CASE NO. (P) A 178/2005

IN THE HIGH COURT OF NAMIBIA

In the matter between:

FRANCIS LIYEMO MUBITA **FIRST APPLICANT**

BEN MUNZIE **SECOND APPLICANT**

RICHWELL MBALA MANYEMO

THIRD APPLICANT

RICHARD LIMBO MUKAWA

FOURTH APPLICANT

ALFRED LUPALEZWI SIYATA

FIFTH APPLICANT

and

THE GOVERNMENT OF THE
REPUBLIC OF NAMIBIA **FIRST RESPONDENT**

INSPECTOR GENERAL:
NAMIBIAN POLICE **SECOND RESPONDENT**

CORAM: SHIKONGO A J

Heard: 26/07/2005

Delivered on: 10/08/2005.

RULING

SHIKONGO A J: The prelude to this application is the respective suspension and discharge of the above applicants by the respondent following their arrest on 270 charges, including High Treason.

All the applicants are members of the Namibian Police and were all arrested in the Caprivi Region in connection with what has become known as the High Treason Trial. In this regard, the first applicant was arrested on the 3rd of August 1999 and suspended retroactively during February 2002 as from the 3rd of August 1999; his discharge came about on 15th September 2003 retroactively as from 3rd August 1999; second applicant was arrested on the 5th of August 1999 and was suspended on the 31st of August 1999 retroactively as from 5th August 1999 and discharged on the 28th August 2003 retroactively as from 5th August 1999; third applicant was arrested on the 18th of May 2000 and was suspended during June 2002 retroactively as from May 2000, he was discharged on the 30th of October 2002, retroactively as from 18th of May 2000; fourth applicant was arrested on the 3rd of August 1999; he was suspended during February 2002, retroactively as from 3rd August 1999, and was discharged on the 28th of August retroactively as from 3rd August 1999; fifth applicant was arrested on the 3rd of August 1999, he was suspended during February 2002 retroactively as from 3rd of August 1999, he was discharged retroactively as from 3rd August 1999 on the 28th of August 1999.

The application it appears, is essentially aimed at reviewing and setting aside the decisions taken by the second respondent referred to above in relation to the suspension and discharge of the applicants on the dates as indicated, including the declaration of the aforementioned actions as unconstitutional, null and void.

It was indicated on behalf of the respondent at the commencement of the proceedings that they no longer oppose the setting aside of the decision to discharge applicants and that they would abide by the decision of the court. In this regard it was accordingly submitted on behalf of the respondent that the only issue to be considered by the court, is whether the second respondent's decision to suspend applicants without remuneration and benefits was lawful. For what it is worth, it was pointed out and submitted on behalf of the respondent that the aforesaid concession, rather than being an acceptance of the respondent's inability to legally discharge the applicants, it should be viewed only as a concession in relation to the procedural deficiencies in implementing such discharge, rather than a concession on the merits.

The background and circumstances under which the applicants were suspended and arrested, are set out in the founding affidavit deposed to by the first applicant.

As the discharge of the applicants by the respondents is no longer opposed, reference is made to this aspect of the application only insofar as it may be relevant to the issue of suspension. Consequently, the voluminous body of material in this application relating to the discharge of the applicants by the respondent, is deliberately avoided and referred to only in passing.

Turning back to the first applicant's founding affidavit, the applicant informed the Court that prior to 1999, he joined the Namibian Police Force where he held the rank of constable. Since his arrest on the 3rd of August 1999, he had been a trial awaiting prisoner on 275 charges, including High Treason. As of the date of arrest, he had not received any salary, nor did he receive any benefits. According to the first

applicant, the other applicants who likewise, were members of the Namibian Police on the dates of arrest, found themselves in similar circumstances.

First applicant received a suspension order during or about February 2002 from the Inspector General of the Namibian Police Force being the second respondent in this application. The first applicant informed the Court that he was advised by the Inspector General LP Hangula that according to information at the latter's disposal, he, the first applicant, committed the criminal offence of high treason and as a result, pending a complete investigation and the trial regarding that criminal offence, he was suspended without remuneration in terms of section 23 (2) of the Police Act as amended.

The suspension notice under cover of a letter to the Regional Commander of the Namibian Police in the Otjikoto region was forwarded to the first applicant and reads as follows:

> **"SUSPENSION HEARING CONDUCTED IN TERMS OF SECTION 23(3) OF THE POLICE ACT 1990**
>
> **A: PARTICULAR OF CASE:**
>
> **Number:** 400466 Rank: CST Name: F L Mubita
>
> **B: CRIMINAL OFFENCE COMMITTED:-** High Treason
>
> **C: RECOMMENDATION BY LEGAL OFFICER:** The member in terms of section 23 (1) of the Police Act, 1990 be suspended

D: **DECISION:** No. 400466 Cst. F L Mubita is suspended in terms of section 23 (1) of the Police Act, 1990, with effect from 03 August 1999, until further notice".

According to the first applicant, the remainder of the applicants were likewise suspended on the dates as set out hereinbefore on similar terms. The applicant then proceeds to point out that he, including the other applicants, did not receive any form of hearing, whether in an attenuated form or otherwise, prior to the second respondent's decision to suspend them. Applicant asserts further in this regard that had they been afforded such an opportunity, they would have made use of same. In addition, the applicant points out that neither him, nor the other applicants received any prior notice of such suspension, nor were they informed of the investigation into the allegations against them prior to the suspension order.

The discharge of the applicants (which shall not be referred to in detail) followed on about the 15th of September 2003, when the first applicant received a letter from the Inspector General advising that due to the seriousness of the charge against the applicant, he was no longer considered fit to serve in the Namibian Police and was accordingly to be discharged in terms of Section 9 of the Namibian Police Act with effect retrospectively as from the 3rd of August 1999 being the date of arrest. Accordingly, the first applicant submits that the decision by the second respondent to suspend him and the other applicants on the dates as set out without remuneration and benefits with effect from the dates of arrest, are to be reviewed and set aside on several grounds as cited.

These grounds, include the failure to comply with the rules of natural justice in having been denied any form of hearing prior to such decision having been taken. It is asserted in this regard that applicants are entitled to such hearing even in

attenuated form prior to a decision of that nature been taken; the decision taken against applicants were unfair and unreasonable and in conflict with their rights under Article 8 of the Namibian Constitution; the second respondent acted ultra virus his power, especially in seeking to suspend applicants without pay retrospectively; the second respondent was motivated by an improper purpose or motive in making such decision; the second respondent failed to apply his mind to relevant matter and or took into account irrelevant matter in reaching his aforesaid purported decision and or failed to take into account the ambit and nature of the discretion vested in him, especially in seeking to do so retrospectively.

It was in view of the aforementioned, that it was submitted on behalf of the applicant that the decision to so suspend them by the second respondent would be liable for review and should be set aside as such constitutes a nullity.

The first applicant's founding affidavit is supported by the affidavit of the second to the fifth applicant essentially confirming the contents of the first applicant's affidavit, insofar as it relates to them and also confirming specific data in relation to the dates of suspension and discharge applicable to them individually.

Turning now to the answering affidavit of the first and second respondents, it is apparent, pertinently on the issue of suspension, that it is common cause between the parties that the second respondent suspended the applicants without a hearing and that the suspension was made with retrospective effect. As much as this is confirmed by Commissioner Hubbert Mootseng who deposed to the answering affidavit on behalf of the first and second respondent. The Commissioner however submitted that the second respondent was entitled by relevant legislation to act in the way he did. In this regard, he points out that the applicants were facing serious

criminal charges for which they had to be arrested and detained and that they were in custody after having been denied bail by the criminal courts. It was further asserted on behalf of the first and second respondents that there was no breach of the Namibian Constitution and or the common law in any manner whatsoever, in the suspension of the applicants without any hearing and in backdating the suspensions to the respective dates of their arrests.

Respondents further submitted that the rules of natural justice were not breached in any way by the second respondent; the decisions taken against applicants were fair, reasonable and did not breach their rights under Article 18 of the Namibian Constitution; the second respondent was entitled to suspend and discharge the applicants retrospectively from the time of their arrest; the second respondent's position was not actuated by an improper purpose or motive, but was a result of a proper application of the existing legislation to the facts; the second respondent did not fail to apply his mind to the applicant's matter and did not take into account irrelevant matter in making the decisions complained of; the second respondent exercised his discretion properly and in accordance with the relevant legislation and as he is so bound to. Through the aforementioned, the respondent, it appears puts in issue the most critical averments of the applicants.

Summarised, the essential facts are as follows:

The applicants, all members of the Namibian Police Force, were arrested on the dates as reflected at the commencement of this judgment. They are trial awaiting prisoners since the dates of their arrests, and are facing 275 charges, including charges of high treason. During their arrests, the applicants received notices of suspension suspending their services without remuneration and benefits

retrospectively from the date of their arrests. The notices of their suspensions were followed up with notices of discharge from the Namibian Police, also retrospectively from the dates of their arrests. The suspensions of the applicants were implemented without the applicants being heard. In addition, none of the applicants have been paid any salary or benefits since their dates of arrest.

Although counsel for the applicants being *dominis litis* was first in addressing the Court during argument, counsel for the respondent Mr. Nixon replied to applicants submissions, first with reference to what he referred to as applicants' unreasonable delay; an issue resembling a point in *limine*. In this regard, it was submitted on behalf of the respondents, that should the Court find that the applicants have delayed the lodging of their applications unreasonably, the result should be that the application should be refused which will result in the total disposal of the application. It is for this reason that I propose to consider the submissions on behalf of the respondents first.

Turning to the respondents' submissions in this regard, it was pointed out on their behalf that the applicants sought to review the decision by the second respondent to suspend and subsequently discharge them from the Namibian Police. In this regard, it was submitted that a review must be brought within a reasonable time, there being two important reasons for doing this; firstly: the failure to bring review proceedings within a reasonable time may cause prejudice to the respondent, secondly there is a public interest in finality with respect to the status of administrative decisions or acts. Counsel for the respondents as a result submitted that the application against the second respondent's decision to suspend and discharge the applicants is relatively simple and raised no complicated issues of facts. It was further submitted in this

regard that if the applicants wished to have the said decisions set aside, it was incumbent upon them to bring the review application with expedition.

Counsel for the respondent pointed out in this regard that the applicants delayed the lodging of this application until 13th September 2004 which amounted to two years and six months after the decision to suspend first applicant, five years after the decision to suspend the second applicant; two years and three months after the decision

to suspend the third applicant, two years and seven months after the decision to suspend the fourth applicant; and two years and seven months after the decision to suspend the fifth applicant. It was further pointed out on behalf of the respondents that the applicants did not explain or justify the said delay in the founding papers, neither did they attempt to do that in their reply.

Mr. Markus further submitted that such was the case, despite the fact that the unreasonable delay in lodging the application was put in issue by the respondents. It was further submitted by Mr. Markus that it would seem that the delay should be explained with reference to the fact that applicants accepted the decisions of the second respondent to suspend them which according to counsel for the respondent is evident from the fact that during December 2003, the applicants requested their leave and pensions payouts. Accordingly, it is submitted, that the delay of more than two years is clearly unreasonable, while in the case of the second applicant's delay of five years, besides being unreasonable, such claim has also prescribed. As regards, the question of prejudice to the respondents, it was submitted on their behalf that prejudice to the other party is not a prerequisite before an application can be dismissed on grounds of unreasonable delay. It is nevertheless a relevant consideration, especially when considering whether the Court will condone the delay.

According to the respondents' representatives, the applicants omitted to allege any prejudice as a result of the delay by the applicants in their papers. The above notwithstanding, it was submitted that insofar as the matter was essentially a labour dispute and by its nature urgent, it was incumbent upon the applicants to seek its resolution as soon as possible. The point was further made on behalf of the respondents that insofar as the applicants were suspended from their employment without pay during 2000, the letters of demand which followed their suspension, on their behalf, claimed compensation for losses and damages suffered on account of their suspension and dismissal. Consequently, the longer the applicants delayed in not challenging the decision to suspend them, the longer the applicants seek payment for in fact not working and resultantly, the greater their claim for damages would be. This was submitted to constitute a clear case of prejudice to the respondents. A further ground was also raised on behalf of the respondent, why the delay by the applicants should not be condoned. This was done with reference of Section 39 (1) of the Police Act which provides that:

> "Any civil proceedings against the state or any person in respect of anything done in pursuance of this Act shall be instituted within 12 months after the cause of action arose and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than 1 months before it is instituted: Provided that the Minister may at any time waive compliance with the provisions of this Section".

It was submitted in this regard that the applicants were all aware of the statutory requirements before instituting the present application. It was further submitted that although the applicants purported to have complied with the said requirement by giving notice on the 6th of August 2003 of the intended action, by then however they were already out of time with regard to the decision to suspend them. In this regard no waiver was sought from the Minister with the compliance of the provision.

Consequently, it was submitted that the delay by the applicants, coupled with the non-compliance with section 39 (a) offends against the legitimate governmental purpose of regulating claims against the state in a way that promotes quick and prompt investigation of surrounding circumstances and settlement, if justified.

It is apparent from the pleadings that the issue of delay as dealt with on behalf of the respondent was not at all dealt with by the applicants in their founding papers, nor in their written heads of arguments. Aforementioned had the result that whereas extensive arguments were advanced on behalf of the respondents, supplemented by the written heads on the issue of the delay, the applicant's reply was rather short, and was restricted to submissions from the Bar on both issues of fact and Law.

In his reply to the submissions of the respondent's legal representatives on the issue of delay Mr. Dicks, applicant's counsel, from the outset submitted that the respondent is precluded from relying on the issue of delay, insofar as such point was not dealt with in the founding papers; nor should it be regarded, as what he referred to as a proper point of Law. It was furthermore submitted on behalf of the applicants that insofar as the issue has not been raised at all in the respondent's papers, the applicants were not afforded an opportunity to deal with the issue. An adjudication on the issue in the manner proposed by the respondent would accordingly prejudice the applicant. The applicant's counsel further amplified on his aforementioned submission by arguing that the issue of delaying has not been dealt with in clear and unambiguous terms by the applicant and that should I be inclined to hold differently on the issue of clear and unambiguous terms than, at the very least, the applicants should be afforded an opportunity to amend its papers, with the resultant postponement to be at the respondent's cost.

Accordingly, my first inquiry will focus on whether the respondents are entitled to rely on the issue of the delay on the part of the applicants in bringing the application for review; secondly whether the delay if any, on the part of the applicants is such that I should disallow a hearing of the application on the merits.

I shall now consider in this regard the applicant's submission to the effect that the respondents are not entitled to raise the issue of delay in *limine,* under circumstances where such was not raised in clear and unambiguous terms in the papers. The initial point raised in this regard was that the issue of delay was not at all dealt with. Counsel for the applicant seems not to have pursued this when it become clear that the issue was in fact raised though not in the terms it was expected according to Mr. Dicks. In this regard, the respondent's representative in reply pointed out that the issue of delay was in fact expressly dealt with in their answering affidavit where it was articulated in paragraph 19 of their answering affidavit as follows:

> "the contents herein are disputed. One can even question why the applicants are bringing this review application so late after the decisions complained of where made at a time when their prosecutions had commenced."

The respondent aforementioned reply was in answer to paragraph 19 of the first applicant's founding affidavit, wherein the following was averred:

> "I am advised and submit that the decision to so suspend us would fall to be reviewed and set aside and would constitute a nullity by virtue of the aforegoing"

The question thus arises whether the applicant is correct in its submission that the issue of delay in bringing the review proceedings was not raised in clear and

unambiguous terms. Upon my reading of the aforementioned relevant paragraph, it is my view that at the very least, the question of delay in bringing the review application is raised in a fashion, albeit almost in tentative terms, but definitely creating a sufficient basis not only for the respondent to raise and address the court on the issue, but also to alert the applicants to the possibility that the issue of delay will or can be raised by the respondents. I am of the view that had the applicant's representatives diligently applied their mind to the reply as formulated, clarity or ambiguity on what is being raised in the paragraph would have been the least of their concerns. Similarly, the submissions on behalf of the applicants that the contents of the said paragraph amounts to on ambush seems to me the same as saying, the contents of the paragraph was not understood. The contrary however appears from the applicant's reply: "The contents hereof are denied and respondents are put to the proof thereof". Accordingly, I am of the view that the respondents are not precluded from relying on the delay rule as a defence to the applicant's claim. Even if I am wrong in my aforementioned conclusion, it is now trite that it is competent to raise the defence of delay in bringing review proceedings even after *litis contestation,* although it is desirable that it should be raised *initio litis* so that it should be dealt with as a separate peremptory defence before the merits of the matter are entered into. This essentially, is the respondent's proposed approach to the adjudication of this matter. See: *Hebstein v Van Winsen: The civil practice of the civil court of South Africa, 4th Edition at p.958;* See also the case of *Harnaker v Ministry of the Interior 1965 (1) (CPD)* where Corbett J, in dismissing a similar objection raised in the matter before him relied on the Southern Rhodesia Case of *Ruben v Meyers 1967 (4) (SA) 57 (SR)* where the court *inter alia* remarked:

> "…..It is, I consider entirely out of keeping with the modern and more benevolent approach to the conduct of litigation, to bar a defendant from raising any of this wide range of special defences, merely because he or her

> legal advisors may have overlooked them at the time of filing his original plea".

It is apparent that in *casu,* we are not so much concerned with the overlooking of a specific defence, but rather on the applicant's version, whether or not such defence is raised in clear and unambiguous terms.

It was further submitted on behalf of the applicants that an entertainment of respondent's defence of unreasonable delay, if upheld may, have the effect of validating an *ultra virus* action by the second respondent and for that reason the point should not be upheld. In this regard, a similar point raised was argued in the *Harnaker Case* (supra) where it was argued that the delay rule should not be applied to Legislative Acts since its effect could be to validate an invalid act. In answer to this point, when deciding that unreasonable delay by the Plaintiff in that matter, coupled with resultant prejudice to the defendant was available as defence or objection, the court made the following remarks:

> "it is true that a legislative act would effect a wider section of the public: that if the affected members of the public having locus standi to apply to court for an order declaring the legislative act null and void, delay unreasonably in taking such action and this causes prejudices, I do not see why they should not all be precluded from obtaining relief.

I am in respectful agreement with the remarks of the court in the above matter and stand to be guided accordingly in this matter.

See also the matter of *Kalil and Another, NNO v Ministry of Interior, 1962, (4) SA 755D* where a similar argument was advanced without success.

I now revert to the respondent's overall argument on the issue of delay by the applicant in bringing the application.

In making the submission that review must be brought with a reasonable time, the respondent's counsel made reference to the matter of *Disposable Medical Products (Pty) Ltd v Tender Board of Namibia and Others (1997 NR at 129 HC.* In this matter the point in *limine* was raised on behalf of the respondent to the effect that applicant did not bring his application for review within a reasonable time and that the whole application therefore stands to be dismissed. In refusing to condone the unreasonable delay, the court took into account that there was also prejudice to be occasioned to the respondents. Furthermore, the principles taken into account by the court in deciding this issue was firstly, whether the delay caused prejudice to the other parties, and secondly, the principle applied that there must be finality to the proceedings. Vide p. 132. The delay in question involved a period of approximately two months.

The aforementioned test was applied in the matter *of Kruger v TransNamib Ltd (Air Namibia) and Others 1995 NR at 90 (*also referred to by respondent's counsel), where the Court stated that the test which the Court has to apply is of a dual nature, namely whether the proceedings were instituted after the expiration of an unreasonable time and if so, whether the unreasonable delay should be considered. Furthermore, the court has a judicial discretion in respect of condoning unreasonable delay in this matter. After a close examination of the facts, the court was of the opinion that the period of delay in the light of all the circumstances was unreasonable. The delay being considered in the matter cited amounted to a delay of over a period of two and a half years. It is also apparent that the Court took into account the fact that the applicant offered no explanation in relation to such delay.

The court also considered the applicant's submission that the application for review, although brought two and a half years after he was dismissed, was brought within reasonable time and that what is relevant is severe prejudice suffered by him as a result of the respondent's actions. See *also Radebe v Government of the Republic of South of Africa and Others 1995 SA 787 (N) at 798 G-799E* – relied on by the Court in dealing with the principle relating to the delay rule.

In *casu*, the counsel for the applicant submitted that if the issue of delay is considered, taking into account steps taken by the applicant from date of discharge, the delay, if any, is not unreasonable and would account for a much shorter period, if calculated from date of discharge. In considering the submissions, I am however incline to take into account the fact that the date of discharge is only relevant insofar as it relates to the issue of discharge. In this regard, the respondent however from the outset indicated that relief on the aspect of discharge will not be opposed. I am of the view that common sense and logic demands that in taking into account the period of delay, if any, to be considered under the circumstances of this matter, regard should be had to the date of suspension being the date on which the cause of action arose. In this regard, it was pointed out on behalf of the respondents that the application to have the second respondent's decision to suspend applicants, set aside, is a relatively simple one and raised no complicated issues, of fact.

Furthermore, instead of bringing the review application with expedition, the applicants delayed lodging the application until 13th September 2004 and as pointed out by counsel for the respondent which amounted to two years and six months after the decision to suspend the first applicant; five years after the decision to suspend the second applicant; two years and three months after the decision to suspend the third applicant; two years and seven months after the decision to suspend the fourth

applicant; and two year and seven months after the decision to suspend the fifth applicant.

It seems to me, considering the respondent's submissions on this aspect, that the applicant is not only confronted by what *prima facie* appears to be a considerable delay, but also the fact that no explanation and or justification is to be found in the founding papers, including the applicant's reply.

In this regard, it was pointed out that the omission to explain and justify the delay should be considered, coupled with the fact that such is the case despite the issue of unreasonable delay having been brought up by the respondent in their answering affidavit and accordingly having put the applicants in issue. The respondents further submitted that the delay by the applicants in bringing their review application should be explained with reference to the fact that according to the respondents, the applicants had in fact accepted the decisions to suspend them.

According to the respondents, this is evident from the fact that during December 2003 the applicants requested their leave and pensions payouts and only upon the express advise of their legal representatives in August 2004 did they cancelled their leave and pension payouts. It was accordingly submitted that not only is the delay of more than two years unreasonable, but also the second applicant's delay of five years is not only unreasonable, but the claim has also prescribed. I have no doubt, and it is my finding against the background of the aforecited authorities that the arguments with regard to delay and the unreasonableness thereof are well founded. What is of importance however is the fact that each case must be considered on its own merits and with regard to the facts of the matters. In this regard, I am of the view that the special circumstances pertaining to this matter, although not forcefully

advanced by the counsel for the applicants, requires special consideration before any final conclusions are reached on the issue being decided.

To date, the applicants are all trial-awaiting prisoners on serious charges, including high treason following their arrests. Counsel for the applicants pointed out in this regard, that given the circumstances the applicants find themselves, the matter should be distinguished. He pointed out the fact that the applicants were all trial awaiting prisoners in the Caprivi and that such being the case, it was suggested that, this is not an instance where applicants had full access to legal representatives as would be the case with parties who are not incarcerated. The difficulty however with applicants application is that it contains no averments, on the delay or explanation for such delay. The application is completely silent on this aspect.

The end result is that there are no objective facts advanced by the applicants upon which I can consider the reasonableness and or unreasonableness of the delay, including the related question of whether in the circumstances of the matter, the delay if any should be condoned.

As a result, my previous finding regarding the respondent's submission on these aspects remains undisturbed.

I now turn to consider the question whether or not delay itself, without proof of any prejudice, is sufficient reason for dismissing an application for review.

This was the issue in the Appellate division matter of *Wolgroeiers Afslagers (Edms)) BPK v Munisipaliteit van Kaapstad 1978 (1) SA 13(A)* referred to by counsel for the respondent. In this matter the Appellate division was divided as to the proper test to apply when there has been a long delay, such as in this case, in bringing preview

proceedings. Whereas Jansen J J A was of the view that prejudice ought to be a decisive factor in considering whether an application for review should be dismissed solely for the reason of delay, Hofmeyr J J A together with Rumpf C J A were of the view that the court has an overriding discretion to refuse to hear a review proceedings brought after a long delay, even in the absence of any indications that the respondent has suffered material prejudice. Miller A J in deciding on this issue remarked as follows:

> "It cannot be accepted that in the establishment of the requirement that proceedings should be instituted within a reasonable time, it was intended to fetter the court's discretion to this extend that even where a litigant which disregards a court's directive by unnecessary and excessive delay in bringing proceedings, the court does not have the right to refuse the application, merely because it is not proved or cannot be proved that the respondent was materially prejudiced, even though there were on a review of all the circumstances other well founded reasons for the exercise of its discretion against the applicants. (at p. 42 A and B)

Above notwithstanding, it is clear from the citation that, it does not mean that prejudice and the degree thereof to the respondent should not be considered, in fact it was accepted in the above matter that prejudice and degree thereof are in fact relevant factors in the consideration of whether unreasonable delay ought to be overlooked. As a general proposition however, I go along with the argument as submitted by counsel for the applicants based on the aforementioned authorities, that prejudice to the applicant is not a prerequisite before an application can be dismissed on the grounds of unreasonable delay. See *Hebstein and Van Winsen, the civil practice of the supreme court of South Africa (supra)* at 356: The *Wolgroeiers* case as also cited in the *Namibian Grape Growers and Exporters'*

Association v The Minister of Mines and Energy and Others (unreported judgments in case number A103/2000 at p. 27).

It was further submitted on behalf of the applicants in relation to the aspect of prejudice that prejudice, if any to be considered by the Court should be the prejudice to be occasioned by the applicant, should the respondent's submissions with reference to unreasonable delay be entertained.

Counsel for the applicant pointed out in this regard that as the issue of prejudice has not been raised by the respondents in the papers, they will be severely prejudiced insofar as they have not been afforded an opportunity to reply and deal specifically with such issue in their papers and or heads or arguments. Accordingly, it was submitted that at the very least, the applicant should be afforded an opportunity to amend its pleadings with a view to dealing with the issue of prejudice and that the cost to be occasioned by such postponement be for the respondent. It is apparent that the counsel for the applicant offered no direct reply to the submissions in relation to the pertinent issue of whether or not prejudice to the other party is a prerequisite before an application can be dismissed on the ground of unreasonable delay, other than the submission that the respondents were not prejudiced at all by the delay. I also already found that the issue of prejudice was dealt with by the respondent with sufficient clarity on their papers. In this regard, insofar as I do not have the benefit of the applicant's argument on the issue of prejudice as a prerequisite, I have before me only the submissions of respondents, the authorities referred to, including further leads and sources I could follow deriving from those submissions and authorities in adjudicating on this issue.

I have already concluded that prejudice with the other party is not a prerequisite before an application can be dismissed on the grounds of unreasonable delay upon

the authorities cited. Accordingly, little remains to be considered on this aspect upon the available evidence and submissions on this matter.

In view of my findings aforementioned, I do not consider it necessary to adjudicate further on the additional interesting arguments raised on behalf of the respondents in relation to *inter alia* the onus on the applicants to show that the expected prejudice do not arise, including the issue of the alleged non-compliance with section 39 (1) of the Police Act. In the result, and having found that the lodgement of the applicant's application for review was occasioned by unreasonable and unjustified delay. I find that in the absence of any explanation or justification for such delay, let alone an application for condonation, applicant's submissions on undue and unreasonable delay are upheld, there being no proper basis factual, or otherwise to exercise my discretion in favour of condoning such delay.

Accordingly, the applicant's application is dismissed with cost.

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SHIKONGO, A J

ON BEHALF OF THE APPLICANTS	**ADV . DICKS**
INSTRUCTED BY:	**LEGAL ASSISTANCE CENTRE**
ON BEHALF OF THE RESPONDENTS	**ADV. MARCUS**
INSTRUCTED BY:	**GOVERNMENT ATTORNEYS**