



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

In the matter between:

Case No.1533/2024

**BONGINKHOSI HLATSHWAYO**

Plaintiff

And

**THE GOVERNMENT OF THE KINGDOM  
OF ESWATINI**

Defendant

Neutral citation : *Bonginkhosi Hlatshwayo v The Government of the Kingdom of Eswatini (1533/2024) [2024] SZHC 276 (30<sup>th</sup> October, 2024)*

Coram : **M. Dlamini J**

Heard : 24<sup>th</sup> October, 2024

Delivered : 30<sup>th</sup> October, 2024

**Legal proceedings** : *there is a difference between a legal process and a letter of demand. A letter of demand does not form part of a court process or proceedings. This view by the Legislature resonates with the common law principle of what consist legal proceedings. Legal proceedings are formed by pleadings. A*

*letter of demand, just like heads of arguments do not form part of the pleadings in a court. They may both be demanded by the court but they are certainly not pleadings. Pleadings are provided for in the Rules of this court. A letter of or written demand, like heads of arguments are not derived from the Rules of this Court under the High Court Act No. 20 of 1954. A letter of demand is provided for by common law while heads of arguments are by virtue of a directive by the Chief Justice. [12]*

*The court is therefore without powers to extend the period of instituting legal proceedings out of two years as it were. To cloth the court with such jurisdiction would be to defeat the intentions of the Legislature or the whole purpose of the Act.[15]*

**Summary** : The plaintiff, before instituting the present action proceedings, applied before this court for condonation and leave to serve a letter of demand to the Attorney General. As per her Ladyship Q. Mabuza PJ, he was granted the said order by consent of the defendant. Having served the letter of demand, he then instituted the present action proceedings. The defendant raised a special plea of prescription. The plaintiff contends that the right to institute the present action was inherent in the right granted by this court to serve a letter of demand.

### **The Parties**

1. The plaintiff is an adult male Liswati of Sigangeni area, region of Hhohho.
2. The defendant is the Government of this Kingdom.

### **Particulars of Claim**

3. The Plaintiff has stated that on or about 22<sup>nd</sup> December, 2020, members of the Royal Eswatini Police who were acting within the scope of their employment

unlawfully shot him while he was at Sigangeni. He then attached a copy of the demand. He described how he was shot in that the police officers fired three shots. Two shots targeted his left leg while the third shot his head. He sustained an injury which precipitated him to walk by an aid of crutches. His life has since been lessened by the shots. He claimed a sum of E1.5million together with *mora* interest and costs of suit.

4. The attached letter of demand was authored on 26<sup>th</sup> March, 2024. Para. marked 3 reads that the cause of action happened on 22<sup>nd</sup> December, 2020.

#### **Defendant's defence**

5. The defendant filed a special plea of prescription, pointing out that the summons were served upon it on 4<sup>th</sup> July, 2024. They prayed for dismissal of the action with costs.

#### **Issue**

6. The issue is not whether the cause of action has prescribed *per se*. It is whether the condonation granted and order the giving plaintiff the right to file a letter of demand has extended to the right to institute legal proceedings. The plaintiff has strongly urged this court to consider that inherent in the order in his favour to serve a letter of demand for the cause of action was the right to institute legal proceedings.

#### **Adjudication**

7. In advancing arguments in support of the above proposition, plaintiff referred this court to section 4,(1), the *proviso* under the Limitation of Legal Proceedings Against the Government Act, 1972 (the Act). The section reads:

*“The High Court may, on application by a person debarred under section 2(1)(a) from instituting proceedings against the Government, grant special leave to him to institute such proceedings if it is satisfied that-*

- (a) he has reasonable prospect of succeeding in such proceedings;*
- (b) the Government will in no way be prejudiced by reason of the failure to receive the demand within the stipulated period; and*
- (c) having regard to any special circumstances he could not reasonably have expected to have served the demand within such period.*

*Provided that the Court in granting such leave may impose such conditions as it deems fit (including the payment of any costs) and notwithstanding section 2(1)(c) stipulate the date by which such proceedings shall be instituted.*

8. The plaintiff raised another point that the cause of action is still in process in that he has not healed from the injury sustained. The defendant has failed to abate it and therefore the date of the cause of action cannot be ascertained. This means that it cannot be said that the cause of action has prescribed. However, plaintiff did not argue this point during the hearing. The court shall assume that it was abandoned. If not, it stands to be dismissed in that plaintiff himself acknowledge that he was out of time when it applied for condonation and an order granting him leave to file a demand. In brief, plaintiff himself acknowledged that he had served the letter of demand late. Further from the line of argument on the first point raised by plaintiff, it is not in issue that the summons were filed out of time, mainly, twenty four months after the date it was due.

9. The defendant referred this court to section 2 (1) of the Act and sought the court to draw a line of demarcation between a letter of demand and court proceedings.

10. Section 2(1) reads:

*“Subject to section 3 no legal proceedings shall be instituted against the Government in respect of any debt-*

*(a) Unless a written demand, claiming payment of the alleged debt and setting out the particulars of such debt and cause of action from which it arose, has been served on the Attorney-General by delivery or by registered post:*

*(c) after the lapse of a period of twenty-four months as from the day on which the debt became due.*

11. From the wording of the section that, ‘*no legal proceedings shall be instituted*’ and ‘*[U]nless a written demand.....has been served*’ clearly demonstrate that there is a difference between a legal process and a letter of demand. A letter of demand does not form part of a court process or proceedings. This view by the Legislature resonates with the common law principle of what consist legal proceedings. Legal proceedings are formed by pleadings. A letter of demand, just like heads of arguments do not form part of the pleadings in a court. They may both be demanded by the court but they are certainly not pleadings. Pleadings are provided for in the Rules of this court. A letter of or written demand, like heads of arguments are not derived from the Rules of this Court under the High Court Act No. 20 of 1954. A letter of demand is provided for

by common law while heads of arguments are by virtue of a directive by the Chief Justice.

12. From the above, it follows therefore that by plaintiff instituting summons, he instituted legal proceedings. When it served the written demand on 26<sup>th</sup> of March, 2024, it was not instituting legal proceedings. The short of it is that plaintiff was late by twenty-four months when it instituted legal proceedings by means of summons upon the defendant. The leave granted to plaintiff by this court could not extend to the leave to institute legal proceedings. It was only leave to serve a letter of demand and certainly not to institute summons.
13. Section 4 (1) as the section so refers to section 2(1)(a ) which deals with the written demand applies to an application for leave to serve a letter of demand and not legal proceedings against the Government. So that the court order granting applicant as it was well expressed, was within the confines of a written demand. The order well reads:
  - “1. *The Applicant is condoned for filing or delivery of his demand out of time.*
  2. *The Applicant is granted leave to file its demand out of time.*”
14. From the above, it is clear that the plaintiff was granted both leave and an order to serve a letter of demand and not institute legal proceedings. As correctly submitted by learned Counsel for the defendant, there is no provision in the Act permitting this court to condone a late institution of legal proceedings. Section 4 permits only an application to serve a demand as the

section refers to an application under section 2(1)(a) which stipulates on a written or letter of demand.

15. Plaintiff referred to the *proviso* which stipulates, “*notwithstanding section 2(1)(c)*,” the court shall state the date upon which the proceedings shall be instituted as providing the plaintiff with leave to institute legal proceedings out of twenty-four months period. I do not think so. The *proviso* presupposes that the plaintiff is only late with regard to the ninety days of serving a written demand but he is still within the time frame for instituting legal proceedings. It is then that the court shall stipulate when legal proceedings shall be instituted. Even then it presupposes that the court shall endeavour to calculate the period of instituting legal proceedings within the stipulated twenty-four months as it cannot grant leave to a plaintiff such as in *casu* who is out of time in terms of instituting legal proceedings. I guess that is what informed the Principal Judge when she made the order as she did not stipulate the date upon which legal proceedings may be instituted. It appears to me that she was alive to the fact that plaintiff was out of time with regard to instituting legal proceedings or the cause of action and because she had no jurisdiction to extend the time for such, she did not provide for the dates.
16. The court is therefore without powers to extend the period of instituting legal proceedings out of two years as it were. To cloth the court with such jurisdiction would be to defeat the intentions of the Legislature or the whole purpose of the Act. The analysis by his Lordship Sapire CJ<sup>1</sup> are all in fours with the case herein as he wisely articulated:

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<sup>1</sup> Mandla Khumalo v Attorney General and 2 Others | Civ. Trial No. 2987/1997

*“In terms of Section 4 of the Act the High Court may on application by a person debarred under Section 2(1)(a) from instituting proceedings against the Government grant special leave to him to institute such proceedings subject to being satisfied as to certain matters. It is to be noted that a granting of special leave is only applicable to a person debarred under section 2(1)(a) of the Act.”<sup>2</sup> (my emphasis)*

17. The learned Chief Justice then proceeded:

*“Section 2(1)(a) of the Act is the section which provides that a written demand has to be made and that in terms of Section 2(1)(b) summons may not be issued before the expiry of 90 days from the date on which such demand is served on the Attorney General. Nothing is said in Section 4 or anywhere else which would give the Court the power to condone the failure to institute an action within 24 months as from the day on which the debt became due. It is for this reason that I am of the view that the Court did not have the power to make an order that it did on the 31<sup>st</sup> November.”<sup>3</sup> (my emphasis)*

18. He then concluded:

*“That the cause of action arose in 1994 and the summons in respect of that claim had to be issued before the 19<sup>th</sup> November, 1996. I have no power to extend the period of prescription as is not provided for in the Act.”<sup>4</sup> (my emphasis)*

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<sup>2</sup> *Supra* at para 8 – page 2

<sup>3</sup> *Supra*

<sup>4</sup> *N*<sup>1</sup> at page 3 last para.



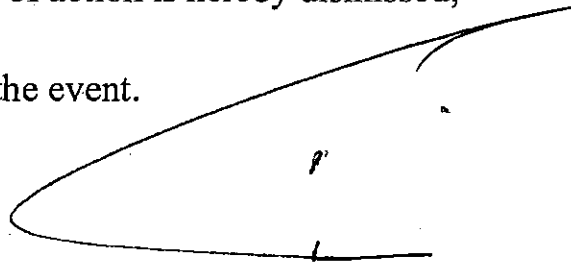
19. In the above, I enter as follows:

19.1 Plaintiff's cause of action has prescribed;

19.2 Defendant's special plea of prescription is hereby upheld;

19.3 Plaintiff's cause of action is hereby dismissed;

19.4 Costs to follow the event.

A handwritten signature in black ink, appearing to be 'M. Dlamini J', is written over a horizontal line. The signature is stylized and somewhat cursive.

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**M. DLAMINI J**

For the plaintiff : M. Mabuza from Khumalo Attorneys

For the defendant : K. Magagula from Attorney General's Chambers