THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 540/2023

In the matter between:

MEC: FREE STATE DEPARTMENT
OF POLICE, ROADS & TRANSPORT **APPELLANT**

and

GOLDFIELDS LOGISTICS (PTY) LIMITED **RESPONDENT**

Neutral Citation: *MEC: Free State Department of Police, Roads & Transport v Goldfields Logistics (Pty) Limited* (540/2023) [2025] ZASCA 152 (16 October 2025)

Coram: MAKGOKA, MOTHLE and UNTERHALTER JJA and MJALI and MASIPA AJJA

Heard: 20 August 2024

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 date and time for hand-down of the judgment is deemed to be 11h00 on 16 October 2025.

Summary: Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002 – whether 'debt', as defined in the Act, includes a claim for *negotiorum gestio* against an organ of State – whether notice of institution of legal proceedings in terms of section 3(1)(*a*) of the Act necessary for such claim.

ORDER

On appeal from: Full Court of the Free State Division of the High Court, Bloemfontein (Mbhele DJP, Van Zyl J, and Boonzaaier AJ sitting as court of appeal):

The appeal is dismissed with costs.

JUDGMENT

Makgoka and Unterhalter JJA and Mjali AJA (Mothle JA and Masipa AJA concurring):

[1] This appeal concerns the interpretation and application of s 3(1)(*a*) of the Institution of Proceedings Against Certain Organs of State Act 40 of 2002 (the Act), which makes it obligatory to give prior written notice before legal proceedings are instituted against organs of State, if those proceedings are for the recovery of 'a debt'. In terms of s 3(2)*(a)*, the notice must be served on the debtor within six months of 'the debt' falling due.

[2] The issue is whether the claim of the respondent, Goldfields Logistics (Pty) Ltd (Goldfields) against the appellant, the Member of the Executive Council for the department of Police, Roads and Transport in the Free State Province (the MEC) is 'a debt' as defined in the Act. If it is, the recovery thereof should be preceded by a notice in terms of s 3(1)(*a*) of the Act. If not, the opposite is true.

[3] Goldfields instituted an action against the MEC in the Free State Division of the High Court, Bloemfontein (the high court) for payment of R234 594.65. Goldfields alleged that it had incurred expenses when it effected repairs to a provincial road in the Free State Province. The department is responsible for, among other things, the repair and maintenance of roads in the province. Goldfields alleged that the MEC failed to maintain the road for several years, hence it effected the repairs it alleged. The department is an organ of the State, and thus, would be entitled to receive the notice in terms of s 3(1)(*a*) for a claim based on a 'debt'.

[4] It is common cause that Goldfields neither gave notice in terms of s 3(1)(*a*) of the Act, before instituting legal proceedings against the MEC, nor sought condonation therefor, in terms of s 3(4) of the Act. For that reason, the MEC raised a special plea to dismiss Goldfields' claim based on its failure to comply with the provisions of s 3(1) of the Act. In its replication, Goldfields averred that the claim did not constitute 'a debt' as envisaged in the Act. As such, the provisions of s 3(1)(*a*) of the Act did not apply to its cause of action, and therefore, such a notice was not necessary.

[5] The MEC's special plea succeeded in the high court. In addition, the high court dismissed Goldfields' claim with costs. This was a rather surprising order. Even if the high court was of the view that Goldfields was obliged to give notice in terms of s 3(1)(*a*), the correct order would have been simply to uphold the MEC's special plea, rather than dismissing Goldfields' claim. This is because Goldfields could still deliver such notice, even if late, and seek condonation for the delay.[1]

[1] In terms of s 3(4) of the Act, condonation for the late delivery of the notice in terms of s 3(1)(a) may be condoned. The provision reads as follows:
'(*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.

[6] However, on appeal to it, the full court held that Goldfields was not obliged to comply with the requirement of s 3(1)(*a*) because its cause of action, being *negotiorum gestio*, is not a 'debt' as defined in s 1 of the Act, and thus, it does not constitute a damages claim. As the notice needs only to be given in respect of claims for 'damages', Goldfields was not obliged to comply with s 3(1)(*a*). Accordingly, the full court upheld Goldfields' appeal. The MEC appeals against the order of the full court, with the leave of this Court.

[7] Section 3(1) reads as follows:

'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 in writing of his or her or its intention to institute the legal proceedings in question; or

(b) the organ of state in question has consented in writing to the institution of those legal proceedings –

(i) without such notice; or

(ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).' (Emphasis added.)

[8] Debt, as used, is defined in s 1 as:

'. . . any debt that arises from any cause of action –

(a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any-

(i) act performed under or in terms of any law; or

(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.

(c) If an application is granted in terms of paragraph *(b)*, the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to the organ of state as the court may deem appropriate.'

(ii) omission to do anything which should have been done under or in terms of any law; and

(b) for which an organ of state is liable for payment of damages . . . .'

[9] The heart of the matter, then, is to interpret what meaning to give to (*b*) in the definition of debt. In *Vhembe Municipality v Stewarts and Lloyds*[2] this Court referred with approval to *Thabani Zulu & Company (Pty) Ltd v Minister of Water Affairs*.[3] In the latter case, it was held that subsections (*a*) and (*b*) of the definition of debt 'must be read conjunctively,' with the result that 'para *(b)* qualifies or limits the generality of para *(a)* to restrict debts to those which constitute a liability to pay damages. Considering the language used in this provision, the only sensible meaning to be attributed to it is that for a claim to fall within the ambit of debt, the cause of action that falls within s 1(*a*) must seek to render the organ of State liable for the payment of damages as stipulated in s 1(*b*). It is thus not unlimited. The definition of debt is thus remedy specific.[4]

[10] Thus, the basis of the claim becomes crucial in the determination of whether it falls within or outside the ambit of the definition of debt as defined in the Act. As indicated, Goldfield's claim is based on *negotiorum gestio*, for reimbursement of expenses incurred when Goldfields allegedly repaired the road on behalf of the department. Whether *negotiorum gestio* as pleaded against an organ of State is a claim good in law does not arise for our consideration.

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[2] *Vhembe District Municipality v Stewarts and Lloyds Trading (Booysens) (Pty) Limited and Another* [2014] ZASCA 93; [2014] 3 All SA 675 (SCA) (*Vhembe*).
[3] *Thabani Zulu & Company (Pty) Ltd v Minister of Water Affairs of the Republic of South Africa and Others* 2012 (4) SA 91; [2011] 4 All SA 208 (KZD).
[4] *Vhembe* fn 2 *para* 12.

[11] The question is then whether a claim under the action of *negotiorum gestio* is a claim for damages. The very nature of *negotiorum gestio* entails a voluntary management of the affairs of another without agreement or even knowledge of the person whose affairs are managed (the *dominus*). The manager (the *gestor*) must intend to manage the affairs in a way that is beneficial to the person whose affairs are managed. *Negotiorum gestio* has been described as quasi-contractual because it does not require consensus for reciprocal rights and obligations to exist between the parties.[5]

[12] Certain requirements must be met before the reciprocal rights and obligations arise, namely, the voluntary and intentional management of the affairs of another who is unaware of such management. Therefore, there is no actual conduct that is required from the *dominus*. Further, the management of the affairs must be executed in a reasonable manner that is useful to the dominus. Also, the gestor must render a complete and fully justified account by means of relevant documentary evidence such as receipts for the expenses incurred.[6] Wessels opines that since the right of the *negotiorum gestor* to recover his costs depends upon the fact that the dominus has been enriched by his acts, the gestor cannot recover his expenses unless he can prove that at the date of the demand the dominus had derived a benefit from his acts.[7]

[13] The reimbursement of the *gestor* for expenses reasonably incurred is not akin to damages. The qualification of 'debt' in the Act to one for which the State is liable

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[5]Sir J W Wessels *The law of contract in South Africa* 2ed vol II (1951), at 3558. 'The quasi contract of negotiorum gestio presupposes that the unauthorized act is done on behalf of a person who is ignorant of it and who has not instructed the negotiorum gestor to do it.'

[6] Ibid at 3631 comments, 'it is a condition precedent to his recovering his expenses that the negotiorum gestor should render a full account of his management together with all documents, receipts and vouchers connected therewith.'

[7] Ibid at 3575.

to pay damages, extends debts contemplated in this Act to delictual, contractual and any other liability.

[14] As mentioned, the appeal requires the interpretation of s 3 of the Act, read with the definition of 'debt' in s 1. The approach to interpretation is well-settled since this Court's judgment in *Natal Joint Municipal Pension Fund v Endumeni Municipality.*[8] There, interpretation was explained to be a unitary exercise entailing a consideration of: (a) the language used in the instrument; (b) the context in which the provision appears; (c) the apparent purpose to which it is directed and (d) the material known to those responsible for its production.[9]

[15] We turn to the language of the provision as the point of departure. Section 3(1)(*a*) of the Act requires that before instituting legal proceedings against an organ of the State, a claimant should first give notice of its intention to do so, if the claim is for the recovery of a 'debt'. In its preface, the definition of debt refers to '*any* debt' that arises from *any* cause of action. In sub-sec (*a*), the definition identifies two causes of action specifically, ie delictual and contractual, which are followed by a general catch-all phrase '*any other liability.*'

[16] A cause of action based on '*any other liability*' is further expressed to include 'a cause of action which relates to or arises from *any* conduct or omission. It specifies: (i) an act performed under or in terms of *any law* (ii) an omission to do *anything* which should have been done under or in terms of *any law*.' The language used appears to evince the legislative intent to include the broadest possible range of

[8] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA).
[9] Ibid para 18.

causes of action for which notice in terms of s 3 has to be given before legal proceedings are commenced against the State. The consistent use of the word 'any', points to this.

[17] The definition of 'debt' is broad and would appear to include any debt that arises from any cause of action, be it delictual, contractual, acts performed in terms of any law or any omission to do anything in terms of any law. Clearly, the definition of a debt is cast in broad terms, hence 'any other liability'. Without clear contextual limits, the repeated use of the word '*any*' in s 1 would warrant a broad interpretation,[10] which would favour a wide understanding of 'debt' to include claims like Goldfields'. That would be the case had the definition ended there. But it went on and provided an express limitation in subsection (*b*), which deliberately restricts the use of the word 'any'. Some of what follows is to specify (and perhaps clarify), on a non-exhaustive basis, what is contained in the notion of a liability. That is the contents of (*a*).

[18] The definition then goes on in (*b*) to specify a particular kind of liability by way of the payment of damages. The key question is, why did the legislature add (*b*)? On the structure of the definition and its plain meaning, it did so not (unlike (*a*)(i) and (ii)) to specify what is included in the more general concept of 'any other liability', but to add (hence 'and') a further attribute of the liability that gives rise to the meaning of a debt. A debt must be a liability for the payment of damages. Plainly not every legal liability is one for the payment of damages. If this is so, (*b*) does cut down the meaning of what is defined to be a debt from the very wide ambit of (*a*).

[10] *Hayne and Co v Kaffrarian Steam Mill Co Ltd* 1914 AD 363 at 371; *R v Hugo* 1926 AD 268 at 271.

[19] As to its purpose, s 3 is clearly intended to afford organs of State time to conduct proper investigations into a claim and to decide whether to make payment or defend the intended action, as soon as possible after the debt arises. The purpose of s 3 and its predecessors has been considered in several decisions of this Court and the Constitutional Court. In *Mohlomi v Minister of Defenc*e,[11] the Constitutional Court explained the purpose of the provision as follows:

'The conventional explanation for demanding prior notification of any intention to sue an organ of government is that, with its extensive activities and large staff which tends to shift, it needs the opportunity to investigate claims laid against it to consider them responsibly and to decide, before getting embroiled in litigation at public expense, whether it ought to accept, reject or endeavour to settle them.'[12]

[20] Considering s 32 of the repealed Police Act,[13] which contained similar time-limit provisions as those of s 3 of the Act, this Court held that the provision had been designed for the benefit of the police rather than the prospective plaintiff.[14] This holding was affirmed by the Constitutional Court in *Moise v Greater Germiston Transitional Local Council*, [15] where the following was said:

'The object is not to regulate judicial proceedings but *to protect the interests of the defendants.* The reasons for this category of legislation were conveniently collated in the following terms by the South African Law Commission in its October 1985 report:

"The circumstances under which the State can incur liability are legion. Because of the State's large and fluctuating work force and the extent of its activities, it is impossible to investigate an incident properly long after it has taken place . . . . The State is obliged by law to follow cautious and sometimes cumbersome procedures. Government bodies operate on an annual budget and must

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[11] *Mohlomi v Minister of Defence* [1996] ZACC 20; 1996 (12) BCLR 1559; 1997 (1) SA 124 (CC).
[12] Ibid para 9.
[13] Police Act 7 of 1958.
[14] See for example, *Minister van Polisie en 'n Ander v Gamble en 'n Ander* 1979 (4) SA 759 (A) at 770 C; *Hartman v Minister van Polisie* 1983 (2) SA 489 (A) at 497H-498C; *Minister van Wet en Orde en 'n Ander v Hendricks* 1987 (3) SA 657 (A) at 662E-663G.
[15] *Moise v Greater Germiston Transitional Local Council* [2001] ZACC 21; 2001 (4) SA 491 (CC); 2001 (8) BCLR 765 (CC).

be notified of possible claims as soon as possible . . . . The State needs time to deliberate and consider questions of policy and the possibility of settlements . . . . The State acts in the public interest and not for gain . . . Because public funds are involved the State must guard against unfounded claims . . . . [T]he State is an attractive target for unfounded claims.'" (Emphasis added and footnotes omitted.)

[21] Section 57 of the South African Police Service Act,[16] the successor to other provisions limiting actions against the police, was considered in *Madinda v Minister of Safety and Security*,[17] where this Court said of its provisions:

'[H]ave been held to be in favour of the police who should accordingly, in so far as the language permits, receive the protection offered by the section without imposing an unnecessarily heavy burden on a plaintiff . . .'

[22] In *Mothupi v Member of the Executive Council, Department of Health Free State Province*,[18] this Court stated that:

'[T]he object of the provisions of s 3 is to enable the State, a large and cumbersome organisation, to investigate claims so as to consider whether to settle or compromise a claim before costs escalate unnecessarily, or to properly prepare its defence – which may be frustrated if it is unable to investigate relatively soon after the alleged incident occurred.'

[23] Regarding context, its role in the interpretative exercise was explained by the Constitutional Court in *AfriForum v University of the Free State*.[19] The Court emphasised that a provision must be interpreted by having regard to 'all the words'.[20] No word can simply be ignored in the pursuit of purposive interpretation, as the wide interpretation preferred by the MEC would have it. Furthermore, the Constitutional

[16] South African Police Services Act 68 of 1995.
[17] *Madinda v Minister of Safety and Security* [2008] ZASCA 34; [2008] 3 All SA 143 (SCA); 2008 (4) SA 312 (SCA) para 7.
[18] *Mothupi v Member of the Executive Council, Department of Health Free State Province* [2016] ZASCA 27 para 12.
[19] *AfriForum v University of the Free State* [2017] ZACC 48; 2018 (2) SA 185 (CC); 2018 (4) BCLR 387 (CC).
[20] Ibid para 43.

Court in *National Credit Regulator v Opperman*,[21] affirmed a longstanding rule of interpretation that every word must be given a meaning. Words in an enactment should not be treated as tautological or superfluous.

[24] In *S v Liesching I*,[22] the Court emphasised that courts must respect both the text of the legislation and its purpose, and must not rewrite statutes under the guise of interpretation. The majority clarified the approach to statutory interpretation under s 39(2) of the Constitution and stated:

'This Court has reiterated that statutes must be construed consistently with the Constitution in so far as the language of the statute permits. Words in a statute must be read in their entire context and must be given their ordinary grammatical meaning harmoniously with the purpose of the statute. The actual words used by the Legislature are important. Judicial officers should resist the temptation "to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation'.[23]

[25] In our view, the wider interpretation of the word 'damages' pays no heed to these prescripts. It would allow any monetary claim, whether by way of compensation, restitution, or even specific performance. This would not only strain the language of the provision but also distort it. Doing so would amount to legislation rather than interpretation, which breaches the principle of separation of powers. This principle necessitates that courts avoid interpretation that effectively rewrites the text under review. Such an approach would amount to usurping the legislative role through interpretation.

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[21] *National Credit Regulator v Opperman and Others* [2012] ZACC 29; 2013 (2) BCLR 170 (CC); 2013 (2) SA 1 (CC) para 99.
[22] *Liesching and Others v State and Another* [2016] ZACC 41; 2017 (2) SACR 193 (CC); 2017 (4) BCLR 454 (CC).
[23] Ibid para 30.

[26] The narrow interpretation recognises damages to be a legal concept that references a specific type of remedy that arises in our law from particular actions, of which contract and delict are the paradigm cases. It is not without significance that these two types of liability are specifically mentioned in the definition of debt in s 1. The narrow interpretation is to be favoured.

[27] If the Legislature had wished to include every monetary claim in the definition of debt, it would have said so. It did not. It rather referred to a particular remedy – damages. To understand damages in s 1 to embrace every type of compensation is to introduce vagueness and indeterminacy into a legal concept that is well understood. It could then possibly include restitution, a claim for specific performance, and every species of statutory claim. If so, that would assign to near redundancy the inclusion in s 1 of the reference to damages in the definition of debt. It would require this Court to ignore the proviso, or draw a line through it. Either way, it is impermissible in an interpretative exercise to do so.

[28] Thus, construed narrowly, a claim for *negotiorum gestio*, as Goldfields' claim is, would be excluded from the definition of 'debt', as such a claim is not for damages in the ordinary legal sense. Consequently, the present claim falls outside the scope of debt as defined in the Act. Goldfields was therefore not obliged to give a notice in terms of s 3 of its intended legal proceedings against the department.

[29] We accept that the way the provision is structured, gives rise to anomalies. For example, had Goldfields repaired the same road under a contract with the department, it would not be required to give notice in terms of s 3, unless it claimed contractual damages. But merely because its claim is based on its unauthorised works on the road, without the consent or knowledge of the department, it is not

required to give such a notice. Similarly, if another company had repaired the road pursuant to a contract with the department, and had sued for contractual damages, it would be obliged to give notice. Yet, the same company, if it had effected the repairs without the authority, knowledge and consent of the MEC, it would not be so obliged.

[30] As emphasised by the authorities referred to earlier, the State has a fluctuating workforce and vast activities. For this reason, it is impossible to properly investigate an incident long after it has taken place. This explains why s 3(2) of the Act requires a notice of intended legal proceedings to be given within six months from the date on which the debt became due. The mischief at which the provision is aimed, is to prevent an organ of the State from being taken by surprise by a lawsuit many years after the facts giving rise to it had occurred. The need for the State to investigate claims against it before legal proceedings are commenced is even greater where there was no prior encounter or relationship between the claimant and an organ of the State.

[31] The reason often cited for why a s 3 notice is necessary for damages claims but not for non-damages claims is that non-damages claims, eg for specific performance, are more likely to rely on documentary evidence. In contrast, damages claims are more likely to rely on the memory of individuals, which is desirable to secure at the earliest possible stage. However, this is not always true in all circumstances. Goldfields' claim illustrates this. As mentioned, the fact that Goldfields allegedly repaired the road without the authority, knowledge and consent of the MEC makes the need for investigation and evidence-gathering even more necessary.

[32] But the fact remains that the Legislature chose to express itself in the manner it did by explicitly limiting the otherwise broad wording of the definition of 'debt'. It deliberately distinguished between damages claims and non-damages claims. It is almost impossible for any legislation to address every possible future scenario. This case illustrates that point. A claim for compensation for managing the affairs of the State is indeed uncommon. Therefore, it was never likely within the Legislature's contemplation to include such claims in the list requiring s 3(1)(*a*) notice. It is not the role of the court to legislate by overly stretching the clear language of the provision.

[33] This is one case where the language of a legislative provision may not be entirely in harmony with its purpose. It is not for this Court to interpret the provision in a manner that strains its language. A contextual or purposive reading of a statute must remain faithful to the actual wording of the statute.[24] It is upon the Legislature to consider whether the definition of 'debt' should be amended to accommodate the broadest possible causes of action for which a notice in terms of s 3(1)(*a*) should precede legal proceedings against an organ of State. In the result, the following order is made:

The appeal is dismissed with costs.

[24] *Bertie Van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* [2009] ZACC 11; 2010 (2) SA 181 (CC); 2009 (10) BCLR 978 (CC) para 22.

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T MAKGOKA

JUDGE OF APPEAL

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DN UNTERHALTER

JUDGE OF APPEAL

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G N Z MJALI

ACTING JUDGE OF APPEAL

Appearances:

For appellant:	G J M Wright
Instructed by:	State Attorney, Bloemfontein
For respondent:	H J Benade
Instructed by:	Symington & De Kok Attorneys, Bloemfontein.