

Analysis – M Cassimjee v Minister of Finance (45511) [2012] ZASCA 101

If you're a plaintiff – or appellant – you need to move fast, or you could find your case dismissed.

Litigation has to be gone into 'all out' or not at all. If there's an "inordinate delay in the prosecution of a claim, the High Court has the discretion to dismiss the action." It has both an "inherent power and a statutory power to prevent an abuse of its process, and under these powers it can dismiss an action." These principles above were recently confirmed by the Supreme Court of Appeal (SCA) in a judgment delivered in *Cassimjee v Minister of Finance (455/11) [2012] ZASA 101* (1 June 2012).

The appellant in the matter had appealed the judgment of the KwaZulu-Natal High Court in Durban. Briefly, the facts are that the appellant had two tankers seized by customs officials in 1977 (that's right, that's not a misprint, we're talking 1977!). Later the same year, the appellant instituted action against the commissioner of SARS for the return of the tankers, or the value of the items, as well as payment of a certain amount of damages.

An interval of 32 years passed between the institution of the action and the delivery of the judgment in the Durban High Court, against which the appellant appealed. Certain pleadings and counter claims flew between the parties, with the SARS commissioner claiming duty in respect of diesel oil delivered to an unidentified person between certain dates in 1976 and 1977.

The pleadings were never closed, because the appellant had not delivered his plea to the counter claim and the commissioner

never took steps to secure the delivery of same.

Also, the commissioner was called upon to deliver documents referred to in the plea and counter claim, but did not respond.

In 2001, the appellant hired a firm of attorneys and the matter was placed on the awaiting trial roll. However, in the absence of a plea to the counter claim, this was premature and therefore brought the matter no nearer completion. In 2006, the case finally moved forward again. But, unfortunately for the appellant, no decisive action was taken, and from the judgment it appears there was no compliance with the High Court rules.

Dismissed

Matters came to a head in 2008 when SARS took steps to have the case dismissed. The High Court judge ruled in favour of SARS and an appeal by the appellant failed, the SCA holding that the time taken to prosecute the matter was too long. It further held that there were no hard and fast rules as to the manner in which the discretion to dismiss an action for want of prosecution was to be exercised. But the following requirements have been recognised:

- There should be a delay in the prosecution of the action.
- The delay must be inexcusable.
- The defendant must be seriously prejudiced thereby.

Inexcusable

In the example we've been discussing, the time delay was prejudicial because most of the witnesses had moved on, died, or had forgotten pertinent facts. The delay was also deemed inexcusable because the appellant did not furnish adequate proof to back up the submissions that he had made with regard to the reasons for the delay. Clearly, the moral of the story is to 'strike while the iron's hot' in any court case – or you run the risk of losing out, even if you're in the right!