REPUBLIC OF SOUTH AFRICA

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

REPORTABLE
Case number: 242/04

In the matter between:

NTOMBOMZI GQWETHA

Appellant

and

TRANSKEI DEVELOPMENT CORPORATIONS LTD 1st Respondent
J L V KWADJO NO
2nd Respondent
P R VICE NO
3rd Respondent

CORAM: **MPATI DP, FARLAM, NAVSA, NUGENT and VAN HEERDEN JJA**
HEARD: **6 MAY 2005**
DELIVERED: **30 MAY 2005**

Summary: Application for review – failure properly to exercise a judicial discretion in condoning unreasonable delay in instituting review proceedings – appeal court at large to exercise discretion afresh. (Two judgments were given in this matter. The order of the court appears from paragraph 36.)

JUDGMENT

MPATI DP:

[1] On 28 June 1995 the appellant, who held the position of accounts supervisor with the first respondent, was dismissed from her employment following a disciplinary hearing which was chaired by the second respondent. She had been found guilty on a number of charges relating to the performance of her duties. Her appeal against the termination of her services failed and her dismissal was confirmed by the third respondent on 26 July 1995. On 30 September 1996 the appellant instituted review proceedings in which she sought an order reviewing and setting aside the decisions of the second and third respondents and directing the first respondent to reinstate her forthwith with all attendant benefits.

[2] Only the first and second respondents opposed the application. I shall refer to them collectively as the respondents. The answering affidavits were filed on 6 December 1996 and the replying affidavit on 10 December 1996. The matter was set down for hearing and argued on 23 October 1997. In their answering papers the respondents raised two points *in limine*, one being that the appellant had taken 'an inordinately and unreasonably lengthy period' before instituting review proceedings and submitted that the

application ought to be dismissed on this ground alone. (The second point *in limine* is not relevant for present purposes.)

[3] The Transkei High Court (Madlanga J) found that the delay was unreasonable but nevertheless condoned it and granted the relief sought. He granted the respondents leave to appeal to the Full Court, but limited such leave to the aspect of condonation of the delay only. The Full Court, by a majority (Pakade J and Tokota AJ), upheld the appeal. It found that Madlanga J had failed to consider certain relevant facts and circumstances in the exercise of his discretion on whether or not the delay, though unreasonable, should be condoned. This appeal is with the special leave of this court.

[4] The issue for consideration is whether Madlanga J, in condoning what he found to be an unreasonable delay on the part of the appellant in instituting the review proceedings, failed properly to exercise his discretion.

[5] The attitude of our courts when faced with the issue of delay in matters of this nature is neatly captured by Brand JA in *Associated Institutions Pension Fund v Van Zyl* 2005 (2) SA 302 SCA at 321 as follows:

'[46] . . . It is a longstanding rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the

aggrieved party had been guilty of unreasonable delay in initiating the proceedings. The effect is that, in a sense, delay would "validate" the invalid administrative action (see eg *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA) ([2004] 3 All SA 1 at para [27]). The *raison d'être* of the rule is said to be twofold. First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Secondly, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions (see eg *Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) at 41).

[47] The scope and content of the rule has been the subject of investigation in two decisions of this Court. They are the *Wolgroeiers* case and *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en 'n Ander* 1986 (2) SA 57 (A). As appears from these two cases and the numerous decisions in which they have been followed, application of the rule requires consideration of two questions:

(a) Was there an unreasonable delay?

(b) If so, should the delay in all the circumstances be condoned?

(See *Wolgroeiers* at 39C-D.)

[48] The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case (see eg *Setsokosane* at 86G). The investigation into the reasonableness of the delay has nothing to do with the Court's discretion. It is an investigation into the facts of the matter in order to determine whether, in

all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned (see *Setsokosane* at 86E-F).'

[6] As has been mentioned above, the finding of the court of first instance, as well as that of the Full Court, was that the delay was indeed unreasonable. Although counsel for the appellant argued, quite tentatively, that this finding was wrong and that the delay was not unreasonable, I can find no reason to interfere with it. The appellant alleges that she 'approached the office of the Respondent and requested a copy of the record of the proceedings with a view of bringing the matter before court' after she had been advised of the dismissal of her appeal. She does not say when she was advised of the dismissal of her appeal and it must thus be accepted that she was so informed on 26 July 1995, the date on which her appeal was dismissed. She then alleges that she approached the office of the first respondent during the period July 1995 to 14 November 1995, 'demanding the record but could not get any co-operation'. It was only at the end of November 1995 that she was furnished with a copy of the record, which, upon perusal, was found to be incomplete in that the evidence was disjointed and incoherent 'to an extent that it was difficult for any lawyer to

get proper instructions'. She brought this to the attention of the respondents and kept calling on the office of the first respondent from January 1996 to the end of March 1996 demanding 'the missing portions of the record', but she was referred 'from one official to another' and was given several undertakings that 'the other portions of the evidence led at the enquiry' would be furnished to her 'in due course'. She was also told to go back home and to 'wait for mail from the office of the first respondent'. On 22 July 1996 her attorneys of record wrote to the first respondent 'requesting the missing pages of the record' to which a response was received advising that the appellant had been furnished with a full record. The appellant's attorneys then sent another letter dated 23 July 1996 to the first respondent explaining that the record was incomplete, but no further response was forthcoming. 'It is on this basis', the appellant alleges, 'that I ultimately put pressure on my legal representatives to place the matter before court despite the fact that the record is not complete'.

[7] Counsel for the respondent submitted that there is a dispute of fact on the papers relating to the date upon which the appellant, for the first time, approached the first respondent for a copy of the record of the proceedings in the disciplinary hearing. The deponent to the answering affidavit is the second respondent, who describes himself as the 'Manager for Investments

in the employ of the first respondent'. He states that a Mr Ndungane, the Human Resources Senior Manager, informed him that 'it was only on 31 May 1996 that he was, for the first time, approached by the applicant who requested to be furnished with a transcript of the proceedings of her hearing'. The applicant did so, so it is alleged, by way of a letter addressed to Mr Ndungane. Counsel contended that the matter should therefore be decided on the respondent's version, regard being had to the decision in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A). In her replying affidavit the appellant repeats her allegations in the founding papers that she called at the office of the first respondent from July 1995, but says that it was for the first time on 31 May 1996 that she 'reduced her request to writing'. She also states that on the previous occasions she spoke to either a Miss Sinxoto or to Mr Ndungane. Neither of these two persons deposed to an affidavit, nor was leave sought by the respondents to file a further set of affidavits to controvert her assertions. There is thus no merit in counsel's submission.

[8] It is plain, as counsel for the respondent argued, that review proceedings could and should have been instituted within a reasonable time after the appellant had become aware of the outcome of her appeal. The record of her disciplinary hearing was not an absolute necessity for

initiating review proceedings. Moreover, her case is one where she seeks to be reinstated in her employ with the first respondent, a business entity. The very nature of the order she seeks has the potential to disrupt the smooth running of the affairs of the first respondent. The delay of over 14 months (14 months and 4 days) from the date of dismissal of her appeal to the date of launching the review application is indeed unreasonable. Should it be condoned?

[9] The sum total of Madlanga J's reasoning on this issue is the following:

'[5] On the issue of delay, the application was brought just over a year from the date of the applicant's dismissal. Though the applicant could, and perhaps ought to, have brought the application much earlier, the delay, though unreasonable, is not of such a nature as not to be condoned. It is not very long. Also, as will appear more fully later, the applicant is quite strong on the merits of the application.'

The learned judge then proceeded to consider the merits of the application.

[10] The Full Court reasoned, firstly, that the appellant 'failed to advance any satisfactory explanation for the delay' and that her only explanation 'as we understand her case' is that she was not furnished with the record timeously so as to enable her to institute the review application. The court held that 'it is sufficient if the applicant merely sets the matter in motion by

filing papers . . . capable of disclosing a cause of action'. That is indeed the ideal, but the mere existence of the delay rule (*Harnaker v Minister of Interior* 1965 (1) SA 372 (C) at 380B-C) points to the fact that not all litigants are as diligent, some because of ignorance. Counsel for the respondent also contended that the appellant's explanation for the delay is unsatisfactory. In my view, a closer reading of the founding affidavit reveals that the appellant did not sit idle. One can also deduce from it that her attorneys were not entirely blameless in the delay. The appellant states in the founding affidavit that 'as early as August 1995 I approached my attorneys of record with a view to taking the matter to court in order to review the decisions of the Respondents, but my attorneys could not brief Counsel because the record was incomplete'. We know that the appellant only received an incomplete copy of the record at the end of November 1995. If it is indeed so that she approached her attorneys in August 1995 (and there is nothing to gainsay this) the inference to be drawn from this is that her attorneys must have told her to first obtain the record. This becomes clearer when, later in the founding affidavit, she states that when there was no response from the first respondent to her attorneys' second letter following the one of 22 July 1996 'requesting the missing pages of the record' she ultimately put pressure on her legal representatives to place

the mater before court despite the fact that the record was incomplete. It follows that I do not share the view of the court *a quo* that the appellant failed to advance any satisfactory explanation for the delay.

[11] The court *a quo* also held that Madlanga J, having correctly found that the delay was unreasonable, failed to exercise his discretion judicially 'by indicating in the judgment that he took into account the fact that other parties have been prejudiced or no party suffered prejudice'. The appellant's post, it said, could have been filled and someone 'would thus have already acquired vested interests by the time of launching the review proceedings'.

[12] It is indeed so that, although Madlanga J clearly applied his mind to the question of the unreasonable delay – he said that the delay, though unreasonable, is not of such a nature as not to be condoned – he did not consider, so it appears from his judgment, the likelihood of prejudice on the part of the respondents should the delay be condoned. As has been mentioned above (in the reference to *Associated Institutions Pension Fund v Van Zyl*) the courts have recognised that an aggrieved party's undue and unreasonable delay in initiating review proceedings may cause prejudice to other parties to the proceedings and that in such cases, therefore, a court should have the power to refuse to entertain the review (*Harnaker*, supra,

380C-E, quoted with approval in the *Wolgroeiers* case, supra). The incidence of prejudice to the respondent and the extent thereof are thus relevant factors in considering whether or not unreasonable delay should be condoned; in certain instances prejudice may well be a decisive factor, particularly in cases of less unduly long periods of delay (*Wolgroeiers*, supra, at 42C). The court *a quo* was thus correct in holding that Madlanga J failed properly to exercise a judicial discretion. That leaves this court at large to itself exercise the discretion. *Wolgroeiers*, supra, at 44H-45D.

[13] The Full Court further held that the appellant failed to place evidence before the court of first instance 'that no one has been prejudiced' by the unreasonable delay, the onus of showing absence of such prejudice being on her. This finding was linked to the Full Court's observation that the appellant's post could have been filled and someone 'would thus have already acquired vested interests by the time of launching the review proceedings'. In this regard it referred to *Mkhwanazi v Minister of Agriculture & Forestry, KwaZulu* 1990 (4) SA 763 (D) at 767H.

[14] It may well be so that a party seeking condonation of his or her delaying unreasonably to institute review proceedings bears the overall onus of persuading a court to so condone such delay, but I do not think that a decision as to whether or not the other party in the proceedings would

suffer prejudice can be made only when evidence has been placed before it. Cf *Silbert v City of Cape Town* 1952 (2) SA 113 (C) especially at 119B-E. There may very well be cases where an applicant for review is unable, due to circumstance, to say under oath that the other party will not suffer prejudice as a result of what might be found to be an unreasonable delay. In the present matter the respondents raised the issue of unreasonable delay, but no mention whatsoever was made by them that because of such delay the first respondent would be prejudiced in any way were the delay to be condoned. Not surprisingly the appellant, in reply, merely states that 'I reiterate paragraphs 19 to 20 of my Founding Affidavit' in which she explains the reasons for the delay. What has just been said is not to be understood as meaning that the respondent bears the onus of proving absence of prejudice. I merely indicate that in certain circumstances and where the party whose decision is sought to be reviewed raises an unreasonable delay on the part of the applicant it may well have an evidentiary burden, at least, on whether it would be prejudiced were the delay to be condoned.

[15] The first respondent is a company and a business entity which does not appear to have only a handful of employees. It is not in dispute that during 1983 the appellant was employed by the first respondent as a clerk

and that in 1992 she became an accounts supervisor in charge of junior clerks. There is no suggestion that the first respondent would be unable to reinstate the appellant as an employee, as ordered by Madlanga J, even in a position other than the one she had held at the time of her dismissal. Counsel for the respondents merely contented himself with the submission that it was not for the respondent to raise prejudice, but for the appellant to demonstrate absence thereof and to do so in her founding papers. In my view, and in light of what I have just said, the likelihood of prejudice for the respondent appears to be remote.

[16] As has been mentioned above, prejudice is a relevant factor, but not the only one, to be considered in the exercise of a discretion to condone or refuse to condone unreasonable delay. In *Wolgroeiers*, supra, Miller JA said the following (at 43G-H):

'Benewens die tydsduur van die versuim is daar in die onderhawige saak ander oorwegings wat noemenswaardig is en in aanmerking geneem behoort te word by die uitoefening van die Hof se diskresie. Die appellant se doel met die aansoek om tersydestelling is eenvoudig om terugbetaling van die begiftigingsgelde te verkry. Dit is derhalwe ter sake om oorweging te skenk aan die vooruitsigte indien die appellant se aansoek toegestaan sou word. (Sien *Saloojee and Another, N.N.O. v Minister of Community Development*, 1965 (2) SA 135 (A.A.) op bl. 142-3; . . . .'

In *Saloojee* this court dealt with an application for condonation of the late noting of an appeal and the late filing of the record and, in considering whether or not to condone the non-compliance with its Rules, also considered the prospects of success of the appeal on the merits. In that case the court was unable to hold that the applicants (for condonation) had no prospects of success in the appeal. It then considered what the consequences would be were the appeal to succeed. One of the considerations was the possibility of the matter being referred back to the court below to deal with a issue (which was incidentally the likelihood of prejudice allegedly caused to the respondent by a lengthy delay in the conduct of the litigation and in which the court below had to exercise a discretion). This court then considered, as it was entitled to do, whether there were any prospects of the appellants succeeding on that particular issue in the court below. That it was clearly entitled to do, for if there were no such prospects the granting of condonation and possible success of the appeal would have served no purpose. The court held that such prospects were doubtful and uncertain and because of that, taken together with the 'wholly unsatisfactory features of the delay in preparing the record' and bringing the application for condonation and of the explanation thereof, it refused the application with costs. Following this approach Miller JA, in *Wolgroeiers*, although it

appears that he did not find it necessary to consider the existence or otherwise of any prospects of success, considered the possible consequences of the appellant's success in the court below and concluded that it (the appellant) would not suffer any substantial damage if, by reason of a 3 ½ years delay, it were to be denied the order it had sought in the court below.

[17] In the present matter, however, whilst it is so, were the appeal to succeed, that the respondent would be entitled, as Nugent JA correctly points out, to pursue its enquiry *de novo*, to suggest that there is 'no reason for confidence that the setting aside of the decision to dismiss the appellant on the grounds that there were procedural irregularities will necessarily have a meaningful result' is, if not to pre-empt the outcome of that enquiry, to enter into the realms of speculation. Anything possible may happen, eg the parties may reach some sort of agreement acceptable to both without getting into another enquiry.

[18] And, as to prospects of success, I should mention that if there are no prospects of the administrative decision being set aside, I can see no reason why a court would still have to embark on an enquiry as to what meaningful consequences there would be were the administrative decision to be set aside. A court might, of course, find it convenient, if it would easily dispose of the matter, to decide it on the basis that there is no prospect of a

meaningful consequence and without having to decide whether or not there is a prospect of the administrative decision being set aside, as appears to have been the approach in *Wolgroeiers*.

[19] Clearly then, Madlanga J was perfectly entitled to consider the prospects of the appellant's success on the merits of the application. In my view the delay was not so great as to lead the court to ignore the merits. Counsel for the respondents' argument that Madlanga J should not have done so is without substance.

[20] As Madlanga J held the appellant was 'quite strong on the merits of the application'. Serious irregularities occurred in the disciplinary processes that led to the appellant's dismissal and it was on the basis of such irregularities that he ordered her reinstatement. His conclusions on this aspect of the case are not under attack. In my view the appeal should succeed.

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L MPATI DP

FARLAM JA) CONCUR

NUGENT JA:

[21] I have read in draft form the judgment of Mpati DP but regretfully cannot agree with the order that he proposes.

[22] It is important for the efficient functioning of public bodies (I include the first respondent) that a challenge to the validity of their decisions by proceedings for judicial review should be initiated without undue delay. The rationale for that longstanding rule – reiterated most recently by Brand JA in *Associated Institutions Pension Fund v Van Zyl* 2005 (2) SA 302 (SCA) at 321 – is twofold: First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Secondly, and in my view more important, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions. As pointed out by Miller JA in *Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) at 41 E-F (my translation):

'It is desirable and important that finality should be arrived at within a reasonable time in relation to judicial and administrative decisions or acts. It can be contrary to the administration of justice and the public interest to allow such decisions or acts to be set aside after an unreasonably long period of time has elapsed - *interest reipublicae ut sit finis litium* … Considerations of this kind undoubtedly constitute part of the underlying reasons

for the existence of this rule.'

[23] Underlying that latter aspect of the rationale is the inherent potential for prejudice, both to the efficient functioning of the public body, and to those who rely upon its decisions, if the validity of its decisions remains uncertain. It is for that reason in particular that proof of actual prejudice to the respondent is not a precondition for refusing to entertain review proceedings by reason of undue delay, although the extent to which prejudice has been shown is a relevant consideration that might even be decisive where the delay has been relatively slight (*Wolgroeiers Afslaers,* above, at 42C).

[24] Whether there has been undue delay entails a factual enquiry upon which a value judgment is called for in the light of all the relevant circumstances including any explanation that is offered for the delay (*Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie* 1986 (2) SA 57 (A) at 86D-F and 86I-87A). A material fact to be taken into account in making that value judgment – bearing in mind the rationale for the rule – is the nature of the challenged decision. Not all decisions have the same potential for prejudice to result from their being set aside.

[25] The challenged decision in the present case was a decision to dismiss the appellant for complicity in financial irregularities. A decision of that

kind will necessarily have immediate consequences for the ordinary administration of the organization, and for other employees who will be called upon to perform the functions of the dismissed employee or even to replace her. Moreover, personnel decisions that are susceptible to review are no doubt made by any large organization on a regular and ongoing basis, and some measure of prompt certainty as to their validity is required. The very nature of such decisions speaks of the potential for prejudice if they were all to be capable of being set aside on review after the lapse of any considerable time.

[26] Review proceedings were commenced in the present case some fourteen months after the final decision to dismiss the appellant was made. The appellant's sole explanation for the delay in commencing proceedings was that she was awaiting a transcript of the disciplinary proceedings that resulted in her dismissal.

[27] The appellant alleges (and I accept her allegations for present purposes) that she approached the respondent to secure the transcript on various occasions between July and November 1995, and that at the end of November 1995 she was given an incomplete transcript. From January to March 1996 she again approached the respondent on various occasions to obtain the missing parts of the transcript. On 23 July 1996 her attorneys

wrote to the respondent requesting the missing pages but they were never received and the proceedings were commenced nonetheless.

[28] What is not explained at all, either by the appellant or her attorney, is what relevance the transcript had to her ability to commence review proceedings. All but one of the grounds upon which she sought to review the decision were quite unrelated to the content of the transcript. She alleged that the disciplinary hearing was irregular because she asked for but was not granted a postponement at the outset of the enquiry, because the third respondent ought not to have been the person to conduct the enquiry, because she was not furnished at the outset of the enquiry with a transcript of earlier disciplinary proceedings, and because she was lured to give evidence in those earlier proceedings without having been told that she was to be charged with the same offences. The transcript of the disciplinary hearing had no bearing on any of those grounds. Finally, she averred that 'there was no evidence to prove that I was guilty of contravening the financial regulations of the first respondent'. The transcript was not required for that bald assertion to be made.

[29] It is difficult to avoid the conclusion, in those circumstances, that the appellant's reliance upon the absence of the transcript to explain the delay is spurious. The fact that the proceedings were indeed commenced when,

according to the appellant, she was in possession of no more than a third of the transcript, and that when the full record of the disciplinary hearing was filed by the respondents as required by Rule 53 the appellant did not find it necessary to supplement her founding affidavit, adds weight to that conclusion.

[30] Bearing in mind the nature of the decision in my view the lapse of a period of some fourteen months, for which there is no adequate explanation, was unreasonable, and the decision of Madlanga J was in that respect unexceptional.

[31] The only remaining question is whether the learned judge properly exercised his discretion to overlook the unreasonable delay and to entertain the application for review, which, as pointed out in *Setsokosane Busdiens*, cited above, is a separate enquiry.

[32] As pointed out by Mpati DP the learned judge exercised his discretion in that regard solely on the grounds that the period of the delay was 'not very long' and that the appellant was 'quite strong on the merits of the application.' I agree with the court *a quo* that the approach of the learned judge was unduly narrow.

[33] As to the first ground upon which the learned judge exercised his discretion, I have already suggested that delay cannot be evaluated in a

vacuum but only relative to the challenged decision, and particularly with the potential for prejudice in mind. In abstract terms the period of delay might be described as being 'not very long' but it was correctly found to have been unreasonable. I do not think that a delay that is unreasonable in its extent can simultaneously, and without more, serve as the basis for overlooking it. What the learned judge overlooked, as correctly pointed out by the court *a quo,* was the inherent potential for resultant prejudice if the decision was set aside. It needs also to be borne in mind, when evaluating the potential for prejudice, that the consequential relief that the appellant sought was an order reinstating her in her employment, which, if granted, would require the first respondent to return her to her former position, and not merely to appoint her to some other unidentified position.

[34] As to the second ground upon which the learned judge relied in exercising his discretion, I do not think that the prospect of the challenged decision being set aside (referred to by Madlanga J and Mpati DP as the merits of her case) is a material consideration in the absence of an evaluation of what the consequences of setting the decision aside are likely to be, and I do not think that *Wolgroeiers* suggests otherwise. The remarks of Miller JA at 43G-H (which are quoted by Mpati DP and need not be repeated) were not directed merely to the prospects of the challenged

decision being set aside, but were directed rather to the prospect of anything meaningful being achieved if such an order were to be granted, as appears more fully from the remarks that followed at 43H-44E. (Different considerations arise in relation to applications to condone delay in the conduct of litigation – for example to condone the late filing of pleadings or to condone a late appeal – and the test that is applied in those cases is not necessarily transposable to unduly delayed proceedings for review.)

[35] In the present case it cannot be assumed that if the challenged decision were to be set aside the appellant's further employment is assured. The first respondent would not be obliged to sweep under the carpet the serious allegations that led to the appellant's dismissal and to permit her employment to continue as before. It would be entitled to pursue its enquiry *de novo* (indeed, it might be duty-bound to do so before once again permitting the appellant to assume her position of trust) provided that the enquiry is not conducted irregularly. I see no reason for confidence that the setting aside of the decision to dismiss the appellant on the grounds that there were procedural irregularities will necessarily have a meaningful result. As appears from the passages from *Wolgroeiers* to which I have referred, it is the prospect (or lack of it) of a meaningful consequence to the setting aside of an administrative decision, rather than merely the prospect

of the administrative decision being set aside, that might be a relevant consideration to take into account, and in my view Madlanga J approached that issue too narrowly.

[36] Thus I agree with the court *a quo* that Madlanga J failed properly to exercise his discretion – both for the reasons given by that court and for the broader reasons I have outlined – and the court *a quo* was free to substitute a decision reached in the exercise of its own discretion. It is not necessary to consider the manner in which the court *a quo* exercised its discretion because I agree in any event with its conclusion. In my view it was in the nature of the decision to dismiss the appellant that any challenge to it ought to have been brought promptly, before its consequences were entrenched. No adequate grounds have been advanced by the appellant for overlooking her default and I am able to discern none. The following order is made:

The appeal is dismissed with costs.

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R W NUGENT
JUDGE OF APPEAL

NAVSA JA)
VAN HEERDEN JA) CONCUR

‘Dit is wenslik en van belang dat finaliteit in verband met geregtelike en administratiewe beslissings of handelinge binne redelike tyd bereik word. Dit kan teen die regspleging en die openbare belang strek om toe te laat dat sodanige beslissings of handelinge na tydsverloop van onredelike lang duur tersyde gestel word – *interest reipublicae ut sit finis litium*. ... Oorwegings van hierdie aard vorm ongetwyfeld ’n deel van die onderliggende redes vir die bestaan van die reël.’