CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 79/20

In the matter between:

HEADMAN MASENYANI THOMPSON RIKHOTSO	Applicant
and	
PREMIER, LIMPOPO PROVINCE	First Respondent
MEMBER OF THE EXECUTIVE COUNCIL, CO-OPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS, LIMPOPO	Second Respondent
DISTRICT MANAGER, MOPANI DEPARTMENT OF TRADITIONAL AFFAIRS	Third Respondent
MAHUMANI TRADITIONAL COUNCIL	Fourth Respondent
MAHUMANI ROYAL FAMILY	Fifth Respondent

Neutral citation:	*Rikhotso v Premier, Limpopo Province and Others* [2021] ZACC 1
Coram:	Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Majiedt J, Mathopo AJ, Mhlantla J, Theron J, Tshiqi J and Victor AJ
Judgments:	Majiedt J (unanimous)
Decided on:	25 January 2021
Summary:	Constitution — section 34 — access to courts

Constitution — section 33 — just administrative action

ORDER

On appeal from the High Court of South Africa, Limpopo Local Division, Thohoyandou:

1. The order of the High Court of South Africa, Limpopo Local Division, Thohoyandou, is set aside.
2. The matter is remitted to the High Court for consideration of the merits of the application.
3. The Premier of the Limpopo Province, the Member of the Executive Council for Cooperative Governance, Human Settlements and Traditional Affairs, Limpopo, and the District Manager of the Mopani Department of Traditional Affairs must pay Mr Masenyani Thompson Rikhotso's costs for the applications in the High Court, the Supreme Court of Appeal and this Court, jointly and severally, the one paying the others to be absolved.

JUDGMENT

MAJIEDT J (Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Mathopo AJ, Mhlantla J, Theron J, Tshiqi J and Victor AJ concurring):

Introduction

[1] Traditional leaders play an important role in our constitutional landscape. They represent the inhabitants of the most rural parts of our country. The institution, status and role of traditional leadership is expressly recognised in the Constitution.[1] This was confirmed in *Sigcau*, where this Court stated that "the institution of traditional leadership and the determination of who should hold positions of traditional leadership have important constitutional dimensions" and that "[t]he institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution".[2]

Background

[2] This matter concerns the review of a decision to dismiss a headman. At issue is an ancillary aspect of the review in which the *functus officio* doctrine (of no further official authority or legal effect because the duties and functions of the original official have been fully accomplished) takes centre stage. We have before us an application for leave to appeal against the whole judgment and order of the High Court of South Africa, Limpopo Local Division, Thohoyandou (High Court). The High Court had dismissed an application to review and set aside the first respondent's decision to withdraw the certificates of recognition and appointment of Mr Masenyani Thompson

[1] Section 211 of the Constitution provides:

> "(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
>
> (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.
>
> (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law."

[2] *Sigcau v President of the Republic of South Africa* [2013] ZACC 18; 2013 (9) BCLR 1091 (CC) at paras 4 and 15. Himonga et al in *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives* (OUP, Cape Town 2014) notes at 228 that:

> "Traditional leadership has been in existence in South Africa since pre-colonial times. The colonial, Union and apartheid governments varied their recognition of traditional leadership on a regional basis and perceived it to be the central element of customary law and governance of customary communities. . . . Traditional leadership has not always taken the same form or been defined by the same source or form of law. The nature of traditional leadership has changed over time through the attempts of colonial, Union and apartheid governments to influence and use it for their own objectives."

Rikhotso (applicant) as the headman of the Nsavulani ward (Nsavulani). Nsavulani is under the authority of or within the area of jurisdiction of the Mahumani Traditional Community, led by the Mahumani Traditional Council, the fourth respondent, and the Mahumani Royal Family, the fifth respondent.

[3] The first respondent is the Premier of Limpopo, who is empowered in terms of the Limpopo Traditional Leadership and Institutions Act[3] (the Act) to issue and withdraw certificates of recognition and appointment of headmen. The second respondent is the Member of the Executive Council for Co-operative Governance, Human Settlements and Traditional Affairs in Limpopo. The third respondent is the District Manager for the Department of Traditional Affairs for the Mopani District Municipality. The fourth respondent is the Mahumani Traditional Council, established as such in terms of section 4 of the Act. The fourth respondent exercises authority over several wards, including Nsavulani, which falls under the fifth respondent, the Mahumani Royal Family. The latter is a customary institution established in terms of customary law. The fifth respondent leads the Mahumani Traditional Community. As the only respondents who participated in the proceedings in this Court and the High Court are the fourth and fifth respondents, they will simply be referred to as "the respondents" where reference is made to them collectively.

[4] Upon the position of headman of Nsavulani becoming vacant, the applicant was nominated for that position by the fifth respondent, in terms of section 12(1)(a) of the Act. On 20 January 2003, the applicant was issued with certificates of recognition and appointment as headman by the first respondent in terms of section 12(1)(b) of the Act.

[5] Section 12 of the Act provides:

> "(1) Whenever a position of a senior traditional leader, headman or head woman is to be filled–

[3] 6 of 2005.

(a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to the customary law of the traditional community concerned–

(i) identify a person who qualifies in terms of customary law of the traditional community concerned to assume the position in question; and

(ii) through the relevant customary structure of the traditional community concerned and after notifying the traditional council, inform the Premier of the particulars of the person so identified to fill the position and of the reasons for the identification of the specific person.

(b) the Premier must, subject to subsection (2)–

(i) by notice in the Gazette recognise the person so identified by the royal family in accordance with paragraph (a) as senior traditional leader, headman or headwoman, as the case may be;

(ii) issue a certificate of recognition to the person so recognised; and

(iii) inform the provincial house of traditional leaders and the relevant local house of traditional leaders of the recognition of a senior traditional leader, headman or headwoman.

(2) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier–

(a) may refer the matter to the provincial house of traditional leaders and the relevant local house of traditional leaders for their recommendations; or

(b) may refuse to issue a certificate of recognition; and

(c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.

(3) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (2) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law."

[6] It was alleged that the applicant had committed acts of serious misconduct between 2010 and 2011, all of which related to his duties as headman. As a result, he

was charged with misconduct by the fifth respondent and invited to attend a disciplinary enquiry to answer to the charges. He failed on three occasions to honour these invitations. As a result of his failure, during a meeting held on 16 January 2012, the fifth respondent invoked the provisions of section 13(1)(d) and (e) of the Act and resolved to remove the applicant as the headman of Nsavulani.

[7] In relevant part, section 13 of the Act provides:

> "(1) Relief of royal duties shall be on the grounds of–
>
> . . .
>
> (d) a transgression of a customary rule or principle that warrants removal; or
>
> (e) persistent negligence or indolence in the performance of the functions of his or her office.
>
> (2) Whenever any of the grounds referred to in subsection (1)(a), (b), (d) and (e) come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family concerned must, within a reasonable time and through the relevant customary structure–
>
> (a) inform the Premier of the province concerned of the particulars of the senior traditional leader, headman or headwoman to be removed from office; and
>
> (b) furnish reasons for such removal.
>
> (3) Where it has been decided to remove a senior traditional leader, headman or headwoman in terms of subsection (2), the Premier must–
>
> (a) withdraw the certificate of recognition with effect from the date of removal."

[8] The decision to remove the applicant was communicated to the first respondent, who subsequently withdrew the applicant's certificates of recognition and appointment as headman of Nsavulani on 8 March 2013 in terms of section 13(3)(a) of the Act.

In the High Court

[9] On 18 September 2017, more than four years later, the applicant launched an application to review and set aside the Premier's decision to withdraw his certificates of recognition and appointment. He based his challenge on the right to just

administrative action.[4] The applicant also sought condonation for his late review – meaning his failure to comply with the provisions of section 7(1)(b) of the Promotion of Administrative Justice Act[5] (PAJA) – by way of an application in terms of section 9 of that Act.[6]

[10] On 27 November 2018, the High Court granted the PAJA condonation application on an unopposed basis. On 16 January 2019, the same Judge who had heard that application delivered judgment on the merits. He recorded that there had been a separation of issues by agreement; he stated that "the merits of the review had been parked aside pending this Court's decision on the point *in limine*". Several points *in limine* had been raised by the respondents, all of which but one were abandoned at the hearing. The remaining point *in limine* was prescription. This was on the basis that more than three years had lapsed before the launch of the review application. Seemingly oblivious to having granted condonation in terms of section 9(2) of PAJA two months

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[4] Section 33 of the Constitution reads:

> "(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
>
> (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
>
> (3) National legislation must be enacted to give effect to these rights, and must—
>
> (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
>
> (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
>
> (c) promote an efficient administration."

[5] Act 3 of 2000. Section 7(1)(b) reads:

> "(1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date–
>
> (b) where no such remedies exist, 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."

[6] Section 9, in relevant part, reads:

> "(1) The period of–
>
> . . .
>
> (b) 90 days or 180 days referred to in sections 3 and 7 may be extended for a fixed period, by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.
>
> (2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require."

earlier, the Court pointed out that the principle of legality requires that an application for review be instituted within a reasonable time. After having considered the reasons advanced for the delay, the High Court found that the explanation was not reasonable and that, in any event, the application lacked prospects of success. It held that proceeding with the review application would be academic.

[11] There seems to have been some confusion in the mind of the presiding Judge on whether the review was brought in terms of PAJA or the principle of legality. The relief sought, and the High Court's earlier order granting condonation, indicate that it was a PAJA review. Be that as it may, the High Court refused the applicant's review application on 16 January 2019. The applicant sought leave to appeal, which was dismissed with costs on 13 August 2019. He then petitioned the Supreme Court of Appeal, which was also dismissed with costs on 11 September 2019.

In this Court

[12] This Court issued directions requesting the parties to make written submissions on whether:

> "(a) it was competent for the High Court to grant an order in favour of respondents on the prescription point *in limine*; and
> (b) the High Court could dispose of the matter on the delay point, following its earlier ruling that the delay was condoned; and
> (c) the principle enunciated in *Biowatch v Registrar, Genetic Resources* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) should apply here."

[13] The applicant submits that he sought in his application before the High Court to vindicate his constitutional right to just administrative action, which entailed a review and setting aside of the first respondent's decision to withdraw his certificates of recognition and appointment as the headman of Nsavulani, and his re-instatement. He accordingly submits that it was not competent for the High Court to grant an order on the prescription point *in limine* in favour of the fourth and fifth respondents. He reasons

that this was inappropriate as the relief sought was not in respect of a debt, but a review. Furthermore, that prescription does not legitimately arise where the conduct complained of is inconsistent with obligations imposed by the Constitution.

[14] On the issue of condonation, the applicant submits that, having granted condonation in terms of section 9(2) of PAJA, the High Court could not dispose of the matter on the delay point. The applicant further submits that the doctrine of *functus officio* applied, and the High Court could not later alter a final order, wherein it had granted him condonation for the delay.

[15] The respondents do not make any direct submissions on whether it was competent for the High Court to grant an order on the prescription point *in limine* in their favour. They simply explain that the prescription point *in limine* was raised pursuant to rule 6 or rule 53 of the Uniform Rules of Court, which require applications to be brought within a reasonable time. In this regard, they draw this Court's attention to *Buffalo City*.[7] In respect of condonation having been granted, the respondents concede that the High Court could not dispose of the matter on the delay point, having in an earlier ruling granted condonation. They make no further submissions on this aspect.

Leave to appeal

[16] The High Court's finding on prescription against the applicant, in the face of its earlier condonation ruling under section 9(2) of PAJA, implicates the applicant's constitutional right of access to courts.[8] An entrenched justiciable right to lawful administrative action evinces a decisive break from our apartheid past as "[t]he right to administrative justice is fundamental to the realisation of [our] constitutional values,

[7] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited* [2019] ZACC 15; 2019 (4) SA 331 (CC); 2019 (6) BCLR 661 (CC).

[8] Section 34 of the Constitution reads:

> "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

and is at the heart of our transition to a constitutional democracy".[9] It is said that the right to administrative justice is linked to other rights, including the right to access courts.[10] In *Zondi I*, this Court said that "[t]he right of access to courts is an aspect of the rule of law. And the rule of law is one of the foundational values on which our constitutional democracy has been established".[11] Since the matter can be resolved by the application of the law, the applicant approaches this Court to vindicate his constitutional rights. This quintessentially engages this Court's jurisdiction as a constitutional matter pursuant to section 167(3)(b)(i) of the Constitution. Furthermore, it is unquestionably in the interests of justice to remedy the injustice occasioned by this adverse finding.

Merits

[17] In respect of a review, rights must be vindicated without delay.[12] But, not every delay is fatal. This Court has emphasised that the right of access to courts is essential in a constitutional democracy under the rule of law and that prescription periods limit this right.[13] In *Khumalo*, this Court endorsed the test enunciated by the majority of the

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[9] *Joseph v City of Johannesburg* [2009] ZACC 30; 2010 (4) SA 55 (CC); 2010 (3) BCLR 212 (CC) at para 45. See further Mureinik "A Bridge to Where: Introducing the Interim Bill of Rights" (1994) 10 *South African Journal on Human Rights* 31, which discusses the critical importance of a justiciable right to just administrative action and how it fosters a culture of justification.

[10] Hoexter *Administrative Law in South Africa* 2 ed (Juta & Co, Cape Town 2012) at 16.

[11] *Zondi v MEC for Traditional and Local Government Affairs* [2004] ZACC 19; 2005 (3) SA 589 (CC); 2005 (4) BCLR 347 (CC) (*Zondi I*) at para 82. See further *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) and *De Beer N.O. v North-Central Local Council and South-Central Local Council* (*Umhlatuzana Civic Association Intervening*) [2001] ZACC 9; 2002 (1) SA 429 (CC); 2001 (11) BCLR 1109 (CC) at para 11. Brickhill and Friedman in "Access to Courts" in Woolman et al (eds) *Constitutional Law of South Africa* 2 ed (2014) at 3, observe the following:

> "It is appropriate to view section 34 within the matrix of related constitutional provisions, both within the Bill of Rights and outside it. At the level of underlying constitutional values, section 34 is most closely related to the provisions of section 1(c). Section 1(c) recognises the founding values of supremacy of the Final Constitution and the rule of law. Section 34 concretises the higher-level value of the rule of law."

[12] *City of Cape Town v Aurecon South Africa (Pty) Ltd* [2017] ZACC 5; 2017 (4) SA 223 (CC); 2017 (6) BCLR 730 (CC) at paras 43-55.

[13] *Road Accident Fund v Mdeyide* [2010] ZACC 18; 2011 (2) SA 26 (CC); 2011 (1) BCLR 1 (CC) (*Mdeyide*) at para 101 Froneman J opined that:

> "Time bars and prescription periods limit the right to seek judicial redress. The main object of these limitations is no doubt to create legal certainty and finality between the parties after a lapse of time, but they should not serve as a blunt instrument to achieve finality regardless of the circumstances of the parties to an obligation."

Supreme Court of Appeal in *Gqwetha*[14] for assessing undue delay in bringing a review application.[15] This Court stated the following:

> "[A]n assessment of a plea of undue delay involves examining: (1) whether the delay is unreasonable or undue (a factual enquiry upon which a value judgment is made in the light of 'all the relevant circumstances'); and if so, (2) whether the court's discretion should be exercised to overlook the delay and nevertheless entertain the application."[16]

[18] The respondents raised prescription in their answering affidavit in the High Court, notwithstanding condonation having been granted on an unopposed basis some two months earlier. In its judgment on the merits, the High Court held:

> "[C]onsidering the points *in limine* in issue here, namely, prescription and the provisions or requirements of the principle of legality, it is the finding of this court that prescription as a point *in limine* was not substantiated or is not the correct or appropriate point to take as we are not dealing with a debt here. Superannuation ought to have been used . . . Four years and four or five months delay is an inordinately long period to wait before seeking redress on a simple issue that the applicant alleges is very close to his heart. When this court also looked at the applicant's prospects of success at the end of the day, it has come to the conclusion that there are none. As such it would be an exercise in futility to go to the merits of this application. On those grounds alone, this application should fail."[17]

[19] The High Court was *functus officio* insofar as prescription or "superannuation" (as the High Court called it) was concerned. The applicant's delay had already been condoned in terms of section 9(2) of PAJA. The High Court could not alter and, even less, revoke that final decision.

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[14] *Gqwetha v Transkei Development Corporation Ltd* [2005] ZASCA 51; 2006 (2) SA 603 (SCA) at paras 24, 31 and 33.

[15] *Khumalo v MEC for Education, KwaZulu Natal* [2013] ZACC 49; 2014 (5) SA 579 (CC); 2014 (3) BCLR 333 (CC). See further *Mdeyide* above n 13.

[16] *Khumalo* id at para 49.

[17] *Headman Masenyani Thompson Rikhotso v Premier of Limpopo Province* unreported judgment of the Limpopo High Court, Thohoyandou, Case No 943/2017 (16 January 2019) (High Court judgment) at para 52.

[20] The two-fold rationale underlying the *functus officio* doctrine was encapsulated by this Court in *Zondi II*:

> "In the first place a Judge who has given a final order is *functus officio*. Once a Judge has fully exercised his or her jurisdiction, his or her authority over the subject matter ceases. The other equally important consideration is the public interest in bringing litigation to finality. The parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order."[18]

This Court has accepted a caveat, however, that "it is assumed that courts do have the discretion to vary their orders, albeit that this discretion must be exercised sparingly".[19]

[21] It is in any event doubtful whether prescription in terms of section 11(d) of the Prescription Act,[20] as raised by the respondents as a preliminary point, applies to proceedings of the present nature.[21] That is because it is doubtful whether the review sought by the applicant is a "debt" as envisaged in section 11(d) of the Prescription Act. The High Court appeared to acknowledge this, as it observed that "an administrative act is not a debt"[22] and "prescription as a point *in limine* . . . is not the correct or appropriate point to take as we are not dealing with a debt here".[23]

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[18] *Zondi v MEC, Traditional and Local Government Affairs* [2005] ZACC 18; 2006 (3) SA 1 (CC); 2006 (3) BCLR 423 (CC) (*Zondi II*) at para 28. See further *Speaker, National Assembly v Land Access Movement of South Africa* [2019] ZACC 10; 2019 (6) SA 568 (CC); 2019 (5) BCLR 619 (CC) (*LAMOSA*) at para 24; *Minister of Justice v Ntuli* [1997] ZACC 7; 1997 (3) SA 772; 1997 (6) BCLR 677 (CC) at paras 29- 30; *Firestone South Africa (Pty) Ltd v Genticuro A.G.* 1977 (4) SA 298 (A) (*Firestone*) at 306F-G; and *West Rand Estates Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 at 178.

[19] *LAMOSA* id at para 25 and *Firestone* id at 309A.

[20] 68 of 1969.

[21] Section 11(d) reads:

> "Periods of prescription of debts
>
> The periods of prescription of debts shall be the following:
>
> . . .
>
> (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt."

[22] High Court judgment above n 17 at para 23.

[23] Id at para 52.

[22] The relief sought by the applicant, for the review and setting aside of the decision to remove him as headman and for his re-instatement, was predicated upon the constitutional right to just administrative action,[24] and the recognition of traditional leaders in order to give effect to section 211 of the Constitution. In this regard, the applicant contends that his removal as headman meant that the respondents had failed to perform their constitutional obligations. This Court has expressed doubt on whether an obligation that arises from the Constitution can be susceptible to prescription, but left the point undecided.[25]

[23] The High Court erred in effectively overruling itself in finding that the "prescription" or "superannuation" point must be upheld. Its order must be set aside and the matter remitted for the consideration of the merits of the review application.

Costs

[24] As indicated, the parties were asked to make submissions on whether *Biowatch* applies.[26] It is well-established that a private party should not be mulcted in costs where that party raises a genuine and substantive argument vindicating constitutional rights, or where the party seeks to hold an organ of state accountable and compel such an organ of state to fulfil its constitutional or statutory responsibilities. However, this rule is not inflexible. In *Biowatch* this Court, quoting its earlier judgment in *Affordable Medicines*,[27] held:

[24] Section 33 of the Constitution.

[25] In *Njongi v Member of the Executive Council, Department of Welfare, Eastern Cape* [2008] ZACC 4; 2008 (4) SA 237 (CC); 2008 (6) BCLR 571 (CC) Yacoob J observed at para 42:

> "I have doubts whether prescription could legitimately arise when the debt that is claimed is a social grant; where the obligation in respect of which performance is sought is one which the Government is obliged to perform in terms of the Constitution; and where the non-performance of the Government represents conduct that is inconsistent with the Constitution."

A similar doubt was expressed in *Mdeyide*, above n 13 at para 11.

[26] *Biowatch v Registrar, Genetic Resources* [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC).

[27] *Affordable Medicines Trust v Minister of Health* [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (*Affordable Medicines*).

> "There may be circumstances that justify departure from this rule such as where the litigation is frivolous or vexatious. There may be conduct on the part of the litigant that deserves censure by the Court which may influence the Court to order an unsuccessful litigant to pay costs. The ultimate goal is to do that which is just having regard to the facts and the circumstances of the case."[28]

[25] This is an instance where the *Biowatch* principle ought to find application. The applicant was genuinely vindicating his constitutional right to just administrative action. While it cannot be controverted that the review application was delayed, that cannot be the basis upon which the High Court and the Supreme Court of Appeal awarded costs against the applicant. That is all the more so, considering that the High Court granted condonation for the applicant's delay in terms of section 9(2) of PAJA. In addition, the High Court did not provide reasons for the costs order against the applicant for this Court's consideration. The first, second and third respondents, as organs of state, should consequently bear the costs of the applications for leave to appeal in this Court, the High Court and the Supreme Court of Appeal. That is so because they raised the prescription point in the High Court, with the full knowledge that the Court had already granted the applicant condonation barely two months earlier. And in their written submissions they conceded that the High Court had erred in upholding the delay point, despite having already granted condonation.

Order

[26] The following order is made:

1. The order of the High Court of South Africa, Limpopo Local Division, Thohoyandou, is set aside.
2. The matter is remitted to the High Court for consideration of the merits of the application.
3. The Premier of the Limpopo Province, the Member the of Executive Council for Cooperative Governance, Human Settlements and Traditional Affairs, Limpopo, and the District Manager of the Mopani

[28] *Biowatch* above n 26 at para 21, quoting *Affordable Medicines* id at para 138.

Department of Traditional Affairs must pay Mr Masenyani Thompson Rikhotso's costs for the applications in the High Court, the Supreme Court of Appeal and this Court, jointly and severally, the one paying the others to be absolved.

For the Applicant:	T W G Bester SC instructed by Mathivha Attorneys.
For the Fourth and Fifth Respondents:	R Baloyi instructed by Mahumani Incorporated.