

# **IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/APN/524/2013**

In the matter between

**BISHOP CHALE**

**APPLICANT**

**AND**

**COMMISSIONER OF POLICE**

**1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL**

**2<sup>ND</sup> RESPONDENT**

## **JUDGEMENT**

Neutral Citation: Bishop Chale v Commissioner of Police & Attorney General CIV/APN/524/2013 [2022] LSHC 15

**CORAM: BANYANE J**

**HEARD: 02/12/2021**

**DELIVERED: 03/03/2022**

### **Summary**

*Application for extension of the 6 months period provided under section 77 of Police Service Act 7 of 1998 – within which certain civil actions against the police must be brought.*

### **ANNOTATIONS**

**Cases cited:**

1. Mafereka v Commissioner of Police C of A (CIV)56/19
2. Khalapa v Commissioner of Police LAC (2000-2004) 151
3. Attorney General v Lerotholi LAC (1995-1999) 31

**Legislation**

1. The Police Service Act of No.7 of 1998
2. Police Order No.26 of 1970

## **Introduction**

**[1]** This is an unopposed application for extension of the prescription period specified under section 77 of the **Police Service Act No.7 of 1998**.

## **Facts**

**[2]** The applicant herein issued summons against the defendants in 2014 claiming damages arising from an alleged assault perpetrated on him by members of the LMPS sometime in 2006. To his summons and declaration, a special plea was raised on grounds that his claim has prescribed in terms of the **Police Order 26 of 1971** and he has failed to apply for an extension. At this time, this application had already been filed but not moved. By this application, he seeks condonation for the late filing of his claim and an extension of a further period of six months.

**[3]** To this application, respondents demonstrated their intention to oppose by filing a notice in that regard. They however failed to deliver their answering affidavit until barred from doing so.

## **The application**

**[4]** In support of the relief (condonation and extension), the founding affidavit reveals that the applicant's late filing of his claim was not due to his own fault or negligence, but he was misled by the police into believing that they were amenable to out of Court settlement and would compensate him for the loss suffered as a result of the assault.

**[5]** He tells the Court that following his assault by the police in March 2006, he was hospitalized for one day and hospital expenses were borne by the police. Two months later (May 2006), he addressed a letter of demand to the police. Immediately thereafter, some officers paid him a visit in the spirit of getting to the core of his complaint. He gave the account of the assault. This was in August 2006. He was even asked to

come to police headquarters the following week which he did and re-narrated his story. He was promised that the matter would be presented before the Commissioner of Police for his consideration.

**[6]** He tells the Court that upon his subsequent visits to headquarters to seek answers and feedback on his complaint, he would always be told that COMPOL was engaged in meetings. He was only able to meet him at the end of May 2010. COMPOL promised him compensation, but said he first needed to make an assessment of the matter and consequently determine appropriate compensation. Regrettably, the meeting bore no fruits until he was finally rejected by officials under the command of 1<sup>st</sup> respondent in 2013. He says this rejection came as a shock because throughout the period from 2006 to 2013, the 1<sup>st</sup> respondent seemed cooperative in the matter.

### **The applicant's submissions**

**[7]** In submitting that the applicant made out a case for the granting of the application, counsel started off by submitting that the Court is entitled to extend the period specified under Section 77 of the Police Service Act where an applicant satisfies the requirements for extension of the six months period.

**[8]** She cited the case of **Moloi v Minister of Safety and Security & Others (3861/2013) [2014] ZA FSHC 76** (12 June 2010) to submit that these requirements are; service of a notice of the application on the crown, and good cause why the summons were issued after the prescription period.

**[9]** She contended that the applicant has met these requirements because firstly; the filing of a notice of intention to oppose filed by respondents demonstrates the crown's awareness of the application.

**9.1** Secondly the applicant has shown good cause for he has clearly set out in his founding affidavit, circumstances that hindered him from filing his claim within the prescribed period. These are that; **a)** he issued a letter of demand within three months of the cause of action arising; **b)** the crown's conduct subsequent to receipt of this letter misled him into believing that they intended to compensate him for damages suffered.

**9.2** Thirdly, an applicant must show that no prejudice would be occasioned to the respondent by the extension. She says none is shown to exist in this case more so when the respondents failed to file their answering affidavit despite having demonstrated their intention to oppose by filing a notice in that regard, hence it should safely be assumed that they take no issue with the extension sought.

**[10]** In buttressing the point that this Court has jurisdiction to grant the extension, she cited the case of **Mafereka v Commissioner of Police C of A (CIV)56/19** to submit that where a plaintiff's application for extension is based on the allegation that police officers were acting in the course and scope of their employment, the Court may exercise its discretion and grant the application.

#### **The Law on extension of the period under the Act**

**[11]** The case of **Khalapa v Commissioner of Police LAC (2000-2004) 151** enunciates the principle that where a special plea of prescription based on **section 60 of Order 26 of 1971** (amended) (now **section 77 of the Police Service Act of 1998**) is raised, the claimant for damages is not barred from applying for extension of the prescription period in terms of the provision. In short, the special plea does not give the respondent a vested procedural right to bar an applicant from seeking an extension of the prescription period.

**[12]** In construing section 60 of the **Police Order of 1970**, the Court held that it is competent for the Court to grant extension of the prescribed period.

**[13]** The Court further delineated the requirements for a successful application for extension. Factors to be considered include the length of the delay, the reasons given for it and consequential prejudice to the respondents.

**[14]** In **Attorney General v Lerotholi LAC (1995-1999) 31** the Court of Appeal dealt with the limitation provision and made the following remarks;

“The objective of the prescriptive period in the order is to prevent the police from prejudice by claims made so long after the alleged cause of action has arisen, that it is impossible or very difficult to investigate the claim, the identity of the particular policeman allegedly responsible therefore or the circumstances pursuing thereto”.

**[15]** Deductible from this authority is that prejudice that the crown may suffer must be weighed against prejudice which the applicant may suffer if not allowed to pursue the intended action.

**[16]** I turn now to apply these authorities to the facts of the present matter.

### **Analysis**

**[17]** In the present matter, summons should have been issued by September 2006, but were only issued in March 2014 following the filing of this application in November 2013.

**[18]** The explanation given for the inordinate delay is that the 1<sup>st</sup> respondent upon receipt of the letter of demand, which was issued within the 6 months period of the cause of action arising, approached (through

officers under him) the applicant, apparently with an intention to hear his story and accordingly assess a reasonable offer of compensation.

**[19]** This, the applicant avers, gave him hope that his claim would be resolved amicably and since the crown through its officers was always cooperative and lend him an ear, he remained hopeful despite the passage of a substantial time following the incident.

**[20]** In the absence of an answering affidavit challenging the truthfulness of these allegations, what remains is the applicant's story which in my view shows that the delay is attributable to no negligence of his part, but a promise given by officials of the crown (1<sup>st</sup> respondent himself). He was lulled into believing that the police were working on compensating him. It will be observed that as soon as he was made aware of the COMPOL's rejection of his claim or final decision to reject his claim in 2013, he spurred to action and immediately filed this application even before issuing summons.

### **Conclusion**

**[21]** While the length of delay is substantially long, it is understandable in the circumstances explained above. I am therefore persuaded that the applicant has shown good cause for the inordinate delay and his application must therefore be granted particularly in view of the fact that the crown has not demonstrated, by filing an answering affidavit, any prejudice that may be occasioned by the extension of time.

### **Order**

**[22]** In the result, the following order is made;  
An application is granted as prayed with no order as to costs.

**P. BANYANE**  
**JUDGE**

For Applicant: Adv. Mpo

For Respondents: No appearance