

Unreasonable Delay, Abuse of Process, and the Inherent Powers of Courts

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Stanford v Haley NO 2004 (3) SA 296 (C)

INTRODUCTION

Section 173 of the Constitution provides that the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each have the inherent power to protect and regulate their own processes, and to develop the common law, taking into account the interests of justice.¹ This includes the power to dismiss an action on the account of unreasonable delay. However, the dismissal of an action in such circumstances will seriously impact the constitutional right of a plaintiff, in terms of section 34 of the Constitution, to have their dispute heard before a court.

The case of *Sanford v Haley NO*² sets out the test for the dismissal of a summons or an action on account of delay in such exceptional circumstances where the court process was abused by the plaintiff. *In casu*, the provisional sentence proceedings were initiated in 1989 by the plaintiff and only culminated in a court hearing on 11 December 2003, ultimately spanning a period of 14 years, and went on against the defendant's deceased estate after he died.

THE COURT'S ANALYSIS

The Court held that the prerequisites to exercise their discretion are threefold: first, there must be a delay in the prosecution of the case; second, the delay must be inexcusable; and third, there must be serious prejudice to the defendant. The Court reiterated that the test for the dismissal of an action is whether the plaintiff abused the processes of Court in the form of frivolous or vexatious litigation, assessed by examining the conduct of the plaintiff as "overstepping the threshold of legitimacy". Such test is a stringent one, having regard to all the facts and circumstances of each case and considering fairness to both parties.

In terms of a delay, the Court emphasized that a plaintiff must proceed with their action within a reasonable time, depending on the facts and circumstances of each case. In this regard, where there is a delay, the general position in our law is that Courts are reluctant to grant condonation where non-compliance with the Rules of Court is gross, regardless of the prospects of success. A party seeking condonation must provide a comprehensive and accurate account of the reasons for

the delay that is detailed enough for the Court to assess such delay, including the date, duration and extent of the reason of noncompliance (if it is time related).

Ultimately, the Court in this case found that the delay in prosecuting the proceedings was unreasonable and inexcusable and was counter-productive to the provisional sentence sought, as provisional sentence is an extraordinary remedy designed for expeditious resolution. The proceedings were found to be an abuse of process as the provisional sentence summons was materially different to the original one and the delays were prejudicial to the deceased's estate.

CONCLUSION

This case is valuable in setting out the test for unreasonable delay. Courts will look at the facts and circumstances of each case before them in exercising their discretion to dismiss an action on the account of delay.

¹ Section 173 of the Constitution of the Republic of South Africa of 1996.

² 2004 (3) SA 296 (C).



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