

CIVIL CASE NO. 1531/03

In the matter between:

PETROS S. MAHHWAYI

APPLICANT

AND

THE MINISTER OF WORKS
ATTORNEY - GENERAL

RESPONDENT
RESPONDENT

CORAM
FOR APPLICANT FOR
RESPONDENTS

K.P. NKAMBULE-J
MAGONGO
S. KHULUSE

RULING ON POINTS IN LIMINE 17/6/04

I have before me an application in terms of Section 4 of the Limitation of Proceedings against the Government Act No. 21/1972 (hereinafter referred to as the Act) for an order:-

"granting the applicant special leave to institute proceedings against the Swaziland Government for:

(1) payment of a total of four claims which together amounts to E49,542-."

According to applicant's affidavit the claim arises from a delict. It is alleged that the driver of a Government truck registered "SG 289 WO was involved in an accident. The accident arising as a result of the sole negligence of the driver. Applicant states that he instructed his erstwhile attorneys Shilubane, Ntiwane and Partners to pursue a claim against the Government for damage suffered as a result of the accident. The applicant states that unbeknown to him, his erstwhile attorneys wrote a letter of demand to the respondents claiming the sum of E3,487- being fair and reasonable amount to effect necessary repairs, instead of E49,542- being the total sum for loss of business income, motor rental hire and loan of E5,000- at 30% interest.

The applicant concedes that his claim is now out of time, the 24 months period set out under Section 2 (1) (c) of the Act having expired. He accordingly seeks special leave from the court in terms of Section 4 (1) of the Act, to institute action against the government.

The respondent has raised the point, *in limine*, that the applicant's claim has prescribed under Section 2 (1) (c) of the Act and that no relief is available to the applicant under Section 4 (1) of the Act.

This area of our law was settled by Hanna C.J. in Walter Sipho Sibisi V The Water and Sewerage Board and the A.G. CIV Case 504/87 (unreported). The learned Chief Justice in this case dealt with the proper interpretation and application of Section 2 (1) and Section 4 (1) of the Act. The learned Chief Justice stated as follows:

"In my judgement the operation of Section 4 (1) of the Act is confined solely to the case of a person demanding a debt arising from a delict who has failed to comply with the terms of the proviso to Section 2 (1) (a) and has no application at all to a person, whatsoever his

claim may be, who has failed to institute proceedings within the period of 24 months stipulated by Section 2 (1) (c)."

This interpretation was followed with approval by Dunn J in Mchlageni Zwane and nine others V The Attorney General CIV. T 1263/92 when after making reference to the above quotation he stated as follows:

"I am in respectful agreement with this interpretation of the two Sections ;and Mr. Flynn who appears for the applicant has not argued otherwise... The Act makes specific provisions for the manner and time limits within which legal proceedings shall be instituted against government in respect of any debt. These are set out under Section 2 (1). The machinery of special leave to proceed against government is, in terms of Section 4 (1) confined to Section 2 (1) (c). This court cannot clothe itself with a power to grant relief to a claimant who has failed to bring his claim within the clear and unequivocal provisions of Section 2 (1) (c). Whatever powers the court may have under common law, cannot stand in the face of the clear wording of the two Sections of the Act."

From the foregoing it is clear that the court has no power to condone failure by the applicant to comply with the two Sections of the Act. For the above reasons and conclusions the point raised *in limine* is hereby upheld. The court has no power outside the provisions Sections 4 (1) to grant the relief sought in the application.

The application is accordingly dismissed with costs.



K.P. NKAMBULE

JUDGE