THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case no: 054/2024

In the matter between:

JANSEN VAN VUUREN,
DILLON WESLEY **APPELLANT**

and

THE MEMBER OF THE EXECUTIVE
COUNCIL FOR HEALTH, GAUTENG
PROVINCE **RESPONDENT**

Neutral citation: *Van Vuuren v Mec for Health, Gauteng Province* (054/2024) [2025] ZASCA 76 (4 June 2025)

Coram: MOKGOHLOA, MATOJANE, WEINER, and SMITH JJA and VALLY AJA

Heard: 13 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The time and date for hand-down is deemed to be 11h00 on 4 June 2025.

Summary: Prescription – Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 (the Act) – condonation for late filing of the statutory notice in terms of s 3 of the Act.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Pretorious, Collis and Phahlane JJ, sitting as a court of appeal):

1 The appeal is dismissed.

2 Each party is to pay their own costs.

JUDGMENT

Weiner JA (Mokgohloa, Matojane and Smith JJA and Vally AJA concurring):

[1] This appeal concerns an application for condonation for the late service of the statutory notice in terms of s 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 (the Act).

[2] The appellant had instituted action against the respondent for loss of support and emotional shock arising from the death of his mother (the deceased) on 22 December 2011.The appellant alleged that the deceased died as a result of negligence of the respondent's medical and nursing staff (the staff) at the Charlotte Maxeke, Johannesburg Academic Hospital (the hospital). The respondent was sued in her representative capacity, as being the entity responsible

for the claims arising against the hospital, the latter being an institution established, funded and managed by the respondent.

[3] The appellant alleged in his particulars of claim that the deceased was admitted to the hospital in August 2011 to undergo surgery. After surgery, she experienced partial paralysis (allegedly from the spinal anaesthetic) and later developed severe pressure sores and sepsis. It was submitted that in breach of their duty of care, the staff was negligent in various respects by, *inter alia*, failing to ensure that the deceased was properly nursed, provided with appropriate pressure relief measures for the pressure sores and treated in accordance with the protocol for immobile diabetic patients. She thus developed the pressure sores and sepsis, which the appellant alleged, ultimately caused her death.

[4] As the appellant instituted action against the respondent, compliance with s 3 of the Act was required. Section 3, in relevant parts, provides:

'(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

(b) intention to institute the legal proceedings in question . . .'

(c) . . . .

(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 section (4)(1); and

. . . .

(3) For purposes of subsection (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 reasonable care, unless the organ of state willfully prevented him or her or it from acquiring such knowledge . . .'

[5] Notice was given to the respondent in terms of s 3 of the Act on 31 March 2017. In his particulars of claim, the appellant claimed compliance with the Act. He also stated that insofar as the plaintiff may not have complied strictly with the Act and in the event that the defendant fails to condone any non-compliance with the Act, the plaintiff will apply for condonation in terms of s 3(4)*(b)* of the Act. The relevant parts of s 3(4) of the Act provides:

'(4)*(a)* If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2)*(a)*, the creditor may apply to a court having jurisdiction for condonation of such failure.

(b) 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.

. . . .'

[6] The respondent filed two special pleas, firstly that the debt relied upon by the appellant became due on the date of the deceased's death, on 22 December 2011, and he was therefore required to give notice in terms of the section within six months of the debt having become due. The respondent therefore asserted that the appellant was debarred from proceeding with his claim, until condonation was granted.

[7] In its second special plea, the respondent asserted that the appellant's claim had prescribed. The appellant turned 18 years of age on 9 March 2015. In terms of s 11*(d)* of the Prescription Act 68 of 1969 (the Prescription Act), the normal period of prescription was three years from the date that the debt became due. As the appellant was a minor at the time, completion of prescription was delayed, in terms of s 13(1)*(a)* and *(i)* of the Prescription Act, by one year. These sections provide that:

'1**3 Completion of prescription delayed in certain circumstances**

(1) If-

(a) the creditor is a minor or is a person with a mental or intellectual disability, disorder or incapacity, or is affected by any other factor that the court deems appropriate with regard to any offence referred to in section 12 (4), or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15 (1); or

. . . .

(i) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph *(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)* or *(h)* has ceased to exist, the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph *(i)*.'

[8] Thus, the respondent averred that the appellant's claim prescribed on 8 March 2016. The appellant replicated to both special pleas alleging that he had complied with s 3(1)*(a)* of the Act alternatively, if it was not strict compliance, condonation would be sought.

[9] The appellant claimed that the debt only became due on 28 November 2016, when he consulted with an attorney who informed him that his claim lay against the respondent and not the hospital, as the appellant had previously believed. Thus, it was only on this date that the debtor was identified, and the debt became due. The statutory notice was served on 31 March 2017, within the six-month period provided for in the Act. And, as a minor, his claim would only prescribe one year after he obtains majority. Summons was served on 1 March 2018, within the one-year period.

[10] The appellant, believing it was necessary, applied for condonation for the late filing of the s 3(1)*(a)* notice. Both the Gauteng Division of the High Court, Pretoria (the high court) and the full court of such division dismissed the application for condonation. The high court found that the appellant only became

aware of the identity of the debtor on 28 November 2016 but still dismissed the application for condonation. The full court found that the appellant had been aware of the identity of the debtor from December 2011. Both the high court and the full court took into account the knowledge that the appellant's father and uncle could have acquired within three years of the date of the deceased's death. But this knowledge cannot be imputed to the appellant. Special leave to appeal was granted by this Court

[11] On his own case, the appellant alleged that he had complied with s 3(1)*(a)* of the Act. He explained the steps that he (and his father and uncle) had taken to bring the claim before the court. At all times prior to 28 November 2016, the appellant had thought that his claim lay against the hospital. He was only 14 years of age when the deceased died and could therefore not have been expected to know the requirements of litigating against the respondent as the entity that administered the hospital. Over the period between the deceased's death and the date when he ascertained who the debtor was, his family had attempted to find legal assistance, which was refused. It was only after he attained majority and when he consulted with new attorneys, Mr Kanarak and Mr Phillips, on 28 November 2016, that he was informed of the identity of the debtor. He cited s 12 of the Prescription Act, which states that prescription commences when the debt is due and that a debt is not due until the creditor has knowledge of the debtor's identity and the facts giving rise to the debt or could have acquired such knowledge with reasonable care.

[12] In my view, on the appellant's own case, the application for condonation was unnecessary, and the appeal cannot succeed. It is not necessary for this Court to decide on the issue of whether the appellant's claim has prescribed. This is a matter for the trial court hearing the special plea.

[13] There are two further applications that were referred to by the appellant. Firstly, the appellant launched an application to introduce new evidence on appeal. This evidence demonstrated, so the appellant argued, that the appellant acted reasonably and only became aware of the identity of the debtor on 28 November 2016. Most of these documents had been discovered by the appellant and could add nothing to his argument in this Court. The appellant also filed an application to amend his notice of motion. This was to introduce an alternative form of relief, ie that this Court should confirm that the s 3 notice was filed timeously. This amendment was only sought in this Court. As it was not dealt with in the proceedings before the high court and the full court, it cannot be entertained in this Court on appeal.

[14] In regard to costs, the respondent submitted that if the appeal is dismissed, costs should follow the result. In my discretion, I disagree with this view. The decision that this Court arrives at is based on the appellant's own case. It is not based upon the respondent's submissions in this Court. It was unnecessary to file a 73 page answering affidavit (excluding annexures) and it would be inequitable for the appellant to bear the costs of the appeal.

[15] The following order is granted:

1 The appeal is dismissed.

2 Each party is to pay their own costs.

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S E WEINER

JUDGE OF APPEAL

Appearances

For the appellant:	W Munro SC
Instructed by:	Adams & Adams, Pretoria
	Honey & Partners Inc, Bloemfontein
For the respondent:	M Barnard with M Mokwena
Instructed by:	The State Attorney, Pretoria
	The State Attorney, Bloemfontein.