pay the R10 million to Mr Love. The only reasonable inference to be drawn from this undertaking is that Mr Pavoncelli had misappropriated the R10 million from the trust account. At his meeting with the Fund, Mr Love said that when he got the undertaking it was clear that the R10 million was not in the trust account. On 22 November 2012 Mr Love was given copies of the trust account which confirmed that the R10 million had been paid out of the trust account in 2011. On 28 November 2012 and in the affidavit Mr Love signed in the provisional sentence proceedings he said that Mr Pavoncelli gave him the undertaking to pay the R10 million "because he has personally misappropriated the R10 million as will appear from what is said hereunder". At the trial Mr Love said that he gave no mandate to release the R10 million from the trust account, yet the money had been withdrawn in 2011. He also admitted that the R10 million was withdrawn from the trust account within a space of two months. This he knew from the trust account bank statements.

There was no need for Mr Love to wait until September 2013 when he got the copies of the bank statements of Turnbull and Associates' business account before notifying the Fund of his claim. How the Trust money was spent is irrelevant to his claim. From what is set out above it is apparent that Mr Love knew in October 2011 or at the latest 28 November 2012 that there had been a wrongful dealing or appropriation by Turnbull and Associates, alternatively Mr Pavoncelli, of the money entrusted to them in the sense of them having been required by Mr Love to keep the money in the trust account until the happening of some known future event. This event did not occur.'[2]

[32] Despite these findings and the SCA order, the High Court held:

'Before 2 September 2013 which is the date upon which Mr Love was provided the business statements, he did not know that his funds had been transferred out of Turnbull's business accounts, and therefore that they had been stolen in the common law sense of the term.'

And further:

'It would not have been practicable for Love to submit a claim until the date on which he learned, subjectively that the funds had been stolen, which occurred on 2 September 2013.'

[33] It follows that the findings of the SCA and the High Court are directly contradictory factual findings concerning the same claimant, the same R10 million, the same theft and the same historical events. They are not merely different interpretations of law. The SCA finally determined the factual issue as to when Mr Love became aware of the theft of the R10 million, which is binding on the High Court.

[34] The High Court's finding that before 2 September 2013 Mr Love did not know that the funds had been stolen, is essential to its conclusion that the claim

[2] *Attorneys Fidelity Fund Board of Control v Love* [2021] ZASCA 44 paras 32-33.

was lodged as soon as practicable under s 48(2) of the Act. The court therefore purportedly exercised the s 48(2) discretion on a factual premise it was not legally entitled to revisit. The High Court had no power to reopen and reverse the SCA's findings, by simply characterising the review application as a s 48(2) matter. On this point, counsel for Mr Love submitted that the court merely 'viewed the same facts through a different lens'.

[35] But that cannot be. The SCA found, as a proven fact, that by 28 November 2012 at the latest, Mr Love knew that the R10 million had been misappropriated; and that he did not need to wait until September 2013 when he obtained Turnbull's business account statements, to lodge the claim. The High Court, however, found that before 2 September 2013, Mr Love did not know that the R10 million had been stolen; and that it was not practicable to lodge the claim before that date. This is not a consideration of proven facts 'through a different lens'. It is a contrary finding about what Mr Love knew and when he knew it. The High Court did not merely apply s 48(2) of the Act; it rejected the SCA's factual finding. It was not entitled to treat that finding as if it had never been made. And the court's departure from that finding was neither collateral nor immaterial: it formed the basis of the substitution order.

[36] For this reason alone, the issuance of the substitution order, purportedly in terms of s 8 of the PAJA, was an unlawful exercise of judicial power. It is settled law that judges are bound by the principle of legality. The judicial function is not an unrestricted licence for a court to do what it considers just; judicial power must have a legal foundation. In this regard, the observation by Harms DP in *NDPP v Zuma*,[3] is specifically apposite to this case:

[3] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (4) BCLR 393 (SCA) (*NDPP v Zuma*).

'[F]or reasons that are impossible to fathom, the court below failed to adhere to some basic tenets, in particular that, in exercising the judicial function, judges are themselves constrained by the law.'

[37] Aside from non-compliance with the principle of legality, a further basic tenet which the High Court disregarded, is the doctrine of *stare decisis* (precedent) – in this case the rule that a lower court is bound by the decision of an appellate court. In *Camps Bay Ratepayers' Association*[4] the Constitutional Court affirmed that the doctrine of precedent requires courts to follow decisions of higher courts. The reason is not simply a matter of respect for courts of higher authority: precedent is intrinsically linked to the rule of law, a founding value of the Constitution, because without it, certainty, predictability, reliability and uniformity would dissipate.

[38] The rule of law thus requires legal certainty and institutional coherence. The SCA held that Mr Love knew at the latest by 28 November 2012, that the R10 million had been stolen and that there was no need for him to wait until September 2013 before lodging the claim. These findings were part of the reasoning essential to the SCA order. The High Court's contrary finding that Mr Love did not know of the theft until 2 September 2013, effectively means that a litigant who has lost in the SCA can return to the High Court by a different procedural route, and obtain a result based on a factual proposition which the SCA has rejected. The authority of an appellate court and the finality of its judgments cannot be allowed to be undermined in this way. The High Court's disregard of the doctrine of precedent is a further reason why the substitution order is incompetent.

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[4] *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another* [2010] ZACC 19; 2011 (2) BCLR 121 (CC); 2011 (4) SA 42 (CC) *(Camps Bay Ratepayers' Association)* para 28.

[39] What is clear is that if it found that the Fund had committed a reviewable irregularity, the High Court had a discretion under s 8 of the PAJA as to the appropriate remedy. This is a discretion in the true sense. An appellate court ordinarily may not interfere unless the discretion was not exercised judicially; was influenced by wrong principles or a misdirection on the facts; or could not reasonably have been reached by a court properly directing itself to all the relevant facts and principles.[5]

[40] But a remedial discretion did not grant the High Court the power to decide the case afresh on whatever factual basis it considered appropriate. This is not a case where there were any other circumstances which made it impracticable for Mr Love to lodge the claim. Indeed, save for the allegation that the claim could be lodged only when he obtained Turnbull's business account statements, Mr Love placed no facts before the Fund to support an extension of the period for the submission of the claim. Despite this, the High Court found that Mr Love did not know of the theft before 2 September 2013. This finding, contrary to SCA's findings, was then used to establish the critical foundation that Mr Love had lodged his claim as soon as practicable, which justified the extension of the period for the submission of the claim.

[41] It follows that the High Court could not use its remedial discretion under s 8 of the PAJA to contradict and overrule a binding SCA determination. The purported exercise of that discretion in making the substitution order was both unlawful and materially misdirected.

[5] *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 88.

The review application is precluded by the once-and-for-all rule

[42] The common law once-and-for-all-rule, described by Van Winsen AJA in *Custom Credit Corporation*[6] as 'part of the very foundation of our law', is this:

'The law requires a party with a single cause of action to claim in one and the same action whatever remedies the law accords him upon such cause. This is the *ratio* underlying the rule that, if a cause of action has previously been finally litigated between parties, then a subsequent attempt by the one to proceed against the other on the same cause for the same relief can be met by an *exceptio rei judicatae vel litis finitae*. The reason for this rule is given by *Voet*, 44.2.1, (*Gane's* translation, vol 6, p. 553) as being

> "to prevent inextricable difficulties arising from discordant or perhaps mutually contradictory decisions due to the same suit being aired more than once in different judicial proceedings".'

[43] Most recently, this Court has affirmed an essential component of the rule: all damages, present and future, must be claimed in a single action.[7] Where a party has a single cause of action, the law requires him to claim in one and the same action, whatever remedies it gives him on that cause of action.

[44] In *Evins*,[8] Corbett JA explained that the purpose of the once-and-for-all rule is to prevent a multiplicity of actions based on a single cause of action and to ensure finality in litigation: a party should not be twice vexed in the same matter. Importantly, *Evins* applied the rule even to damages that had not yet manifested themselves or become capable of assessment at the time of the first litigation. The litigant must, where the cause of action permits it, claim both present and prospective loss in the same action. This is consistent with the objects of the rule: it is in the interests of the parties and the public that there should be efficiency and economy in the conduct of litigation; judgments should be final and certain; and courts must be protected from an abuse of process.

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[6] *Custom Credit Corporation (Pty) Ltd v Shembe* 1972 (3) SA 462 (A) (*Custom Credit Corporation*) at 472A-B.
[7] *TN obo BN v MEC For Health, Eastern Cape, and Others* [2026] ZASCA 14; [2026] 1 All SA 500 (SCA); 2026 (3) SA 507 (SCA) paras 1-2.
[8] *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) (*Evins*) at 835E.

[45] The rule has two closely related aspects: (i) a litigant cannot split a single cause of action into successive claims for different relief; and (ii) once the cause of action has been finally adjudicated, the later proceeding may be met by a defence *res judicata* (a matter already judged).[9] The critical question is whether the later remedy – the review of the impugned decisions, more specifically, whether the Fund should have exercised its discretion under s 48(2) of the Act, arises from the same cause of action, namely the liability of the Fund to repay the R10 million to Mr Love.

[46] Applied to the present case, Mr Love's claim comprises a single cause of action – a claim under the Act against the Fund, for the loss of R10 million on account of theft. In accordance with the requirements of s 48 of the Act, he was required to show (i) that the claim was submitted within the period prescribed in s 48(1)*(a)*; and (ii) if it was not, that there were circumstances which rendered it impracticable to submit the claim timeously, and that the Fund should exercise its discretion to extend that period under s 48(2). In the action, Mr Love claimed that R10 million had been entrusted to Turnbull; that the money was stolen; that the Act entitled him to reimbursement from the Fund; and that the claim was lodged within the period prescribed in s 48(1)*(a)*. In the action the SCA found that the s 48(1)*(a)* requirement had not been met. Mr Love subsequently proceeded with the review application, alleging that the Fund had not exercised its discretion under s 48(2). This is nothing more than splitting a single dispute into successive litigation.

[47] When Mr Love instituted the action, the Fund had already rejected it for non-compliance with s 48(1)*(a)* of the Act. On 31 July 2014, before the action was instituted, Mr Love's attorney wrote to the Fund requesting that the applicable time limit be extended. So, Mr Love knew that the claim had been

[9] *Mmabasotho Christinah Olesitse N.O. v Minister of Police* [2023] ZACC 35; 2024 (2) BCLR 238 (CC) paras 51-52.

rejected; that there was a dispute as to when he acquired knowledge of the theft; and that alternatively, he required the Fund to extend the period for the lodgment of the claim in terms of s 48(2) of the Act. Indeed, in the relief sought in the review application, he asked for an order that the date contemplated in s 48(1)*(a)* of the Act, be extended to 7 October 2013, in terms of s 48(2).

[48] This is not a case which required Mr Love, by the exercise of reasonable diligence, to raise the s 48(2) relief: he was aware of it throughout, and certainly when he instituted the action. Both the action and the review were based on the same facts. Therefore, in the action he should have pleaded and sought an order compelling the Fund to exercise the discretion under s 48(2) of the Act. In these circumstances, the inescapable inference to be drawn from the facts, is that Mr Love chose not to pursue the s 48(2) relief in the action.

[49] On the facts, an extension under s 48(2) was not only an issue that ought to have been raised in the action; it could have been decided by the trial court. The issue properly belonged to the subject of that litigation and was essential to the validity or otherwise of the claim. It was not decided, simply because it was not raised, when Mr Love could and should have done so. What Mr Love could not do, was to claim a different remedy in successive proceedings, relating to a single cause of action – whether the Fund was liable for repayment of the R10 million. For this reason, too, the appeal must succeed.

Order

[50] The following order is issued:

1 The appeal is upheld with costs, including the costs of two counsel where so employed.

2 The order of the High Court is set aside and replaced with the following:

‘The application is dismissed with costs, calculated in accordance with Scale C in rule 69(7) of the Uniform Rules of Court.’

A SCHIPPERS
JUDGE OF APPEAL

Appearances:

For appellant:	P Hodes SC and G Oliver
Instructed by:	Brendan Müller Inc, Wynberg
	Van der Merwe & Sorour, Bloemfontein
For first respondent:	G Marcus SC and N Ferreira
Instructed by:	Malherbe Rigg & Ranwell, Boksburg
	Symington & De Kok Inc, Bloemfontein.