IN THE HIGH COURT OF SOUTH AFRICA
[TRANSVAAL PROVINCIAL DIVISION]

DATE: 18/5/2206
CASE NUMBER: 10345/05

UNREPORTABLE

In the review application of:-

MICRO MATH TRADING 14 CC t/a PARKVILLE MOTORS — **First Applicant and others**

and

JACOBUS MARTHINUS OELOFSE N.O. & THEODORE WILHELM VAN DEN HEEVER N.O.

in their capacity as joint liquidators in the insolvent estate of S N Nyagar Property Development and Construction CC — **First Respondent and others**

JUDGMENT

1. Engelbrecht A J:

On 12 July 2001, Dr G R Batchelor, the duly delegated officer of the Sixth Respondent (Fifth Respondent in the first application), issued, in terms of Regulation 9(1)(a) of the Regulations published in terms of Sections 26 and 28 of the Environment Conservation Act, 1989 (Act 73 of 1989) (ECA) and published in Government Gazette dated 5 September 1997, R.1183, an authorisation for the *"construction and operation of a filling station on Portion* 2 *of Holding* 85, *Agricultural Holding Extension* 1, *White River"* (authorisation). The time limit for the completion of the project was two years.

2. The erection and construction of a filling station is an activity within the meaning ascribed thereto by Section 21(1) of the ECA: **MEC for Agriculture, Conservation, Environment and Land Affairs v Sasol Oil (Pty) Limited** (as yet an unreported judgment of the Supreme Court of Appeal of South Africa, Case number 368/04, dated 16 September 2005). Hence the First Respondent sought and obtained the authorisation, despite objections by the Applicants.

3. The Applicants were informed of the decision of the Sixth Respondent to grant authorisation for the erection and construction of the filling station as well as the contents of the authorisation.

4. Despite so being informed, the Applicants did not deem it necessary to utilise the right conferred upon them by Section 35(3) of the ECA, Le. to lodge an appeal to the Minister of the Environment and Tourism. Why an appeal was not lodged is left unexplained. Neither did the Applicants invoke the provisions of Section 36 of the ECA, Le. request Batchelor to supply reasons for his decision within 30 days after receipt of the request and thereafter to approach this Court within 30 days to review the decision of Batchelor. Applicants appear to have played a waiting game. Surely the Applicants, at this juncture, should have realised that the erection and construction of a filling station by the First Respondent would have a marked influence on the existing petrol filling stations' socio-economic sustainability, a factor which should have been taken into account when the application was considered.

5. It is common cause that construction of the filling station did not start within the 2-year time limit set in the authorisation. Excavations only started towards the end of December 2003 and the erection of the filling station was completed by 8 June 2004. Business at the filling station commenced on or about 1 July 2004.

6. These activities caused the Applicants to approach the Court: **ALL The Best Trading CC *t/a* Parkville Motors and Others v S N Nayagar Property Development and Construction CC and Others 2005 (3) SA 396 (T)** (first application), first on an ordinary basis and later on an urgent basis before Patel J. *Ex facie* the judgment of Patel J (p 398 F) the application was preceded by a letter dated 28 January 2004 from the Applicants' attorney addressed to the Second Respondent threatening with legal proceedings unless confirmation was received of a cessation of building operations by 2 February 2004. No such undertaking was given. The relief sought was:

> "1. *That this application be treated as one of urgency and that the normal rules relating to time periods be dispensed with in terms of the provisions of Rule* 6(12) *of the Uniform Rules.*

2. *Alternatively to prayer* 1, *and in the event of the above Honourable Court not disposing of the whole of the application on an urgent basis, that the following order be granted:*

    2.1 *That pending finalisation of this application in the normal course, First and/or Second and/()r Fourth Respondents are interdicted and prevented from continuing with any development work on the property known as Portion* 2 *of Holding* 85 *of White River Agricultural Holdings Xl, White River, Mpumalanga. That First and/or Second and/or Fourth Respondents are interdicted and prevented from doing any further work to develop a petrol filling station and convenience store on the qforementioned immovable property.*

3. *That a declaratory order be issued whereby it is declared that the record of decision issued by the Sixth Respondent on* 12 *July 2001 has expired and/or has been repealed and is therefore no longer of any force or effect.*

4. *Alternatively to prayer* 3 *that a declaratory order be made that the record of decision issued by the Sixth Respondent on* 12 *July 2001 is null and void and of no force and effect.*

5. *That First and/or Second and/or Fourth Respondents are interdicted and prohibited from proceeding with any development or the taking of any steps to develop a petrol filling station on the property known as Portion* 2 *of Holding* 85 *of White River Agricultural Holdings Xl, White River: Mpumalanga.*

6. *That First and/or Second and/or Fourth Respondents are interdicted and prevented from doing any earthwork<; and/or any excavations on the aforesaid property in order to erect a petrol filling station on the property.*

7. *That Second and Fourth Respondents be ordered to pay the costs of this application, but, should any of the other respondents oppose this application that such respondent and/or respondents be ordered to pay the costs of this application jointly and severally with the Second and Fourth Respondents, the one paying the other to be absolved*

8. *Further and/or alternative relief"*

7. The application was enrolled for hearing on 30 March 2004. The Applicants launched their proceedings on 25 February 2004 in the normal cause. Subsequently they proceeded with the application on an urgent basis. I am informed that on 29 March 2004 the Applicants' advocate, Mr Erasmus, was informed by the Respondents' advocate, Mr Sham, se that the authorisation dated 12 July 2001 had been extended to 12 January 2004 by the Sixth Respondent.

8. On receipt of this information and having sight of the extension, Applicants sought an amendment to their prayers in their application by adding the following prayer:

"4A That a declaratory order be issued whereby it is declared that There is no the purported extension of the record of decision dated 12 *July 2001 by the Fifth Respondent on* 16 *July 2003 and annexed as* ***Annexure "AA22"*** *to the opposing affidavit is ultra vires the competence of the Fifth Respondent, therefore void and of no force and effect."*

Patel J does not deal with this application in the judgment. I am however informed by Erasmus that the application for amendment was refused.

9. Judgment in the first application was handed down on 15 February 2005. There is no appeal by the applicants against this judgment.

10. On 6 April 2005 the present proceedings (second application) were launched in this Court by the Applicants. The relief sought was:

"1. *Calling upon the Respondents to show cause why the purported extension of the record of decision by the Sixth Respondent which purported extension was granted on the 16th of July 2003 should not be reviewed and set aside.*

2. *That the application by the Second Respondent to the Sixth Respondent to extend the period of validity of the record of decision issued by the Sixth Respondent on* 12 *July 2001 be refused, alternatively be replaced with such order as the Honourable Court deems fit.*

3. *Insofar as it may be necessary that condonation be granted to the Applicants for the late bringing of the review application, which condonation is granted in terms of the provisions of Section* 9(1) *of the Promotion of Administrative Justice Act, Act* 3 *of 2000.*

4. *Insofar as it may be necessary that the Applicants are exempted from the obligation to note an appeal in terms of Section* 35 *of the Environment Conservation Act, Act* 73 *of* 1989 *against the purported extension of the period of validity of the record of decision, which exemption is granted in terms of the provisions of Section 7(2)(c) of the Promotion of Administrative Justice Act, Act* 3 *of 2000.*

5. *Pending finalisation of any application which may be brought by the Second, Third and/or Fourth Respondents in terms of Section 22(1) of the Environment Conservation Act, Act 73 of 1989 and/or any other steps which may be taken by the Sixth and/or Seventh Respondents in terms of the provisions of Section 28 of the National Environmental Management Act, Act 107 of 1998 and/or Section 31A of the Environment Conservation Act, that Second, Third and Fourth Respondents are prohibited and interdicted from:*

5.1 *Operating the petrol filling station on the immovable property known as Portion* 2 *of Holding* 85, *White River*

Agricultural Holdings Xl, Registration Division J. U. Mpumalanga and/or storing or handling any petroleum product under Property Portion 2 *of Holding* 85, *White River Agricultural Holdings Xl, Registration Division J.U., Mpumalanga;*

6. *That the costs of this application be paid by the Second Respondent and any other Respondent or Respondents who oppose the application to pay the costs jointly and severally, the one paying the other to be absolved with Second Respondent.*

7. *Further and/or alternative relief"*

11. The proceedings were enrolled for hearing on 7 July 2005. On that date the Sixth Respondent was ordered to despatch to the Registrar of the High Court, Pretoria, the records of the proceedings sought to be reviewed and set aside, together with any reasons which the Sixth Respondent desires to give, within 10 days after service of the order of Court.

12. The matter was thereafter enrolled for hearing, according to the Court file, on 28 April 2006 and on that date removed from the roll and thereafter set down for hearing on 9 May 2006.

13. It is common cause that in the interim period the erection of the filling station was completed and is in full operation. The total costs to the Second Respondent of developing the filling station was R6 085 956.00 and the total cost to the Fourth Respondent was R2 575 000.00.

14. From what has been said the following picture emerges: from the date that Applicants became aware of the construction and erection of the filling station Le. December 2003 to the date the second application was launched, i.e. 6 April 2005, a period of 15 months had elapsed.

15. It must be accepted that the Applicants were to a certain extent misled by an official of the Sixth Respondent. When the Applicants learned of the excavations at the site, they approached the Sixth Respondent, through their

attorney of record, Mr Pienaar and Ms Neumann, who were informed by Mr Hlatshwayo, that no authorization had been issued. To my mind this omission is satisfactorily explained by Hlatshwayo and Batchelor. The latter was approached by Hlatshwayo who advised him that he (Hlatshwayo) had received a request for an extension of their period of the original authorisation. This request was considered by Batchelor prior to 11 July 2003 and approved. Batchelor instructed Hlatshwayo to prepare a letter to the record this finding as Batchelor would be absent from his office for a week. On. Batchelor's return he signed the authorisation on 16 July 2003. The decision to grant an extension of the original authorisation was taken on 9 July 2003. In this regard the Applicants concede that they became aware of the contents of the authorisation dated 16 July 2003 on 29 January 2004. Again no appeal was noted in terms of Section 35(3) of the ECA. The argument advanced in this regard on behalf of the Applicants *"to have expected of the Applicants to have returned to the Sixth Respondent is ludicrous"* is untenable. The appeal may be directed to the Minister: Section 35(3) of the ECA. The Applicants could also have, regard being had to the provisions of Section 36 of the ECA have:

- Requested Batchelor in writing to furnish reasons for his decision within 30 days after receiving the request; and

- Within 30 days after receiving such reasons have approached this Court (Section 36(2) of the ECA) to review the decision. These procedures were not followed; instead the first application was launched. No explanation why the procedure set out in Section 36 of the ECA was not followed was advanced.

16. It was necessary to deal in extenso with the events that precluded the second application because the Respondents contend that there was an unreasonable delay in bringing the application. Erasmus argued that the Applicant acted with due diligence once it became aware of the unlawful construction of the petrol filling station and immediately when judgment was delivered in the first application. *Alternatively* it was submitted that they are entitled to an extension of the period of time as provided for in Section 9(1)(a) of the Promotion of Administrative Justice Act, No. 3 of 2000 (PAJA). The advocates are in agreement that the outcome of the second application is

determined by the answer to the question whether the time frame set in Section 9(1)(a) of PAJA should be extended.

UNDUE DELAY:

17. The following facts are common cause:

- The Applicants were aware of the authorisation granted by Batchelor on 12 July 2001 for the erection of a filling station located on Portion 2 of Holding 85 of Agricultural Holding Ext. 1, White River.

- The Applicants did not lodge an appeal against this authorisation in terms of Section 35(3) of the ECA nor invoked the provisions of Section 36 of the ECA.

- The applicants were aware of the fact that earthmoving works commenced at the end of December 2003 which was necessary for the erection of the petrol filling station.

- The Applicants knew of the extension of the deadline of the authorisation to 12 January 2004 by Bachelor on 29 January 2004 and became aware of the actual existence of the document on 29 March 2004.

- The Applicants brought their first application, which was not to review the decision of Bachelor, on 25 February 2004, seeking relief of a declaratory or interdictory nature. By following this procedure the applicants again ignored the remedy provided for in Section 35 of the ECA (appeal to the minister) as well as the remedy provided for in Section 36 of the ECA (review). The sensitivity of applications of this nature is clearly illustrated by the time frame, i.e. 30 days set in Section 35 and Section 36 of the ECA.

- The interdictory relief sought was not made subject to a notice of review being filed within a certain period of time.

- The second application was filed on 16 April 2005 that is more than a

month after judgment in the first application.

- The second application was heard on 9 May 2006.

18. The nub of the second application is *"to review the purported extension of the record of decision (authorisation) by the Sixth Respondent".* Bachelor is the Director: Environmental Management in the office of the MEC: Agriculture Conservation and Environment, the delegated officer to perform the functions ascribed to his office by Section 22 of the ECA. When Bachelor therefore granted the authorisation and extended the operation thereof to 12 January 2004 Bachelor performed an administrative action within the definition thereof in Section 1 of PAJA, with the resultant effect that the application is governed by Section 6 and Section 7 of PAJA: **Minister of Health v New Clicks S A (Pty) Ltd and Others 2006 (2) SA 311 (CC) at par 92 et seq**.

19. In terms of Section 7 of PAJA judicial review proceedings must be instituted *"without unreasonable delay and not later than 180 days after the date"* of the relevant decision. In terms of Section 9 of PAJA the Court retains a discretion to extend the period of 180 days where the *"interests of justice"* so require.

20. As already pointed out the second application for review was launched on 6 April 2005. By then the period of 180 days had expired. It is of academic importance only whether the date is calculated from the date of the extension of the authorisation, the date Grabow advised Pienaar of the existence of the extension, i e 29 January 2004, or 29 March 2004 when the extension was shown to Applicanfs advocate, all the dates being more than a year prior to the issue of the second application. It is therefore clear that the proceedings were not brought within a period of 180 days after the date of the decision.

21. I now turn to consider whether I should extend, in the interests of justice, the period of 180 days.

22. The Applicants rely on the date of the judgement of Pate I J in the first application (Le. 15 February 2005) for the contention that there was no undue delay. I disagree with this contention of the applicants for the following reasons: Patel J (p 399A) found that the Applicants, amongst others, failed to make out a case for urgency. I will revert back to this aspect later. The

Applicants should have realised that they, by their own conduct, have created the urgency.

- Patel J (p 401 B - C) found:

> *"A further consideration is that the Applicants seek a declaratory order and, consequent on it, an interdict. This raises the pertinent question of whether the interdictory relief sought by the Applicants is competent. The Respondents acted in developing the site in accordance with the written authorisation by an authorised official. Although the Applicants may consider the extension of the period of the authorisation to be invalid, they have not sought to have the administrative decision reviewed and set aside. Their failure to do so means that the decision stands and that the Respondents are within their lawful right to act in terms of it. Under the circumstances, the Applicants surely cannot succeed in securing the interdictory relief Consequently, the declaratory relief that the Applicants seek is of no more than academic significance and a Court will not issue a declaratory order in such circumstances."*

I am in respectful agreement with Patel J. In **Oudekraal Estates (Pty) Ltd v City of Cape Town and others 2004 (6) SA 222 (Supreme Court of Appeal) at 241 H** Howie Pet Nugent J A held:

> > *"For those reasons it is clear, in our view, that the Administrator's permission was unlawful and invalid at the outset. Whether he thereafter also exceeded his powers in granting extensions for the lodgement of the general plan, thus takes the matter no further. But the question that arises is what consequences follow upon the conclusion that the administrator acted unlawfully. Is the permission that was granted by the administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the administrators approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view, it was not. Until the administrator's approval (and thus also the*

> *consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked The proper functioning of a modem State would be considerably compromised if all the administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.* "

I agree with Sham SC where he argues that it is this fundamental distinction which the Applicants have failed to grasp in their repeated characterisation of the construction of the White River Filling Station as unlawful. The Respondents had received a written authorisation as contemplated by Section 22(1) of the ECA and, for so long as that written authorisation had not been reviewed and set aside by a Court, they were entitled (because of its factual existence) to act on it and to construct the White River Filling Station and convenience store.

23. I am therefore in full agreement with Patel J (p 400 C - F) where the Learned Judge said:

> *"During June 2003, the Second Respondent sought an extension of the period of authorisation to undertake the listed activity. The authorised official, Mr Batchelor, considered the merits of the matter and was of the view that the factors which motivated the original authorisation were still applicable and there was no environmental reason why the extension of the period should not be granted On* 9 *July 2003, he decided to grant a 6-month extension of the period The written authorisation for the undertaking of the listed activity was granted on* 16 *July 2003. The Applicants did not seek either to have the granting of authorisation reviewed or have it set aside. The Applicants were complacent in not challenging the lawfulness of the authorisation by way of review application. Thus, the authorisation remained intact and continued to be valid Under the circumstances the Applicants failed to persuade me that the Respondents acted*

unlawfully. In the absence of any unlawfulness on the Respondents' part, the Applicants failed to make out a persuasive case to disturb the authorisation that was granted to the Respondents by the relevant authority and subsequently extended by an authorised official. Therefore, I find that the Respondents did not act unlawfully in developing the site since they were lawfully authorised to do so. Hence, the application stands to be dismissed"

24. The common law basis of the so-called delay-rule is twofold. First, the failure to bring a review within a reasonable time may cause prejudice to the Respondent. Secondly, there is the public interest element in the finality of administrative decisions and the exercise of administrative functions. The effect is that, in a sense, delay would *"validate"* the invalid administrative action: **Associated Institutions Pension Fund and Others v Van Zyl and Others 2005 (2) SA 302 (SCA) at para 46**, with reference to **Oudekraal Estates (Pty) Ltd v City of Cape Town and Others** *supra* and **Wolgroeiers Afslaers (Edms) Beperk v Munisipaliteit van Kaapstad 1978 (1) SA 13 (A) at 41.**

25. Brand, J A in **Associated Institutions Pension Fund v Van Zyl** *supra* in paragraph 46 described the purpose of the delay rule as follows:

"Since PAJA only came into operation on 30 November 2000 the limitation of 180 days in s 7(1) *does not apply to these proceedings. The validity of the defence of unreasonable delay must therefore be considered with reference to common- law principles. It is a long-standing rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party had been guilty of unreasonable delay in initiating the proceedings. The effect is that, in a sense, delay would 'validate' the invalid administrative action (**see eg Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA) ... at paf'a (27)**. The raison d'etre of the rule is said to be two-fold First, the failure to bring a review within a reasonable time may cause prejudice to the Respondent. Secondly, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions **(see eg Wolgroeiers Aftlaers***

***(Edms) Beperk v Munisipaliteit van Kaapstad* 1978 (1) *SA* 13 *(A) at* 41)**.

26. I agree with the submission of Bham S C that even though the passage in the judgment of Brand J A deals with common law principles, the considerations such as those of prejudice are equally applicable to a consideration under P AlA for the extension of the period provided for in terms of Section 7(1) ofPAJA. That this is the correct approach is fortified by the judgment of Chaskalson C J in **Minister of Health v New Clicks S A (Pty) Ltd and Others**, supra at 364 where, under the heading: *"The Constitution and P AJA"* Chaskalson C J in para 97 said:

> *"Professor Hoexter sums up the relationship between P AJA, the Constitution and the common law, as follows:*
>
> > *'The principle of legality clearly provides a much-needed safety net when the PAJA does not apply. However, the Act cannot simply be circumvented by resorting directly to the constitutional rights in s* 33. *This follows logical from the fact that the PAJA gives effect to the constitutional rights (The PAJA itself can of course be measured against the constitutional rights, but that is not the same thing.) Nor is it possible to sidestep the Act by resorting to the common law. This, too, is logical, since statutes inevitable displace the common law. The common law may be used to inform the meaning of the constitutional rights and of the Act, but it cannot be regarded as an alternative to the Act.' I agree."*

27. The question whether the time period should be extended, as the Applicants contend, in terms of Section 9(2) of PAJA entails a two-fold investigation. The first is a factual question whether there was an unreasonable delay which is a factual question and has nothing to do with discretion. If the answer to this question is in the affirmative, the discretionary question arises whether the delay in all the circumstances must be condoned: **Associated Institutions Pension** Fund, *supra* at para 47 and para 48. Section 9(1) of PAJA gives the Court a wide discretion to extend the relevant period in the phrase: *"The interests of justice."*

28. I have already found that the review application (second application) in terms of Section 6 of PAJA read with Section 7 of PAJA was not, instituted within the period of 180 days. Applicants explain the delay as follows:

> "1. *The Applicants at all relevant times were under the impression that there was not purported extension of the period of validity of the ROD (authorisation).*
>
> 2. *The Applicants were therefore advised by their attorney to launch an application for the relief originally sought in the notice of motion in the application.*
>
> 3. *The Applicants only became aware of the purported extension of the record of decision on* 29 *March 2004.*
>
> 4. *Upon the advice received from the Applicants' attorney an amendment was then sought regarding the relief prayed for in the notice of motion.*
>
> 5. *The urgent application was argued before the above Honourable Court on* 31 *March and* 1 *April 2004. At conclusion of the argument judgment was reserved by the above Honourable Court.*
>
> 6. *As already indicated above judgement was handed down on* 15 *February 2005.*
>
> 7. *Immediately upon learning of the fact that the Applicants were unsuccessful with the previous application, a consultation was arranged in order to obtain advice from the Applicants' attorney and counsel. Such consultation was conducted on* 22 *February 2005.*
>
> 8. *During the consultation various options were considered and the Applicants' representative was informed that an advice would be furnished to the Applicant whether to proceed with an*

application for leave to appeal, or not.

9. *Shortly thereafter the Applicants were advised not to proceed with an application for leave to appeal, but to approach this above Honourable Court with the review application.*

10. The Applicants immediately instructed their attorney to proceed with the preparation of the application for review.

11. *Various drqft affidavits were prepared, and the input from an environmental consultant also retained by the Applicants were also received.*

12. *After all inputs had been received a consultation was thereafter convened with counsel in order to settle the application. The consultation was arranged for the first available date and a consultation was conducted on* 23 *March 2005, during which consultation the counsel assisted the Applicants' attorney in settling the application."*

29. It is not correct as the Applicants aver that they at all relevant times were under the impression that there was no purported extension of the time period of validity of the authorisation and that they only became aware of the extension on 29 March 2004. The Applicants concede in their replying affidavit that Grabow informed the Applicants' attorney, Pienaar of the purported extension of the period of validity of the authorisation on 28 January 2004. The Applicants further rely on the date of judgment of Pate I J in the first application in an endeavour to support the contention that the second application was brought within a reasonable time. I do not agree. Although Patel J, in the first application held that the matter was not urgent he indicated that there are other reasons also why the first application stands to be dismissed on the merits. Having considered the pertinent aspects of the merits of the application, Patel J found (p 401 G):

"Since the Applicants failed to seek the review of an administrative decision, they are not entitled to the declaratory relief"

I agree, regard being had to the address of Sham S C, which address is attached to the papers of the second application that the failure of the Applicants to bring review proceedings was pertinently raised during the hearing before Patel J and was thus pertinently dealt with by Patel J in his judgment. Notwithstanding the fact that it was clearly brought to the attention of the Applicants that the relief they sought in the first application was clearly wrong and having regard to the provisions of Section 6, Section 7 and Section 8 of PAJA the Applicants adopted a passive stance. They did not seek any interdictory relief pending the institution of review proceedings neither did the Applicants bring a review application or given any notification to the Respondents that they intended to do so. Even if the Applicants sought declaratory relief, this should have been done in the context of a judicial review in terms of Section 6(1) of PAJA. There was a duty on the Applicants to take all reasonable steps available to them to investigate any possible reviewability of the extension of the deadline of the decision. This the Applicants did not do.

31. The applicants by not acting timeously with review proceedings, accompanied by interdictory relief, had as a result that the Respondents fully constructed their filling station with resultant substantial costs and financial obligations already alluded to. The Applicants did not dispute that the Respondents would suffer prejudice in this regard, but in their replying affidavit contended that the Respondents acted recklessly by constructing the White River Filling Station. I cannot agree with this contention. The Respondents acted upon the extension granted by Batchelor on 16 July 2003 and they were entitled to so act until the decision by Batchelor was set aside by a competent Court. I agree with the submission of Bham S C that the Respondents should not now be *"punished'* for having acted, as they were lawfully entitled to act, in circumstances where the Applicants failed to act as required by Section 7(1) of PAJA. Although Section 7(1) of PAJA prescribes a 18O-day period, due regard should be had to the words *"without unreasonable delay".* The intention of the legislature is clear. There may be circumstances where a delay of less than 180 days would be unreasonable and in my judgment the time period set in section 35 and 36 of the ECA should receive serious consideration when deciding whether the application was brought without reasonable delay.

32. Regard being had to the judgment in the Supreme Court of Appeal, **Chairperson, Standing Tender Committee and Others v J F E Sapella Electronics (Pty) Ltd and Others 2005 (4) All SA 487 (SCA)** that where the affluxion of time and intervening events are of such a nature, a Court will decline, in the exercise of its discretion, to set aside an invalid administrative act. In my view this is an appropriate case where the circumstances (already alluded to) are of such a nature, accepting for the purposes of this judgment, but not deciding the issue, that Batchelor's act constituted an invalid administrative act.

33. I find that not only was the application for review not brought within the time limit set in Section 7(1) of PAJA, but that there was an unreasonable delay in bringing the application for review (second application).

34. I therefore find that it is not in the interests of justice, for the reasons and factors alluded to, to extend the time limit set in Section 7(1) of PAJA.

35. It is only the Second, Third and Fourth Respondents who opposed this application.

36. The application for review as well as the ancillary relief is therefore refused with costs.

J ENGELBRECHT
ACTING JUDGE OF THE HIGH COURT

15 May 2006