

FOR PSA MEMBERS: DEPARTMENT OF DEFENCE (DOD)

10-12-2019

## Labour Court Case: Demilitarisation of then-Finance Division

The employer contested the successful, unopposed PSA application for condonation. When the matter was to be put on the roll to consider the merits, the employer had another Advocate appointed to represent it. He requested to be afforded an opportunity to peruse the bundle of documents on the successful condonation application. The then-Judge took a decision to afford the employer's Advocate an opportunity to peruse the application.

After the perusal, they raised a point *in limine* that the matter had prescribed in terms of the *Prescription Act of 1969 (Act 68 of 1969)*. Furthermore, the other basis for opposing the matter was the prospects of success. They alleged that the action should have been raised immediately after 1998 or the latest during 2001 and there is no prosperity of success.

The PSA, through its legal representatives, submitted replying affidavits stating that the Statement of Case and employer's acknowledgement of members' grievances are the basis of the cause of action. The employer continuously responded that feedback would be provided. During 2013, the disparity was apparent.

The Judge alerted the PSA's Advocates that should the claim be instituted with effect from 1998, the Court would require all the relevant witnesses to give oral evidence. Alternatively, should the claim be instituted with effect from 2013 when the prejudice unfolded, the submitted documentary evidence would be considered for the merits of the case. Furthermore, both Advocates were advised to jointly compile a settlement agreement. The PSA shared a draft with the employer, who rejected it and indicated that it intends to proceed with the matter. Its prayer was that the Judge must dismiss the matter based on the *Prescription Act*.

Parties are still awaiting the ruling on the contested, successful condonation application by the PSA. After the ruling, the matter will be put on the roll for the merits of the matter to be heard.

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