



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 2155/2022

In the matter between:

NOBEXOLISI CHRISTINAH MALGAS

APPLICANT

and

**THE MEC: FREE STATE DEPARTMENT OF POLICE,
ROADS AND TRANSPORT**

FIRST RESPONDENT

**THE REGISTRAR: FREE STATE OPERATING,
LICENCING AND PERMIT BOARD**

SECOND RESPONDENT

**THE CHAIRPERSON: GREATER BLOEMFONTEIN
TAXI ASSOCIATION**

THIRD RESPONDENT

OC MAROGOA

FOURTH RESPONDENT

Neutral citation: *Malgas v MEC: Free State Department of Police, Roads and Transport and Others* (2155/2022) [2025] ZAFSHC 358 (17 October 2025)

Coram: Van Zyl, J

Heard: 6 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be on 17 November 2025 at 9h30.

Summary: Application for review in terms of the Promotion of Administrative Justice Act, 3 of 2000 – application instituted beyond 180 days after the date on which the applicant was informed/became aware of the decision as determined by s 7 – no allegations in support of condonation – unreasonable delay – in the absence of an extension of time in terms of s 9, the court has no authority to entertain the review application – application dismissed.

ORDER

1. The application is dismissed.
2. The Estate Late of Mr Ngomeni Jimmy Malgas (no: [REDACTED]/2008) is ordered to pay the costs of the fourth respondent, counsel's fees to be taxed on scale A.

JUDGMENT

Van Zyl, J

[1] This is a review application in terms of the Promotion of Administrative Justice Act, 3 of 2000 ('PAJA'), in terms whereof the applicant is seeking the following relief:

- '1. Reviewing and setting aside the decision by the 1st Respondent, the 2nd Respondent and the 3rd Respondent on or about the 25th of February 2009, to transfer to the 4th Respondent the Mini Bus Permit No: [REDACTED] 3.
2. Declaring the impugned decision to be unlawful, inconsistent with the Free State Public Transport Act, 4 of 2005, and invalid.
3. Directing that the Mini Bus Permit No [REDACTED] 3, be returned to, and re-registered by the 1st Respondent, the 2nd Respondent and the 3rd Respondent under the late Estate of Ngomeni Jimmy Malgas.
4. Directing the 4th Respondent to take such steps as necessary to co-operate with the 1st Respondent, the 2nd Respondent and the 3rd Respondent in releasing and/or signing any document that will facilitate the re-registration of the Mini Bus Permit No: [REDACTED] 3 to the late Estate of Ngomeni Jimmy Malgas.
5. Condoning the late filing of this application in terms of section 9(2) of the Promotion of Administrative Justice Act, 3 of 2000.
6. Ordering those respondents that oppose the relief sought by the Applicant, to pay the costs of this application jointly and severally, the one paying the other to be absolved.
7. Granting the Applicant further and/or alternative relief as the Honourable Court may deem fit.'

[2] Only the fourth respondent is opposing the application. The first to third respondents indicated that they would abide by the decision of the court.

[3] The late Ngomeni Jimmy Malgas ('the deceased') were married in community of property on 16 September 1993. The deceased passed away on 13 December 2008. The applicant is therefore the widow of the deceased. It is not specifically indicated in the application papers that the applicant brought the application in her *nomino officio* capacity as the executrix of the estate of the deceased. She does however aver at paragraph 8 of the founding affidavit as follows:

'I was later during 2009 authorized by the Master of the High Court Bloemfontein, to take control of the assets of the late Estate No [REDACTED]/2008.'

[4] The letters of authority issued by the Master appointing the applicant as such is attached to the founding affidavit as annexure 'D'. I am further mindful of the fact that the relief sought at paragraph 4 of the notice of motion is that the relevant Mini Bus Permit be re-registered in the name of the estate of the deceased. I consequently accept, for purposes of this judgment, that the applicant brought the application in her representative capacity as executrix of the estate of the deceased.

[5] Paragraph 9 of the founding affidavit contains the following averments:

'After realizing that the abovementioned permit was transferred to the 4th Respondent, I approached the 1st Respondent, the 2nd Respondent and the 3rd Respondent, as early as the year 2010, to review their decision. In one of our meetings, the senior official of the Free State Department of Police, Roads and Transport, Mr T.J. Phahlo, instructed the members of the board to review the transfer and register it under the late Estate of my late husband.'

[6] The application was subsequently issued on 11 May 2022.

[7] In his answering affidavit the fourth respondent averred that the relevant permit had been lawfully and validly transferred and registered in his name. In addition to his defence on the merits, the fourth respondent further raised several points *in limine* in his answering affidavit, read with the heads of argument filed on his behalf.

[8] One of the aforesaid points *in limine* raised on behalf of the fourth respondent is the issue of condonation. In this regard Mr Mohono, who appeared on behalf of the fourth respondent, stated as follows in his heads of argument:

'32. Prayer 5 of the notice of motion seeks condonation for the late filing of the PAJA application.

33. Despite seeking condonation no case is made out at all for condonation.

34. It is common cause that the application was brought after twelve years. Despite this extreme inordinate delay, no explanation for the delay has been provided by the applicant neither did she even pay lip service to the condonation in the founding affidavit.
35. It is thus submitted that the application should be dismissed on this alone.'

Applicable legal principles:

[9] Section 7 of PAJA determines that review proceedings in terms of the Act must be instituted without unreasonable delay and not later than 180 days after the date on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons. According to a judgment of the Constitutional Court the 'administrative action' refers to the 'decision' that is challenged in the review proceedings. See *Camps Bay Rate Payers' and Residents' Association and Another v Harrison and Another* 2011 (4) SA 42 (CC) at para 57.

[10] In terms of s 9 of Paja the period of 180 days referred to in s 7 may be extended for a fixed period by agreement between the parties or, failing such agreement, by a court on application by the person concerned. The court may grant such an application where the interest of justice so require.

[11] When the abovementioned matter of *Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another* served before the Supreme Court of Appeal ([2010] ZASCA 3; [2010] 2 All SA 519 (SCA) (17 February 2010)) the Supreme Court of Appeal at para 54 stated as follows in respect of s 9(2) of PAJA: 'And the question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof. . .'

[12] In *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Ltd and Others* (90/2013) [2013] ZASCA 148; [2013] 4 All SA 639 (SCA) (9 October 2013)] the court determined at para 26 as follows:

'[26] . . . The difference lies, as I see it, in the legislature's determination of a delay exceeding 180 days as *per se* unreasonable. Before the effluxion of 180 days, the first enquiry in applying s 7(1) is still whether the delay (if any) was unreasonable. But after the 180 day period the issue of unreasonableness is pre-determined by the legislature; it is

unreasonable *per se*. It follows that the court is only empowered to entertain the review application if the interest of justice dictates an extension in terms of s 9. Absent such extension the court has no authority to entertain the review application at all. Whether or not the decision was unlawful no longer matters. The decision has been 'validated' by the delay . . .'

[13] In the judgment of this division in *Mohapi and Others v Registrar Free State Transport and Others* (2283/2022) [2022] ZAFSHC 341 (2 December 2022) the court dealt with an application in terms of PAJA similar to the present matter. In that matter the court found as follows at para 15:

'[15] This application was only instituted on 18 May 2022. It is undisputed that this period is beyond the permissible 180 days within which the review application must be brought. There is no condonation application requesting the variation regarding the time within which to institute this application. The applicants are enjoined by section 7 of PAJA to institute these proceedings within 180 days or within such period agreed between the parties or as sanctioned by the court. The Applicants have failed to institute the application within 180 days as required by the law. This constitutes an unreasonable delay and is fatal to the Applicant's case . . .'

Application of the legal principles to the facts:

[14] On the applicant's own version she became aware of the transferral of the permit to the fourth respondent and approached the first to third respondents in this regard in 2010 already. However, the applicant failed to present any explanation for the delay from 2010 until 2022 when the application was instituted.

[15] Although the applicant is seeking condonation in the notice of motion, no averments in support thereof was made in the founding affidavit. There is consequently no basis upon which condonation can be granted. In the absence of condonation, where the applicant failed to institute these proceedings within 180 days as required by the Act, this delay is inordinate and unreasonable and is fatal to the applicant's case.

[16] In view of my aforesaid finding, I deem it unnecessary to deal with the further defences raised by the fourth respondent.

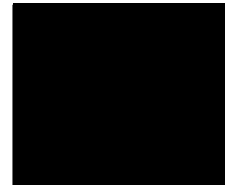
Costs:

[17] There is no reason why costs should not follow the outcome of the application. However, in the circumstances of this matter I deem it fair and reasonable that the costs are to be paid by the Estate Late of Ngomeni Jimmy Malgas.

Order:

[18] The following order is made:

1. The application is dismissed.
2. The Estate Late of Mr Ngomeni Jimmy Malgas (no: [REDACTED]/2008) is ordered to pay the costs of the fourth respondent, counsel's fees to be taxed on scale A.



C. VAN ZYL

JUDGE OF THE HIGH COURT

Appearances:

For the Applicant:
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For the Fourth Respondent:
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