REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

DURBAN AND COAST LOCAL DIVISION

CASE NO. 7940/07

In the matter between:-

P.N. CELE **APPLICANT**

and

THE SOUTH AFRICAN SOCIAL SECURITY AGENCY AND 22 RELATED CASES **RESPONDENT**

JUDGMENT

Delivered on 19 March 2008

WALLIS AJ

[1] On Monday 3 March 2008, when I presided in the Motion Court, there were fifteen unopposed applications on the roll in which the Respondent was either the Minister of Social Development or the South African Social Security Agency (SASSA). When the matters were called counsel appearing for the Applicants dealt with them in groups that appeared to correspond to the identity of the firm of instructing attorneys. A representative from the office of the State Attorney appeared, but through no fault of his own he was manifestly unfamiliar with any of the cases and asked that they should stand down. Thereafter in all of the

matters some or other consent order was taken frequently accompanied by an order for costs against the relevant Respondent. This struck me then as a largely pointless exercise involving significant and probably unnecessary legal costs that would be borne by the taxpayer.

[2] The matters in question emanated from four firms of attorneys and they in turn appeared to be instructed by two agencies that assist persons applying for social assistance grants, who encounter problems in the administration of these grants. (I will refer compendiously to social assistance grants as including all forms of grants provided for in the Social Assistance Act 13 of 2004 ("the 2004 Act") or its predecessor the Social Assistance Act 59 of 1992 ("the 1992 Act")) On enquiry I was informed from the Bar that these agencies charge a fee for their services although I was not told either the amount of the fee or the basis upon which it is calculated nor how people so impoverished that they qualify for social assistance grants can afford to pay fees. As appears later in this judgment the legal costs of these matters are substantial and when multiplied by the number of cases involved, enormous.

[3] Leaving aside the question of costs my primary concern related to the contents of the application papers in these papers. Each of the cases raised one of three separate complaints namely:-

a) a complaint that the Applicant had submitted an application for one or other form of social assistance grant, either a social or a disability grant for themselves or a child support grant, but had received no response to the application;

b) a complaint in regard to disability grants that an application for such a grant had been refused and the Applicant had exercised their right to appeal against such refusal, but no arrangements for an appeal hearing had been made;

c) a complaint that the Applicant had been in receipt of a social assistance grant in the past but payment had been stopped for reasons of which the Applicant was unaware.

In each instance the claim for relief under this head was joined in the alternative with a claim for payment of the grant in question, payment of arrears and a claim for costs.

[4] Each of the cases accordingly raised issues in terms of the provisions of the 2004 Act, or possibly its predecessor the 1992 Act, because in a number of the cases the factual allegations related to matters occurring prior to 1 April 2006 when the 2004 Act came into operation. There was no attempt in the affidavits in any of these cases to identify which Act was applicable or to deal with the legal implications of the transition from one to the other. One such potential problem lay in the fact that the administration of the 1992 Act was delegated to the provinces in terms of the provisions of section 235(6)(b) of the Interim Constitution. Whilst that delegation was held by the Constitutional Court to be unlawful and invalid in its judgment in *Mashavha v President of the Republic of South Africa* 2005 (2) SA 476 (CC) the Constitutional Court suspended the operation of its order of invalidity for a period of eighteen months from the date of the order. Accordingly, as the judgment was handed down on 6 September 2004, the order of invalidity came into effect on 6 March 2006, a mere three weeks before the 2004 Act came into operation. In the result the provincial departments had been responsible in law for the payment of social grants prior to 6 March 2006 and SASSA had become liable from 1 April 2006.The possible implication of this was that claims in respect of the earlier period were claims that should properly lie against the Provincial Department that had been responsible under the 1992 Act for the administration of social grants, whilst claims in respect of the period after the declaration of invalidity came into force, or possibly after the 2004 Act itself came into force, would lie against SASSA and the Minister of Social Development

at a national level. As the funds to pay these claims would be drawn from different budgets, depending upon whether the liability lay at provincial or national level, this was plainly an issue of considerable importance. Nonetheless no attempt was made in any of the matters that came before me to deal with it. In addition no attempt was made to explain the process of transition so that it was not clear why, for example, SASSA would be liable for not responding to a claim for a grant lodged with the provincial authorities several years prior to it having come into existence. On the face of matters an application for a social assistance grant had been made to one authority and an entirely separate authority was sought to be held liable for the response (or lack of it) to that application.

[5] Leaving aside the statutes under which the obligation to make social assistance grants available arises, the position is that with effect from 1 April 2006 the administration of those grants and responsibility for paying them was delegated to a government agency established for that purpose, namely SASSA. As many of the complaints related to the failure of SASSA to discharge its statutory functions it followed that the provisions of the South African Social Security Agency Act No. 9 of 2004 ("the SASSA Act"), under which SASSA operates, might well be relevant to the claims being advanced in these applications. Notwithstanding that none of the application papers made any pertinent reference to the provisions of the Act. One potentially important aspect is that in terms of section 14 of the SASSA Act it is provided that:

> " **14. Legal proceedings against Agency.**—(*a*) Any legal proceedings against the Agency must be instituted in accordance with the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002).
> (*b*) The Agency is, for purposes of paragraph (*a*), deemed to be an organ of state contemplated in

paragraph (*c*) of the definition thereof in section 1 of the above Act."

None of the proceedings before me made reference to compliance with the Institution of Legal Proceedings against certain Organs of State Act ("the Legal Proceedings Act"). This is a matter to which I will revert.

[6] The failure in these cases to identify the relevant statutory provisions on which reliance was to be placed either as demonstrating the right to a social assistance grant, an appeal hearing or reasons for the withdrawal of a grant as the case may be or to demonstrate the existence of a default on the part of the Respondent flies in the face of long established authority. (*Ketteringham v City of Cape Town* 1934 AD 80 at 90 as endorsed by the Constitutional Court in *Bato Star Fishing (Pty) Limited v Minister of Environmental Affairs* 2004 (4) SA 490 (CC), para [27] footnote 16). That authority requires a litigant who seeks to rely upon a statutory provision either to set out in its pleadings the provisions on which reliance is to be placed or, at the very least, to set out facts that will enable the other party to identify the statutory provision in question. Where proceedings are brought by way of application that information must be embodied in the affidavits as it is clear that the affidavits serve the function both of the pleadings and of providing the essential evidence to be relied upon by the Applicant. (*Hart v Pinetown Drive-In Cinema (Pty) Limited* 1972 (1) SA 464 (D) at 469C-E.)

[7] Of course, it would have been apparent to the Respondent, as it was apparent to me on reading the papers, that the basis for the Applicants' claims lay somewhere within the provisions of either the 1992 Act or the 2004 Act and any regulations promulgated under these Acts. However, that is not sufficient. It does not suffice for a litigant to point their opponent (and the Court) in the general direction of a thicket of legislative provisions leaving them to hack a path through the

undergrowth as best they can. That does not constitute compliance with the obligation that rests upon a litigant to set out their case with reasonable clarity in either their pleadings or, where the matter proceeds by way of application, in the affidavits filed in support of the application.

[8] In adopting this approach I do not believe that I am imposing an undue burden on these litigants, for whose plight I have considerable sympathy. They are, however, represented by attorneys who appear to have established a mini-industry in cases of this type. (Only 5 firms have been involved in the cases that have come before me, but I am told by the State Attorney that there are about 30 firms specialising in this type of case in the courts of this province.) There can be no excuse for the lawyers not being fully acquainted with the relevant statutory provisions and able with clarity and simplicity to identify which provisions are relevant to each type of case identified in paragraph 3of this judgment or any variant that may come before the courts. I would have expected in these matters to have found an affidavit by the attorneys in standard form indicating the relevant processes germane to their clients' cases and identifying the statutory provisions and regulations on which reliance was placed in each instance. As was recently pointed out by Maurice Kay LJ in giving the judgment of the Court of Appeal in *Merina v Secretary of State* [2008] 1 All ER 718 (CA), para. [1], p721:-

> "In the field of social security, primary and secondary legislation are notoriously labyrinthine. Sometimes the substantive entitlement to a statutory benefit is clothed in complexity and can only be determined after an interpretive journey that few are equipped to travel."

That being so the need for an Applicant's lawyers - for the Applicants themselves are plainly not equipped to do so - to identify with clarity the legislation, primary

or secondary on which their clients rely should be self-evident.

[9] The need for compliance with these basic principles became even more apparent when the present matters were argued before me on Friday 7 March 2008. Whilst section 32 of the 2004 Act makes provisions for the promulgation of regulations dealing with the establishment of uniform standards and the proper administration or implementation of the Act, it appears that no such regulations have been made. What seemed on their face to be regulations were promulgated under Government Notice R162 in Government Gazette No. 27316 of 22 February 2005 over a year before the 2004 Act was put into operation and five months after the Mashavha judgment was handed down. The form of these regulations is sufficiently misleading to have conveyed to the ordinary reader (and to Juta & Company Limited whose service publishing statutes and regulations carries these regulations as being in force under the Act) that they are indeed regulations promulgated under the 2004 Act. However, by way of Government Notice No. R1280 in Government Gazette No. 29471 dated 11 December 2006 the Minister for Social Development announced that the regulations promulgated under Government Notice No. R162 had merely being published for public comment and he added:-

> "It has come to my attention that there is a perception that the above-mentioned draft Regulations are in force. For avoidance of doubt, I record that the draft Regulations aforesaid are not in force and I have not yet made regulations in terms of the Social Assistance Act, Act No. 13 of 2004. The Regulations are currently being finalised and will be promulgated in due course."

Inasmuch as the regulations contained in Government Notice R162 were published without any *caveat* it is hardly a surprise that once the 2004 Act came

into operation and until this ministerial announcement appeared most interested people would have regarded them as being in force. After all section 14(b) the Interpretation Act 33 of 1957 expressly provides for the promulgation of regulations under a statute before the commencement of that statute. However it is now clear that they are not in force, with the result that, although the 2004 Act has been in operation for very nearly two years and draft regulations were prepared three years ago the Department for Social Development has failed to finalise and promulgate the regulations needed to describe how the system of social assistance grants provided for in the 2004 Act is to be administered. It must also take responsibility for the considerable confusion between 1 April 2006, when the 2004 Act came into force, and December 2006, when the Minister announced that the published regulations were only a draft. In the interim those who were trying to follow the statutory procedures can only have been confused.

[10] As there have been no regulations promulgated under the 2004 Act the position is that in terms of section 33(2) and (3) of that Act, both the national and any provincial regulations promulgated under the 1992 Act remain in force. It is no easy task to ascertain the precise content of these regulations and I am indebted to counsel who appeared before me on Friday for their assistance in this regard. The position appeared to be that there were two primary sets of regulations still in force. The first, entitled "Phasing Out of Maintenance Grants" was published in Government Notice R417 in Government Gazette 18771 of 31 March 1998. They dealt with maintenance or similar grants payable in terms of section 21(2) of the 1992 Act and the phasing out of those grants. Clearly they were promulgated in order to give effect to section 21(2) of the 1992 Act as inserted by way of the Welfare Laws Amendment Act 106 of 1997. However no commencement date was ever promulgated for that amending Act so these regulations have never had

any operative effect and they can be ignored. The second set of regulations, entitled "Grants and Financial Award to Welfare Organisations and to Persons in need of Social Relief of Distress," was published in Government Notice R418, also in Government Gazette 18771 of 31 March 1998. These latter regulations identify various types of social grants; set up the procedure to be followed in applying for such grants; make provision for the suspension or variation of the amount payable by way of grants in terms of a process of review; provide for the circumstances in which a grant lapses and provide for an applicant for a grant to be advised of the fate of their application and, if unsuccessful, of their right to an appeal. These latter regulations have been amended from time to time, most recently in 2003, but appear otherwise to be in force. I will refer to them as the regulations in GN R418.

[11] I trust that I have said sufficient to indicate that in the field of social assistance in South Africa the primary and secondary legislation is as labyrinthine as it apparently is in the United Kingdom and the entitlement of any applicant to relief flowing from a failure on the part of the Minister of Social Development or SASSA may well be complex. All this can only serve to emphasise the necessity for those lawyers who practise in this area of the law to be thoroughly familiar with the applicable legislation, both primary and secondary, and to ensure that it is properly placed before the Court in a coherent form when the need for litigation arises.

[12] The orders sought in the matters that came before me on Monday were all sought by consent and granted accordingly. However, I did take the opportunity of expressing my disquiet over the quality of the papers and whether in any of the applications a proper case had been made for the grant of relief. Thereafter I

made enquiries among the other judges stationed in Durban during this month and they confirmed, what I suspected, that the motion roll of this Court and indeed the motion roll of the Natal Provincial Division of the High Court, are cluttered with cases of this type. The pattern of events that played itself out before me is a daily occurrence in these Courts. The Registrar of this Court informs me that in order to provide space on the motion roll for other cases she is constrained to restrict the number of cases relating to social assistance grants to fifteen on each of Monday, Wednesday and Friday in any week and ten on each of Tuesday and Thursday. In other words a maximum of sixty-five cases a week is set down for hearing in the Durban motion court each week. In the result she advises me that she is at present setting down matters of this type for hearing in August of this year. In Pietermaritzburg the position is if anything worse, especially as some attorneys who are aware of the restrictions in Durban now bring their cases in Pietermaritzburg. Whilst it is not always the case that the roll is so congested I have ascertained through other judges that for example on 26 April 2007 there were 67 such matters on the motion roll in that court and on 13 March 2008 there were 75. Pillay J undertook an investigation in the course of preparing his judgment in *Mzimela v Minister of Social Development*, Case No 1438/07 (NPD), unreported, and ascertained that in the five days 26 and 28 November and 5, 6 and 11 December 2007 no fewer than 152 such matters came before the court in Pietermaritzburg. Of these 84 were adjourned at the expense of the Respondent i.e the State, and in 38 others an order was taken that the costs of the entire application be paid by the Respondent. As Pillay J remarked "the Respondent had agreed in an inordinately large number of cases to pay the costs of the applications or wasted costs".

[13] It seems to me that this situation is entirely untenable. The only obvious

beneficiaries of what is happening are those legal practitioners who specialise in dealing with this type of case. Apart from the limited number of attorneys who undertake these matters there seems from my enquiries to be a small coterie of junior counsel for whom this is a profitable way in which to spend a morning. Only five counsel have appeared before me in these cases on behalf of the Applicants and one of those appeared in only one case. However several of the others appear regularly in these cases. On 26 April 2007 in Pietermaritzburg only three counsel appeared in 67 cases divided among them as to 40, 21 and 6 matters. On 13 March 2008 two of those three counsel appeared and the roll was divided between them, one of them being the unfortunate who had only appeared in 6 matters on 26 April 2007. I merely observe that this makes the motion court very profitable particularly as the papers are standardised and the matters are invariably adjourned and not argued. That may explain why a number of Durban counsel are prepared to travel to Pietermaritzburg to attend to adjournments. Whether and to what extent they examine the papers in any detail is debatable. Judging by the inability of counsel who appeared last Monday to proffer any helpful submissions in response to my questions those counsel had barely read the application papers and had certainly not applied their minds to them. I cannot say that this is true of all cases or all advocates but that it happened at all is deeply perturbing.

[14] Turning to the other branch of the profession as the papers produced by each firm of attorneys are in a standard form and indeed, as I discovered, there are instances where two firms of attorneys are making use of the identical precedent, inclusive of grammatical and typographical errors, they can with relatively little effort be run off on a computer using a standard word processing programme. Thereafter the activities of the attorneys in causing the papers to be issued and served and the matters set down on the motion roll are administrative. As I will show churning

out application papers in these quantities is highly profitable. The attitude of the attorneys appears to be much along the line of the representative of one of these firms of attorneys, who in response to a telephone call from my secretary on the Friday prior to 3 March, informed her that it was unnecessary for me to read the papers emanating from that firm as "in these matters it is usual to take orders by consent". I assume that this merely represented the indolent way in which these matters appear to be dealt with rather than a deliberate attempt to stop me reading the papers and discerning their defects.

[15] All of this is a deplorable situation. For some years now the Courts in this province and in the Eastern Cape, endorsed by judgments of the Supreme Court of Appeal, have addressed scathing criticism to the authorities responsible for the payment of social assistance grants. In the papers before the Court in *Mashavha* there was considerable focus on the inability of the provinces properly to administer a system of social assistance grants and the creation of SASSA and the transfer of responsibility for these grants from provincial to national level were put forward as a solution to the existing disarray. The Constitutional Court afforded the Department of Social Development eighteen months in which to put proper systems in place to enable SASSA to function efficiently from inception. At the time of the hearing before the Constitutional Court both the 2004 Act and the Act establishing SASSA had been passed by Parliament. Within five months of the judgment draft regulations were promulgated. Three years after their promulgation the regulations have not yet been finalised. That is a lamentable situation for which there is no explanation and on the face of it no excuse.

[16] The absence of regulations might be forgiven if the system were in fact operating efficiently. However, in the course of argument in these matters I was informed

that although section 18 of the 2004 Act provides that an applicant who disagrees with a decision made by SASSA in respect of a matter regulated by the 2004 Act is entitled to lodge a written appeal with the Minister of Social Development against that decision, no independent tribunal has been appointed in terms of section 18(2)(b) of the 2004 Act to consider appeals. The explanation for this, according to Mrs. Naidoo, from the office of the State Attorney, who represented the Respondents in the applications before me on Friday, is bureaucracy and red tape. In the result, so she said, there is now a backlog of 5000 appeals. Mr. Govender, the State Attorney, who made very helpful general submissions to me indicated that there were problems with SASSA filling posts and turnover of staff. Ultimately he said that for the problem to be solved the position needs to be that there are people in the agency working at their desks, properly supervised and instructed in what to do. That this is not the position simply means that the administrative problems that previously existed at provincial level have now been transferred to SASSA at national level. Sadly an examination of the written argument in *Mashavha* reveals that this was predicted.

[17] My concern at this situation led me to adjourn all the similar applications on my motion roll on Wednesday to Friday. I informed counsel and the attorneys concerned that I wished to hear submissions on these cases and in addition asked for submissions on ways in which the general problems with these applications could be addressed. I did not believe that the problems with SASSA could be solved overnight, but was concerned to see whether a process could be put in place that would facilitate the resolution of this type of dispute before the commencement of litigation and without the incurring of substantial legal costs. To assist me in this regard I asked Advocates Broster SC and Annandale to act as *amici curiae* to make general submissions on the applications and also on possible

solutions to the problem or at least ways of ameliorating the tidal wave of unopposed applications congesting the rolls of the Court and involving substantial costs to the taxpayer. It is appropriate that I record my gratitude for their assistance. Not only did they consider the papers in all of the applications from my Wednesday and Friday motion rolls, but they researched the legal position and provided me with substantial heads of argument. This has proved most helpful in the preparation of this judgment. In addition Mr. Broster SC made arrangements with the State Attorney, Mr. Govender, to ensure that his office was represented by a senior member, as it happened, his deputy Mrs. Naidoo, who was able to provide me with a full history of the problems encountered with these applications. In addition, Mr. Govender himself appeared and made submissions which have likewise proved of great assistance. I canvassed with him in court the possibility of instituting the procedure that is referred to later in this judgment and he willingly agreed that it could be helpful and undertook that his office would actively participate in it. I am grateful to him and Mrs. Naidoo for their contributions.

[18] In the result I heard argument on behalf of both the Applicants and the Respondents, as well as submissions by the *amici curiae* in twenty three applications arising from claims to be entitled to receive social assistance grants. Four counsel appeared before me instructed by different firms of attorneys. I should particularly mention the contribution of Mr. Ungerer, who apparently has had considerable experience over a number of years in regard to these applications (although he now appears less frequently in them) and who was able to enlighten me in regard to a number of the difficulties that arise therewith. Both he and Ms Sridutt emphasised the fact that in almost all cases in their experience the applicant was entitled to some form of relief and usually entitled to receive the

grant in question. They stressed that without the assistance of the attorneys in these matters the applicants, who are both unskilled and impoverished, might well have no means of securing the grants to which they are entitled. They accordingly urged upon me the need to be cautious in imposing procedural requirements that might render it more difficult to obtain the relief to which these applicants are entitled. They also made the point that the attorneys who undertake this kind of work are in professional practice and need to be remunerated for their services otherwise they will not undertake these cases. In preparing this judgment I have borne these points in mind. Well made as they are, however, they cannot provide a justification for attorneys not doing their job properly because they do not expect the application papers that they prepare to be subjected to scrutiny by the Courts. The clear impression that I have been left with in these matters is that the attorneys are relatively unconcerned about the content of their application papers because their main purpose is not to obtain relief from the Court but to secure the presence of the State Attorney and through his office a settlement of the claim together with a consent to pay the costs of the proceedings. That approach cannot be permitted to continue.

[19] Lest it be thought that I am being unduly harsh on legal practitioners who are merely striving to earn an honest crust, I was furnished by Mr. Broster SC with the taxed bill of costs in a matter that came before the Natal Provincial Division of this Court in one of these cases. I was told that he had been given it as an example of a typical bill of costs in this type of case and no-one sought to suggest otherwise. The amount of the bill, as taxed by the Taxing Master, is R5941.60. I called for the file from the office of the Registrar and the following details appear from it. The matter was unopposed and came before the Court twice. On the 19th April 2007 it was adjourned by consent to the 26th April 2007 with the costs

reserved. On the 26th April 2007 it was recorded that the matter was settled and adjourned *sine die* with the Respondent being ordered to pay the costs occasioned by the application.

[20] I start with the costs of counsel. Different counsel appeared on each occasion. Each charged R615.00 for their appearance, although on the second occasion counsel from Durban was instructed. I am not surprised that she was content to charge the same as her Pietermaritzburg colleague for what was in essence an adjournment bearing in mind that the fee she charged was R165.00 higher than the standard fee charged by Durban juniors for adjourning matters in the High Court. I have ascertained that on the day in question she appeared in 20 similar matters on the Pietermaritzburg motion roll. That presents a different picture of earning R12 915 for a morning of brief appearances that were dealt with in a single batch or a few batches. If the colleague who appeared in 40 similar matters on the same roll charged the same fee the total would have been nearly R25 000. I understand from the presiding judge that the roll, insofar as it related to this type of case, was completed before the short adjournment was taken at 11.15 am. On any basis that makes for an exceptionally profitable morning for a very limited amount of work.

[21] I turn to the fees of the attorney. According to the bill of costs on the 9th January 2007 the following fees were raised:-

"ITEM DETAILS

UNITS FEES

2 Consultation with client taking instructions 1 hr R500.00

3 Attend to receive and peruse client's identity

document 1p
R25.00

4 Copy 1p
R1.25

5 Attend to receive and peruse letter from H..
Pension Advisory Services 1p R25.00

6 Copy 2p R2.50

7 Draft affidavit 6p R750.00

8Consultation with client traversing affidavit 15min R125.00

9 Attend to receive and peruse commissioned affidavit
R25.00"

The total amount of these fees is R1453.75. From the file I discovered the following. The first noticeable feature was that the founding affidavit, described in the bill as being six pages in length, only exceeds three pages because on the fourth page four lines of the attestation of the affidavit before the Commissioner of Oaths are typed plus the Commissioner's signature and also because there are two photocopied annexures, one of which reflected proof of posting of the other. Had the affidavit not been typed in double spacing it would have had difficulty in reaching a third page. Had a copy of the Applicant's identity document been annexed no doubt the claim would have been that the affidavit was 7 pages long and a further R125 would have been claimed. The claim to have perused the commissioned affidavit is belied by the fact that the requirement to provide the details of the commissioner, such as their name, address and basis of appointment, were missing so that the attestation was defective. The affidavit was 'signed' with a thumb print but there was no indication that the commissioner (an attorney) had satisfied him or herself of the identity of the deponent or taken any of the other

steps that should be taken when dealing with an illiterate deponent. This latter is a not uncommon feature of these applications

[22] The contents of the affidavit read as follows:-

> "I, the undersigned, Q... S...
> do hereby state under oath as follows:
>
> 1.
>
> I am an adult female with identification number ... and I reside in the area of .. I am the Applicant in this matter. The contents of this affidavit are within my personal knowledge unless stated otherwise or indicated by the contents thereof.
>
> 2.
>
> The Respondent is South African Social Security Agency, established as a juristic person in terms of Section 2 of the South African Social Security Agency Act no. 9 of 2004 and who for the purpose of service is care of the State Attorney (KwaZulu-Natal), 5th Floor, Sangro House, 417 Smith Street, Durban.
>
> 3.
>
> I initially applied for disability grant in 2004 with the staff of the Respondent at the Mandeni District pension office. I never received payments of this grant.
>
> 4.
>
> I filed the appeal with the staff of the Respondent at the Ulundi Regional Office. I am entitled to such appeal whenever the Respondent refuses or suspends my grant in Terms of Section 18 of the Social Assistance Act no 13 of 2004.

5.

I was invited to the appeal before the Appeals Board to set out my appeal. I am told that at least one Doctor and the Minister amongst the members of the Appeals Board.

6.

I presented myself before the appeals board as requested by the Respondent. I was thereafter told to go my District pension office after 4 weeks to check if payments were available and to be informed of the appeal outcome.

7.

I have been to my District pension office on several occasions however I have never been informed of my appeal outcome and as result I do not know whether my appeal was successful or dismissed.

8.

In December 2006 I approached a pension advisory firm in an attempt to get my grant payment initiated or reason for non-payments. H... P... services assisted me by writing a letter on 12 December 2006. Such letter was sent by registered by post and is attached hereto and marked as annexure "**A**" to the Regional office of the Respondent in Ulundi requesting that the Respondent: supply me with the outcome of my appeal. I am informed that there has been no response to the said letter of demand.

9.

I respectfully ask the Honourable Court to assist me, as I have no other reasonable recourse available to me.

Wherefore, I respectfully request the Honourable Court to grant an order against the Respondent as set out in the

Notice of Motion."

[23] The affidavit is clearly in a standard form. I have reproduced it with no attempt to correct its omissions or its grammar. The attorney's contribution to the affidavit consists of inserting the name of the applicant in the heading and the preamble; her identification number and the area in which she resides in paragraph 1; the date in paragraph 3 and the name of the pension office; the name of the regional office in paragraph 4; some of the contents of paragraph 6 and the dates in paragraph 8. The work involved was almost entirely clerical and for my part I have great difficulty in seeing why the taxpayer should be liable to pay R1453.75 for these services. To put the matter into perspective the current levels at which social assistance grants are paid in South Africa are the following, as extracted from Government Notice R 253 in Government Gazette 29726 of 30 March 2007 are R870 per month in respect of a disability grant or R200 per month in respect of a child support grant.

[24] I would be rather more understanding if I thought that this was an unusual part of the attorney's practice requiring the practitioner to set aside time especially to attend to these matters. However, annexed to the affidavit are a letter and a post office tracking slip that reflects that H...Pension Services sent forty two other claims to the Chief Director of the Department of Social Welfare and Population Development KZN together with that of Q... S... That does not suggest that the application is a solitary piece of work Rather it tends to suggest that a production line is in place for the processing of these applications. This conclusion is supported by the fact that a limited number of attorneys and counsel are involved in these matters and accords with my experience and, I am told, that of other judges. My suspicion that this is nothing more than a production line of litigation

has been confirmed. It is also confirmed by the fact that the notice of motion in this case was only prepared 3 weeks after the affidavit was sworn. A fee of R100 was raised for this albeit that the notice is in absolutely standard form. Whilst fees are raised for preparing instructions to counsel (1 page only) I cannot imagine that these are very detailed or involve any great industry. Nonetheless once the telephone call to counsel had been made, documents copied, instructions and the brief drawn and papers arranged another R363 of costs had been incurred. At every stage fees are raised (albeit I suspect only once a favourable costs order has been made) at the maximum figure allowed by the tariff, which on the face of it is an approach that bears little or no relationship to the effort involved.

[25] I can see no reason to regard this bill of costs as in any way out of the ordinary. It was prepared by a costs' consultant and the amounts contained in it, apart from the fees of counsel, are entirely in accordance with the tariff of fees of attorneys forming part of Rule 70 of the Uniform Rules of Court. The implications for the public purse of legal fees at this level are deeply disturbing. With roughly 3000 such matters on the motion rolls in Durban during a calendar year one is looking at somewhere between R12 and R15 million per year in legal expenses. That is probably an under-estimate. If an attorney is able to secure that ten such matters a week are on the motion roll for fifty weeks a year, the attorney is likely to earn R2 million in fees. Plainly the situation has not improved since Combrink J delivered his judgment in this court in *Q T Machi & Others v MEC for Province of KwaZulu-Natal responsible for Social Welfare and Population Development*, Case No. 4392/04 (unreported) on the 8th March 2005. There he recorded the following:-

"Up to 31 December 2005, the costs that had to be paid

> to the representatives (the attorneys in other words) who brought these applications from 2000 to now total R26.7 million. That is not nearly all the costs. Once all the costs of those application that have been dealt with by the Department, once they have been lodged with the Court are finally paid, the bill will amount to R42.9 million as at 31 December 2004. When the cases that have brought this to a head in these proceedings are factored in, in other words the 18 000 that are currently awaiting enrolment, and the costs there paid, on the old figures, and I will tell you in a moment what the new figures are, will amount to R133.6 million. That is the cost incurred by the incompetence of the Department under the Respondent.
>
> Now the bad news is that Mr. Govender, and for good reason, said that he wanted, or was entitled, to have the costs of each settled application taxed. Until recently such costs were usually agreed and the amount of plus minus R2600,00 per application. The only taxation subsequent to that request came from the Registrar of this Court, and I am informed by the Registrar of the Provincial Division the same result will follow there, and that is the bill is R3700. It simply means that these applications currently pending will cost the taxpayer, you and I, R66.6 million, and that is leaving aside what is already due, the R42 million referred to by Mr. Govender".

[26] This Court would be remiss if it did not take cognisance of this situation and explore ways in which it can be addressed. Some things may be beyond its powers. With the best will in the world it cannot force the employees of SASSA and the Department of Social Development to do their jobs properly, although it has striven hard to do so over the years, as it did with the provincial authorities in the past. In that regard it should be borne in mind that, notwithstanding the deficiencies in its administration, according to the authoritative Annual Survey

published by the South African Institute of Race Relations for 2007 nearly eleven million South Africans are in receipt of social assistance grants under the 2004 Act. That is a very substantial burden of cases involving nearly a quarter of the population although there may be some overlap between different types of grant. As Mr. Ungerer pointed out in the course of argument if there are 50 000 or 100 000 problematic cases, whilst that is 50 000 or 100 000 too many, it nonetheless represents only between 0.5% and 1% of the total number of recipients of such grants. In addition most of the cases that I have seen are hangovers form the former regime. That is not an excuse for dilatory conduct in dealing with applications, but it perhaps puts the scale of the problem into perspective. It is SASSA's obligation in the progressive realisation of the constitutional right to social security as embodied in section 27(1)(c), as read with section 27(2), of the Constitution and the right to just administrative action embodied in section 33 of the Constitution, to strive to overcome the present administrative difficulties that beset it. It is the aim of this Court, in the procedures set out later in this judgment to facilitate the achievement of that aim.

[27] Where the Court clearly can intervene is in ensuring that in the conduct of litigation and in particular litigation of this type certain basic rules are followed. The first is that litigation should be a last resort after other appropriate measures have been taken to resolve the matter. The second is that costs should not be needlessly incurred when they can be avoided. The third is that when costs do have to be incurred they should be maintained within reasonable bounds. These are the principles that underpin what follows in this judgment.

[28] The High Court addresses issues of this nature by exercising its inherent power in terms of section 173 of the Constitution to protect and regulate its own process,

taking into account the interests of justice. Issues such as the congestion of the court's rolls, the unnecessary commencement of legal proceedings and the incurring of wasteful and unnecessary costs are plainly matters that fall to be addressed by the Court in terms of these powers. It does this by making appropriate rules within its jurisdiction to control proceedings of the particular type that give rise to concern. This is not to usurp the function of the Rules Board, which is to make general rules applicable to all courts in South Africa, save the Constitutional Court and certain specialist courts. Instead the Court addresses problems peculiar to its own jurisdiction in a fashion appropriate to resolve those problems. I note in this regard that the High Court in the Eastern Cape, which was also beset with problems arising from the administration of social assistance grants, adopted a practice directive applicable to those cases in an endeavour to address the problems they occasioned in that division.

[29] I have found that Practice Directive, which is part of the Eastern Cape Rules of Practice published under Court Notice 1 of 2007, extremely helpful. Firstly in regard to the contents of applications it requires that the original document on which a claim to a grant is founded be put up; that proof of receipt of the application be furnished including the identity number of the applicant, the receipt number and the date on which the application is made; that proof of delivery of a demand must be shown and the demand must contain the applicant's identity number and a copy of the receipt for the original application. Secondly it directs that applications may only be brought after a reasonable time has elapsed from the demand and that applications must be served on the State Attorney. Thirdly it directs that no social grant application may be set down unless the application has been dealt with in a specified way involving the State Attorney consulting with the department concerned, a communication from the State Attorney to the

Applicant's attorney and a certificate from the Applicants or their attorney that these requirements have been followed. Fourthly where agreement is reached that a matter is to be adjourned it is not placed on the roll and where a matter needs to be dealt with on the merits because it has been settled the settlement agreement must be filed with the notice of set down. Lastly when a bill of costs has to be taxed pursuant to an agreement to pay costs the taxing master must be informed of the number of similar applications agreed to in the same manner in that week in respect of that firm of attorneys. No doubt this is to prevent or at least limit the aggregation of costs identified earlier in this judgment. In discussion with one of the judges of the Eastern Cape Division in relation to this practice directive I was informed that it has had a dramatic effect and that the congestion of the court rolls that division was experiencing has ended. That should encourage this Court to embark upon a similar route

[30] In seeking to evolve procedures that will help to address the problems in this division and the provincial division identified in this judgment I take as my starting point the fact that it appeared to be common cause between counsel who appeared for the various applicants and who have experience of these matters (as do their instructing attorneys) and Mr. Govender and Mrs. Naidoo from the State Attorney, that once the issues raised by these cases are brought to the attention of the office of the State Attorney the vast majority of them are resolved relatively quickly. (This appears likewise to be the Eastern Cape experience.) In many instances the resolution goes beyond the procedural and administrative issues that initially generated the litigation and result in the applicants receiving the social assistance grants that they seek as well as payment of arrears. Where the applicants are entitled, as apparently the vast majority of them are, to some or other form of social assistance grant this outcome is thus satisfactory in achieving

the ultimate aim which is to ensure that the poor, the needy and the disabled in our society receive the assistance to which 14.7% of the national budget is currently devoted and to which they are constitutionally entitled. Any steps within the power of this Court that will facilitate the achievement of that aim are therefore desirable.

[31] Once it is recognised that the intervention of the State Attorney's office generates satisfactory results the question that arises is whether it is necessary in order for that office to intervene for legal proceedings to have been instituted. That is the current model and it suffers from all the defects that have already been identified in this judgment. More particularly it operates as an incentive to institute proceedings when that might well be avoided if different procedures are in place. Is there a different model? In my view there is if we look to the experience of other jurisdictions in seeking to grapple with unnecessary litigation and the incurring of legal costs that are excessive in relation to the problem that occasions them. In recent years as a result of what are known as the Woolf reforms, after their chief architect, Lord Woolf of Barnes who, as Master of the Rolls, oversaw the introduction of these reforms into the practice of the Supreme Court of England and Wales, there are nine fields of dispute where pre-action protocols, the scope and extent of which is laid down in the Civil Procedure Rules, apply and where a party's failure to comply with not only the words but the spirit of the protocols can subsequently attract adverse orders for costs, including orders against the legal practitioner concerned. Whilst compliance is not made a pre-requisite for instituting proceedings non-compliance is viewed with disfavour so that in practice litigation in these classes does not commence until there has been compliance.

[32] There is wisdom in what Lord Woolf said in his report entitled *Interim Report on Access to Justice* (June 1995). Thus for example he said:

> "Many of the difficulties which we face arise because attitudes are entrenched before proceedings are begun. Before the writ is issued, it is the adversarial approach which colours behaviour and permeates negotiations. Traditionally, the courts have been reluctant to become involved with the behaviour of potential litigants. But if the court were in a position to control behaviour, then this might avoid the need for some proceedings altogether or, if proceedings did result, could make the court's task substantially less onerous." (Chapter 19, para3).

This is an accurate reflection of what occurs in the cases before this court. The whole point is to commence the litigation, which then proceeds at a leisurely pace because of the congestion of the rolls, until it is set down and then a settlement results. The lawyers benefit but it is debatable whether society benefits.

[33] It is unnecessary for the purposes of this judgment to explore in any detail those pre-action protocols although the procedures I suggest bear some similarity to them at least at the outset. It is the concept of such protocols that can be of valuable assistance in addressing the problems arising in this Court in relation to litigation over the entitlement to social assistance grants. I accordingly raised with the State Attorney, Mr. Govender, the possibility of such a protocol or practice directive in our terminology being implemented in this Court, under which it would be obligatory, before legal proceedings could be commenced in this type of case, for a simple notice to be given to his office of the intention to commence such proceedings unless the applicant's problem in relation to social assistance grants can be resolved without the need for litigation. His response was that his office is ready and willing to co-operate in implementing such a practice directive with a view to resolving the present difficulties. In drafting its terms I have been mindful of the constitutional right of access to courts and have

accordingly tried to ensure that the operation of the practice directive does not interfere unreasonably with that right. That is why I have expressly preserved the right to approach the court as a matter of urgency where that is appropriate.

[34] The procedure I have in mind is the following. Before an applicant may issue application papers out of the Registrar's office in an application seeking relief relating to or arising from an application for a social assistance grant in terms of the 2004 Act or its predecessor they shall be obliged to deliver a notice to the State Attorney's office in KwaZulu-Natal marked for the attention of the officer appointed by the State Attorney for that purpose and containing the following details:

(a) the name and identify number of the applicant for relief;

(b) the type of grant to which it relates;

(c) where the grant relates to a person other than the applicant, as in the case of a child support grant, the name of that other person and their identity number and where a child support grant is sought in respect of a child who is not the child of the applicant a brief description of the relationship between the applicant and the child and the reason why the applicant claims a child support grant in respect of that child;

(d) where the applicant is seeking a disability grant the nature and anticipated duration of the disability;

(e) the administrative centre where the application for the grant was lodged and where possible the date of the application as well as proof of that application in the form of the receipt issued to the applicant in terms of regulation 8(3)(b) of the regulations in GN R418 or failing that other information that will enable the State Attorney to identify the application in the records of SASSA;

(f) where the complaint is that an appeal has been lodged and no appeal conducted a copy of the notice of appeal must be furnished;

(g) the nature of the applicant's complaint, such as that an application has

been made and not processed; an application has been refused and the grounds of the refusal or an appeal (or both) are sought; or that a grant originally made has been withdrawn and the applicant seeks reasons for the withdrawal or the reinstatement of the grant (or both) or any other complaint;

(h) a copy of the letter of demand addressed to SASSA or the Minister of Social Development as the case may be, with proof of delivery and a copy of any response;

(i) the name of the attorney representing the applicant.

A copy of this notice must at the same time be delivered to SASSA or the Minister of Social Development whichever is appropriate. The reason for involving the office of the State Attorney at the pre-litigation stage is that if the matter comes to litigation they will in any event become involved and it seems as if that is largely the aim of each of these applications. That being the case the sooner they become involved the better for all concerned. Their involvement does not remove the obligation on the Applicant - and more particularly their representatives - to give notice to SASSA or the Minister of Social Development of any proposed proceedings and their obligation to seek to resolve these matters without resorting to litigation.

[35] On receipt of the notice the State Attorney shall enter it into a register and allocate a reference number to it and thereafter in liaison with SASSA, or the Department of Social Development in the case of complaints about appeals, endeavour to respond to and resolve the complaint. If no response is forthcoming within one month of receipt of the notice in the case of a complaint against SASSA or two months in the case of a complaint against the Minister of Social Development in regard to an appeal, or the response is unsatisfactory the applicant may then commence legal proceedings. (In fixing these periods initially I have had regard to the suggestion from Mrs Naidoo of the State Attorney's office, who believes

that extra time is necessary in regard to appeal matters because of the time that may be taken in constituting an appeal panel and providing the applicant with necessary information in regard to the reasons for the application being refused in the first instance. See *Tetra Mobile Radio (Pty) Ltd v MEC, Department of Works, and others* 2008 (1) SA 438 (SCA)) The notice and the response (if any) shall form part of the application papers and the Registrar will only issue the application papers if they are accompanied by a certificate signed by the applicant's attorney recording that there has been proper compliance with this practice directive and that there has either been no response or an inadequate response to the notice. Unless the application papers are accompanied by such a certificate, or a certificate of urgency in the case of an urgent application, the Registrar will not accept or issue the application.

[36] I am not so bold as to believe that this proposal will not have its teething problems and may not require revision once a proper assessment can be made of its feasibility and its effect on the problems it is directed at solving. Two matters are of particular concern to me. The first is that the already dilatory response of SASSA and the Department of Social Development to claims will now be prolonged and the attitude adopted that matters only have to be dealt with when the notice in terms of the practice directive is served. Any such approach is to be deprecated and will prompt a response by the Court. Secondly, whilst I have for the present accepted the State Attorney's recommendation in regard to the time periods for dealing with these notices, I trust that once the system is up and running the State Attorney will be able to abbreviate the periods within which a response is furnished. The current approach of leaving everything until the last minute by those who administer these grants should stop and must not be the approach of the State Attorney's staff in dealing with these notices.

[37] To that end and bearing in mind that we are dealing with the protection and realisation of constitutional rights it is incumbent on the court to ensure that the remedy it evolves is appropriate and works in practice. In the first place the State Attorney is directed to appoint the officer identified in paragraph [34] within one week of this judgment. At the same time a letter must be written to those firms of attorneys known to the State Attorney who undertake this kind of work furnishing them with the name of that officer and a copy of paragraphs [34] to [40] of this judgment. The Registrars in Durban and Pietermaritzburg must be furnished with the name of that officer and a copy of the same paragraphs of this judgment in order that they can implement its terms pending the publication of a formal practice directive by the Judge President. Lastly the Minister of Social Development, the Director-General of the Department of Social Development and the heads of SASSA, both nationally and regionally in KwaZulu-Natal, must be furnished with a copy of the judgment and their attention drawn specifically to paragraphs [34] to [40] thereof. Furthermore the operation of this practice directive will require ongoing supervision by the court to ensure that any problems that are identified in its implementation can be addressed. Accordingly the State Attorney is required at intervals of not less that three months, commencing on 30 June 2008 and continuing until directed otherwise, to furnish a report to the Deputy Judge President on the workings of the practice directive, any problems arising from its terms and suggestions to address those problems and on its effectiveness in resolving complaints in regard to social assistance grants. In the initial report the two matters I have identified in paragraph [36] should be addressed. It shall be open to the State Attorney to approach the Deputy Judge President at an earlier stage or at any time between reports in order to seek directions on the way in which to address problems that cannot await his quarterly

report for their resolution. The Deputy Judge President will either deal with matters himself or allocate a judge or judges of the Division to do so in his stead.

[38] The contents of this judgment and the terms of the suggested practice directive have been circulated to the Judge President, the Deputy Judge President and the judges on duty in Durban during this month. They have approved its terms and I am authorised to say that this practice is to be followed in this Division and the Natal Provincial Division until further notice. The terms of the proposed notice and the contents of paragraphs [34] to [40] have also been shown to the State Attorney, who has indicated his acceptance of them, and to the *amici curiae* who have given them their support.

[39] That leaves a substantial number of cases in which application papers have already been issued and possibly served. Where those cases have not yet been placed on the Court's roll there must be compliance with the practice directive before a notice of set down is served. In those instances the notices delivered to the State Attorney shall also state that proceedings have been instituted and the case number of the application must be furnished. If the matter is thereafter set down the notice of set down must be accompanied by a certificate from the attorney in accordance with paragraph [35] of this judgment.

[40] In regard to matters that have already been set down on the rolls of the court it is of course open to the attorneys to remove them from the roll by notice and then to follow the practice directive and there would be much to commend such an approach. On the assumption that the application papers in the bulk of those cases suffer from the same defects as have been mentioned above and are to be dealt with in greater detail below in dealing with the individual applications

before me there is a sound reason for attorneys to follow this course inasmuch as their applications may otherwise suffer the same fate as those that I am called upon to decide. If attorneys decide nonetheless to pursue matters then they will be dealt with in the ordinary course. They may however find that the State Attorney's office is less inclined to agree to and pay for adjournments as that office will be duty bound to draw to the court's attention the terms of this judgment as will counsel for the applicants if the application is unopposed.

[41] I turn then to those applications. Before dealing with them individually it will be appropriate for me to deal with those features that are common to all or a large number of them. That should be helpful as the applications before me provide a reasonable cross-section of the type of application that comes before the court in social assistance grant cases. Three involve applications for grants and sought an order that these be processed. Of these, one sought a social grant, one a child support grant and one a disability grant. Fifteen were directed at procuring the hearing of appeals in cases where applications for disability grants had been turned down. Three sought reasons for grants having been stopped, of which two related to child support grants and one to a disability grant. In each of these cases an alternative order was sought for payment of arrears and interest premised upon the right to a grant being conceded. One sought directly an order that a grant that had been stopped be reinstated.

[42] The first general point is one I have already detailed namely the failure in all save three of the applications to make any effort to deal with the grounds in law for the individual applicant's entitlement to relief. Before dealing with the implications of this failure there are three preliminary issues that I should dispose of.

[43] As noted in paragraph 5 of this judgment section 14 of the SASSA Act constitutes the agency as an organ of State for the purposes of the Legal Proceedings Act. In terms of section 3(1) of the Legal Proceedings Act no legal proceedings for the recovery of a debt may be instituted against an organ of State unless the creditor has given the organ of State in question notice in writing of the intention to institute such proceedings or the organ of State has consented in writing to the institution of those proceedings without such notice or after receiving a notice that does not comply with the requirements of section 3(2). That latter section sets out the requirements for such a notice.

[44] The key to the application of these provisions is the definition of a "debt" in section 1 of the Legal Proceedings Act. That definition reads as follows:-

> ""**Debt**" means any debt arising from any cause of action:-
> (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any:-
> (i) act performed under or in terms of any law; or
> (ii omission to do anything which should have been done under or in terms of any law; and
> (b) for which an organ of State is liable for payment of damages,
>
> whether such debt became due before or after the fixed date."

Whilst sub-paragraph (a) of this definition is wide enough to encompass claims of the type that are raised in these applications, sub-paragraph (b) of the definition makes it clear that the debts to which the Legal Proceedings Act applies are debts flowing from causes of action in which a claim for the payment of damages is advanced. That is both the plain meaning of the language and is consistent with the history of the legislation, which is largely based upon the provisions of the

Limitation of Legal Proceedings Provincial and Local Authorities Act 94 of 1970, which it replaces. That Act confined its operation to delictual claims and hence to claims for damages. Whilst the Legal Proceedings Act does not impose the same restriction in relation to the nature of the cause of action it does confine the claims to which its provisions apply to claims for damages.

[45] I accordingly hold that in the applications that were argued before me, save for three that I will mention in a moment, it was not necessary for notice to be given to the Respondent in terms of the Legal Proceedings Act. That is also the conclusion that Ndlovu J reached in the unreported case of *Shandu v MEC for Social Welfare and Population Development, KZN* [2007] JOL 19237 (N) a copy of which was made available to me in the course of argument but which unfortunately has not been reported.

[46] The three exceptions arise from cases in which, in addition to the other relief sought, the applicant claimed constitutional damages on the basis of the judgment in *MEC, Department of Welfare, Eastern Cape v Kate* 2006 (4) SA 478 (SCA). On the face of it I can see no reason why constitutional damages of that type should not fall within the definition of a debt in the Legal Proceedings Act. Whilst that Act was in force when the proceedings in *Kate* were instituted there is no indication in the judgment whether notice had been given in terms of the Legal Proceedings Act. As it happens the three applications where this question arose are in any event defective for other reasons so that it is unnecessary for me to express a final conclusion on this question. I mention it, however, as it will need to be considered if these, or similar, claims are pursued without such notice having been given.

[47] That conveniently leads to the next point, which is the application of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). As with the other relevant statutes none of the papers before me made any reference to PAJA or gave any indication that the proceedings were being brought in terms of PAJA. That creates difficulties, the one largely of form and the others of substance. Before dealing with these I should deal with the applicability of PAJA to applications of this type in the light of some tentative suggestions in the course of argument either that it does not apply at all or that it does not apply to those cases where the complaint is one of a failure by SASSA to give reasons or to process an application for a social assistance grant or a failure by the Minister of Social Development to afford a hearing in respect of an appeal against a refusal of such a grant. Mrs. Annandale, on behalf of the *amici curiae,* submitted that this approach is incorrect. As regards the giving of reasons this is specifically dealt with in section 5 of PAJA. Clearly therefore a failure to give reasons is a PAJA matter. In addition Mrs Annandale pointed out that in administering social assistance grants and providing for an appeal against the refusal of such grants SASSA and the Minister of Social Development are exercising public powers and performing public functions in terms of legislation. That submission is consistent with two decisions of the Constitutional Court dealing with the disbursement of public funds, namely *Premier, Mpumalanga and another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal* 1999 (2) SA 91 (CC) and *Permanent Secretary, Department of Education and Welfare, Eastern Cape, and another v Ed-u-College (PE) (Section 21) Inc* 2001 (2) SA 1 (CC). As regards the submission that those cases founded upon inactivity by SASSA or the Minister did not fall within PAJA Mrs Annandale pointed out that the definition of administrative action in section 1 of PAJA includes not only any decision taken but also any failure to take a decision. In the definition of 'decision'

subparagraph (g) makes it clear that it includes the refusal to do something of an administrative nature and provides that "a reference to a failure to take a decision must be construed accordingly". Lastly the definition of 'failure' is that it includes a refusal to take the decision. In my view therefore the submission that these matters lie outside the purview of PAJA is incorrect. That accords with the tentative views of Conradie JA in *Jayiya v MEC for Welfare, Eastern Cape* 2004 (2) SA 611 (SCA), para. [9], p618 and appears to have been accepted without demur by Clive Plasket in an article he wrote on the effect of PAJA in 2002 SALJ 50 before his appointment to the bench. In my view all applications of the type that came before me concerning social assistance grants are applications that should properly have been made in terms of PAJA. They all concern in one form or another the review of administrative action and as was pointed out by the Constitutional Court in *Bato Star, supra,* para. [25], as well as in subsequent decisions of that Court, the general intention is that PAJA should cover the entire field of judicial review. The failure by the applicants' legal advisors to recognise this fact is deplorable.

[48] The requirement of form that arises from the application of PAJA is the same as that already identified in relation to the primary and secondary legislation under which these social assistance grants are payable, namely that where reliance is to be placed upon the provisions of PAJA it should be clear from the application papers which of those provisions are applicable. In saying this I am not advocating the "check box" approach to PAJA that one so often encounters in application papers in cases of administrative review, where the draftsman of the papers refers to every conceivable provision of section 6 of PAJA that could be invoked in support of their client's case for fear of omitting the relevant one. That is unhelpful and sometimes misleading. It is, however, necessary that the basis of

the case should be sufficiently set out in the affidavit for the Court and the opposing party to be able to identify with some degree of accuracy which provisions of PAJA are applicable. This was not done in these cases.

[49] I turn then to the issues of substance arising from the application of PAJA. There are several of these. Firstly, I mention the one raised by Conradie JA in *Jayiya's* case *supra,* which is whether it is permissible to recover constitutional damages in terms of PAJA or whether the applicant is confined to compensation and, if so, how that compensation is to determined. The second point, which is particularly pertinent in these cases, a number of which arise from events over several years, is the need for the applicant to comply with the provisions of section 7(1) of PAJA which provides that proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after certain specified dates of which the relevant one is the date 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. In terms of section 9(1) the Court is empowered to extend that period where the interests of justice so require and it may be extended by agreement between the parties. I appreciate that the application of this provision in cases of this type may not be easy and particularly that it may be difficult to establish the commencement date for the running of the period of 180 days. (See the article by Plasket, *supra*.) I accept also that the personal circumstances of the applicants in these cases will go far towards justifying an extension of time in terms of section 9 in regard to delays arising from their failure to seek advice at an earlier stage. However, neither compliance with the time limit nor an assumption that an extension of time will be granted automatically should be taken for granted in the preparation of the application papers. The papers I have

seen made no attempt whatsoever to address the provisions of PAJA or to consider whether the applications were brought in time or required an application for an extension of time. That is not permissible and to that extent all of the applications before me where the problems are of longstanding duration do not establish that the proceedings have been timeously brought in terms of PAJA.

[50] From the question whether the applications were timeously brought I move to the question whether they were brought against the correct party. In regard to any claim arising since 1 April 2006 the legal position is clear. The administration of social assistance grants is an obligation of SASSA under the SASSA Act. Accordingly an application for such a grant falls to be made to SASSA and to be dealt with by SASSA. If there is undue delay or a failure to deal with the application that must be taken up with SASSA and if litigation ensues it is SASSA that must be sued. The only exception relates to the refusal of grants and subsequent appeals in terms of section 18 of the 2004 Act. Those appeals clearly lie to the Minister of Social Development and must be lodged with the Minister's department. If there is any administrative default in dealing with an appeal then that is the Minister's responsibility and any claims arising therefrom lie against the Minister.

[51] As already indicated the claims insofar as they arise in relation to applications made and events prior to 1 April 2006 give rise to considerable difficulty in determining the appropriate entity or person responsible for meeting such claim or explaining why a grant cannot be paid or providing an appeal. However, I was informed by Mrs Naidoo that insofar as grants are concerned SASSA has adopted the approach that it is in any event, subject to the relevant statutes and regulations, liable to pay any grants to which people were entitled from 1 April 2006 whether

or not those grants had been recognised prior to that date. On that basis it deals with any matters that remain unresolved from before the new regime in respect of social assistance grants came into force. Similarly all appeals are now to be dealt with in terms of the provisions of section 18 of the 2004 Act. Any budgetary issues arising from this are dealt with by way of adjustments between SASSA and the provinces. This arrangement is manifestly sensible and resolves the need to address the issues I had identified. Accordingly the legal position is that all applications must be brought against either SASSA or the Minister of Social Development as appropriate. That also means that any notices or demands should be addressed to SASSA or the Minister of Social Development.

[52] Whilst on the topic of notices, whilst my conclusion is that, save in regard to claims for constitutional damages the provisions of the Legal Proceedings Act do not apply that does not mean that it is appropriate to commence litigation or even to contemplate doing so without first addressing an appropriate letter of demand to the correct authority setting out the identity of the claimant and the basis of the claim. By virtue of the requirement in paragraph [34(h)] of this judgment such a demand remains essential. I also point out that the demand must be directed at resolving the claim without the need to resort to litigation. It is important therefore that the letter of demand provides sufficient information to enable the agency to investigate the claim and deal with it appropriately. Most of those I have seen in dealing with these cases are quite unhelpful. Where that is so and litigation is launched and settled the Court will give serious consideration to depriving Applicants of their costs.

[53] Finally, I return to the papers themselves and the need for the Applicant to make out a case for the relief they seek. That requires not only that they identify with

sufficient clarity the statutory provisions on which they rely but also that they set out the facts on which the Applicant relies in support of that relief. Where the relevant statutory provisions are not properly identified and cannot be discerned with any accuracy the papers will be defective and relief cannot be granted. As regards the necessary factual allegations, what is required will differ from case to case and it is undesirable in a judgment to seek to lay down rules to govern every case. All that I should say is that the application papers should set out with reasonable clarity and completeness the circumstances of the Applicant and the basis for their claim to a particular social assistance grant; the history of their application and the attempts made on their behalf to resolve their entitlement to the grant and the particular complaint in respect of which relief is being sought. It is not for relatively unsophisticated people who are the victims of administrative inefficiency to describe either the legal or factual background to the system of awarding social assistance grants as it is clear that they are not in a position to give that evidence. That evidence should come from the attorney or from the pensions agency assisting the Applicant. Where the issue relates to an appeal the Applicant should show that they have made an application; are dissatisfied with the result and have lodged a proper notice of appeal. That requires an indication of the grounds upon which the appeal is brought. It does not suffice to say nothing in that regard, as is the case with some of the notices of appeal I have seen, or even the one that cryptically attributes the applicant's disability to "1998". Where the complaint is that a social assistance grant has been withdrawn it must be shown that it is one that should have remained in force. Among these cases are ones where a disability grant was issued for a specific period and the complaint is that it was withdrawn after that period elapsed. Regulation 24 in GN R418 deals with the lapsing of grants and the Applicant should at least indicate that their circumstances do not fall within any of those specified in the regulation.

[54] In requiring those who represent the Applicants in these and other cases, be they attorneys or in the first instance agencies especially established for this purpose, to obtain proper instructions, ensure that letters of demand and the notices that will now be required contain sufficient information to enable SASSA, the Minister of Social Development and the State Attorney to investigate and if possible resolve claims, and if litigation has to be resorted to that the application papers are properly prepared and make out a case for the relief sought, it is not my intention to place obstacles in the way of those poverty-stricken applicants who have been the victims of bureaucratic indolence and incompetence. Far from it. However the Court should not on the one hand rail against the bureaucrats and on the other, because of its sympathy for the plight of the Applicants, turn a blind eye to the indolence and incompetence of those who appear to be making a significant, if not handsome, living from these cases. If the Court demands appropriate standards from its officers that in turn will ensure that it is easier for the bureaucrats who deal with these claims to address and resolve them expeditiously. If we are fortunate that may hasten the day when all those who are entitled to receive social assistance grants are treated with dignity and efficiency by SASSA and receive their lawful due without the need for a lengthy process of complaints and litigation. Against that background I turn to consider the 23 applications that came before me. I will identify each by its number on the roll, the name of the Applicant and the case number.

[55] <u>No 6. P N Cele. Case No 7940/2007</u>

In this application the order sought in the first instance was that SASSA supply reasons "why the Applicant was not entitled to a grant from the stoppage of the

grant in August 2006." In the alternative - and this is a feature common to all these applications - there is a prayer for payment of "the grant", together with interest and costs. As the 2004 Act identifies 7 different types of grant it is remarkably unhelpful to refer simply to "the grant". On reading the affidavit it appears that the Applicant is referring to a child support grant which was given her in 2002 and which stopped in 2005. (Although in both the Notice of Motion and the letter of demand it is said that the grant stopped in 2006, a letter from SASSA confirms that it was stopped in 2005.) The Applicant claims to have been told by "the staff of the Respondent", which was not then in existence but which I assume means the staff then employed at her local Pensions Office, that the grant was stopped because her disability grant was stopped and this is confirmed in the letter from SASSA. Nonetheless she states that she had been to the District Pension Office "on various occasions" and had not been furnished with written reasons "why the grant has not been approved". This allegation appears to have been taken from the standard allegations in cases where there has been no response to an initial application for a grant and in this context it is meaningless. The complaint is not that a grant has not been approved but that it has been withdrawn. This also leaves unexplained what the Applicant did between August 2005 and July 2007 to address her difficulties. In addition as she does not explain the basis upon which the disability grant was given in the first place or withdrawn and does not in these papers suggest that it was not properly stopped, it is at least possible on this information that the Applicant is employed and earning more than the financial threshold for a child support grant as set out in regulation 16(2) of the regulations in GN R418. Other possibilities spring to mind but I need not specify them. In the absence of greater detail no *prima facie* case is made out that the child support grant in question was improperly withdrawn. However SASSA invited the Applicant to apply for a review of both her disability grant and her

child support grant and offered to pay arrears if it was found that she was entitled to these grants.

[56] One might have thought that the response to this invitation would have been the lodging of an application for review of the Applicant's entitlement to both a disability grant and a child support grant. After all I was told at the hearing on Friday, 7 March that the grants are now being paid although I was not told when payment commenced. That suggests that a straightforward approach to SASSA would have borne fruit. Far from it. A week after the offer of a review this application was launched and served on SASSA. The justification for this was a bald submission that the two types of grant were unrelated and that the child support grant is "the straight forward type of grant and does not require a medical assessment as a Disability Grant." The basis for the Applicant making this statement is unclear and it is incorrect insofar as the grant being straightforward is concerned. Although the notice of motion said that in the event of the application not being opposed it would be heard on 17 September 2007 it does not appear to have been enrolled on that date and notice of set-down was given on 25 January 2008 for hearing on 5 March 2008. Almost certainly the delay is due to the congestion of the motion roll. Now I am asked to adjourn it *sine die* on the basis that the grants are being paid. Cautiously Mr Ungerer left the question of costs in the hands of the Court. In my view the application was launched prematurely and the papers are defective. In those circumstances the order I make is that the application is adjourned *sine die* and there will be no order for costs. In addition in view of the defects in the application I direct that the Applicant's attorneys shall not be entitled to recover any costs of this application from the Applicant.

[57] <u>No 7. N P Maphumulo. Case No 11516/2006</u>

In this application the Applicant sought an order directing the Respondent, the Minister of Social Development, to process the appeal application of the Applicant forthwith. It went on to seek an order that the Respondent supply a date for an appeal hearing before the appeal board within 15 days of the date of the order. In the alternative and if the appeal had already been processed an order was sought compelling the respondent to supply the decision and any documents recording it and pay any monies or arrears due to the Applicant. In this latter regard ancillary relief relating to the calculation of what is due as well as interest and costs were claimed. It does not appear to have occurred to the draftsman of this order that these two prayers were inconsistent. The allegations in the founding affidavit, as in all these cases, are terse contained in 6 paragraphs. The Applicant deposes that she applied for a disability grant in January 2004 and was turned down on medical grounds in December 2005. She then says:

> "I was offered a right to appeal against this rejection of my social grant application, but to date, this appeal process has not been finalised by the Respondent, and I respectfully request this Honourable Court to assist me in this regard."

This allegation is completely useless. There is no allegation that the Applicant in fact lodged an appeal and if she had done so it would have been to the MEC: Social Welfare and Population Development in KwaZulu-Natal in terms of section 10 of the 1992 Act. Such an appeal had to be lodged within 90 days of the date of the refusal of the grant but it is impossible to know whether this time limit was observed. I do not chastise the Applicant in this regard as it is apparent from her affidavit that she is illiterate. However the letter notifying her of the refusal of her grant and of her right of appeal is addressed to the agency that represents her and a number of other applicants in these cases and which clearly has a close

working relationship with certain of the attorneys that act in these cases. In those circumstances it cannot have been difficult to put up a clear explanation in the papers of what occurred after this letter was written.

[58] It is unnecessary for me to consider the effectiveness of the appeal that was apparently lodged at a much later stage under cover of a letter that should have been, but was not, annexed to the founding affidavit. Nor is it necessary to consider the effect of the defective attestation by the commissioner of oaths of the founding affidavit, which was 'signed' with a thumbprint, without any indication that the commissioner either satisfied herself as to the identity of the Applicant or explained the contents of the affidavit to the Applicant. Both of these matters fall away as I was informed from the Bar that the Applicant has "had an appeal". I was not informed when this occurred or of the outcome. I was simply asked to adjourn the matter *sine die* and order the Respondent to pay the costs. I am not prepared to grant an order for costs in the light of the defects in the papers. The order I make is that the application is adjourned *sine die* and there will be no order for costs. In addition in view of the defects in the application I direct that the Applicant's attorneys shall not be entitled to recover any costs of this application from the Applicant.

[59] <u>No 8. Z V Ngubane. Case No 13882/2007</u>

The Applicant in this case sought an order that he be furnished with reasons why he was not entitled to a disability grant during the period from October 2004 to January 2006. The usual alternative of an order for payment was included in the notice of motion. Unusually this application contained a fair measure of detail and several annexures. From these it emerged that the Applicant had applied for a

disability grant in October 2004 and been awarded a grant in February 2006 retrospective to September 2004 and lapsing on 30 September 2005, prior to the grant being awarded. It appears that he received some of the money due to him in respect of the grant but not all. However he did nothing about seeking an extension of the grant until September 2006. On this occasion the application was dealt with more speedily and on 28 September 2006 he was given a further grant for a period of 6 months lapsing on 28 February 2007. On these facts at best for him he had been underpaid to an indeterminate extent in respect of the initial grant but there was no basis for claiming for the period mentioned in the Notice of Motion.

[60] Undeterred by the facts an agency called Edulex wrote to SASSA on 31 May 2007. It claimed that the Applicant had not been furnished with the outcome of his application or with payment. That was untrue as is demonstrated by the very next paragraph of the letter in which reference is made to the award letter. It reads as follows:

> "3.2 The pensioner instructs that he thereafter received an award letter stating R10680 for Nov 2005 in Feb 2006. He was reinstated in Feb 2006 with a payment of R1560 and is still in payment.
>
> 3.3 However our client is still not in receipt of about Oct 2004 until Jan 2006 hereof and now demands such aforementioned relief. If the reason is that our client did not review timeously, provide us with the notification letter, acknowledged by client."

Then follows a threat of litigation. Notwithstanding the complete lack of clarity in this letter it received a courteous response from SASSA pointing out that the initial grant was only for 12 months and payments in respect of it had been returned uncashed. A promise was made to pay the arrears. This was followed by a further letter requesting the Applicant to present himself at SASSA's offices in

order to finalise the arrears. Edulex apparently responded to this on 18 August 2007 although the reply is not part of the papers. The Applicant does however allege that he went to SASSA's offices as requested but was not assisted. Instead his telephone number was taken and the officials said they would contact him. He does not say when this occurred so it is impossible for the Respondent to verify this allegation. What I do know is that Edulex wrote another letter on 31 August 2007 to SASSA, marked for the attention of two ladies neither of whom on the face of it is the person who had written the previous letters on behalf of the Agency, referring to the letter of 18 August and saying: "Kindly assist our client in order to finalise this matter within 30 days of this letter in order to avoid legal proceedings."

[61] The affidavit does not disclose what if anything happened after this or what attempts the Applicant and his representative made to secure payment after this date. The founding affidavit was sworn on 1 November 2007 and the application was issued on 22 November 2007. Again the date for an unopposed hearing in the notice of motion was ignored and the matter was set down for hearing on 5 March 2008. I was told on 7 March 2008 that payment of the arrears has been made and asked to adjourn the application *sine die* and order the Respondent to pay the costs. Whilst the application papers suffer from the shortcomings I have mentioned I am not disposed to think that they render the application fatally defective and whilst it is possible that the agency assisting the Applicant was less helpful than it should have been, it is clear that the Applicant was entitled to be paid the arrears and there appears to be no particular excuse for this not having been done far earlier. On balance I accept that he was compelled to bring these proceedings in order to vindicate his rights. In those circumstances it seems to me that I should grant an order for costs but disallow some of them to mark my

disapproval of the manner in which the papers were prepared. The order I make is that the application is adjourned *sine die* and the Respondent is ordered to pay the costs, save those attendant upon the drafting of the notice of motion and founding affidavit. The Applicant's attorneys shall not be entitled to recover any fees from the Applicant in respect of these items. Insofar as they may have agreed to undertake this case for a fixed fee they are directed to adjust that fee to make a proper allowance for this disallowance.

[62] No 9. M Ramlall. Case No 13244/2007

In this application the Applicant sought an order that the Respondent process her appeal application forthwith, alternatively supply her with the decision of the Respondent and the documents recording that decision. She also sought an order that a date for an appeal board hearing be set within 15 days and related relief. The first and fatal stumbling block to this application is that its identification of the Respondent against whom these orders are sought is defective. In the heading of the notice of motion the Respondent is identified as the Minister of Social Development. However the notice of motion is then addressed to "Minister of Social Development For KwaZulu Natal". The founding affidavit identifies the respondent in the heading and in paragraph 2 of the founding affidavit as "MEC for Social Welfare and Population Development for KwaZulu Natal". On this ground alone the application cannot succeed. I was asked to adjourn it *sine die* and reserve the costs. In considering whether I should do so it is however appropriate to look at the application more closely.

[63] The Applicant submitted an application for a disability grant on 25 May 2007. By inference from the laconic statement that "The Respondent offered me an appeal"

it seems that this was rejected. If that is so it should have been dealt with in proper detail. The rejection must have occurred in 2007. Nonetheless the application founds her claim to an appeal on section 10 of the 1992 Act and not section 18 of the 2004 Act. What is more the "notice of appeal" bears the same date as the receipt for the initial application, namely 25 May 2007, and is addressed to the MEC for Social Welfare at a Private Bag in Ulundi. It refers to the same section of the 1992 Act and claims that: "Our client is disabled due to illness." and in a typed paragraph in the standard form letter: "Our client has sufficient ailments which are of a serious nature to warrant the granting of a disability grant." In blithe disregard for the fact that the application has been refused it says that there "appears to be sufficient grounds in the District Surgeons (*sic*) report to illustrate that our client should receive a disability grant." Having referred to this appeal letter the founding affidavit then goes on as follows in paragraph 6:

> "The Respondent did not have any properly formulated or gazette Regulations as to appeal procedures before November 2004. I believe that there still are none. Neither was pensioners in general being properly informed of their rights to an appeal, nor were they supplied with any medical documents in the possession of the Respondent to enable them to appeal properly. I respectfully submit that (as a direct result of the interest shown by this Honourable Court, and the Court's decision on 22 November 2000, regarding the rights afforded t pensioners and applicants in general) the respondent supplied medical records to applicants and set up a medical appeals board."

Again I quote without emendation. It is unclear on what basis the Applicant could depose to this, as it relates to matters that she is most unlikely to have any knowledge of, and its relevance to the application escapes me, dealing as it does with a system that is no longer in place and does not apply to the Applicant's situation. Bearing in mind the approach that the MEC is the responsible person I suspect that this relates to events under the 1992 Act before SASSA came into

existence. I am reinforced in that suspicion by Mrs Naidoo having told me that the ministerial appeal process under section 18 of the 2004 Act is mired in red tape and has not yet been established. Accordingly the detail contained in paragraph 7 of the affidavit regarding the constitution of the appeal board probably also relates to the prior regime.

[64] I trust that I have said sufficient to make it clear that the application is hopelessly defective. I do not think that its defects can be remedied by way of supplementary affidavits. In those circumstances there is no point in adjourning it or in reserving the costs. The application is dismissed. The attorneys are not entitled to recover any costs in respect of the application from the Applicant.

[65] Nos 10 - 15 and 22 - 26. L Mkhize, Z Khanyile, M I Lukhazi, L E Shezi, K G Bhengu, B F Njiyela, LB Mpingelo, N F Buthelezi, Z C Mthetwa, Z P Dlamini and K V Ciliza. Cases No 13245/2007, 13569/2007, 13570/2007,13571/2007,13580/2007,13572/2007,13550/2007, 13549/2007,13563/2007, 13551/2007 and 13552/2007.

These applications are identical to matter no 9 the papers having been produced on the same word processor. They are all dismissed. The attorneys are not entitled to recover any costs in respect of the applications from the Applicants.

[66] No 16. Z J Ngobese. Case No 4539/2007

This application was yet another in which relief was sought in relation to an appeal against the refusal of a disability grant. My suspicion that there is a rush to litigate in these matters was fanned by being told that in fact the Applicant had

received an appeal before the application was brought. I was asked to remove it from the roll. I see no reason to grant such an order when *ex confesso* the application was fatally defective. The application is dismissed. The attorneys are not entitled to recover any costs in respect of the application from the Applicant.

[67] No 17. B Q Makhanya. Case No 10597/2006

This application also related to an appeal against the refusal of a disability grant. The application was launched on 3 October 2006 and apparently an appeal was heard on 1 December 2006. It is unclear why it has not been disposed of long before today and no explanation was proffered for the delay. Whilst I was advised that the Respondent consented to pay the costs of the application the application itself was inadequate. The background was hopelessly sketchy providing no detail in respect of the dates when the application was made or the date when it was refused. There was no indication that any steps were taken after the notice of appeal was delivered to follow up and ascertain the reason for the delay. The notice of appeal is dated 22 August 2006 and the application was launched on 3 October with the founding affidavit having been signed on 29 September 2006. There was no letter of demand indicating an intention to institute proceedings. Once again there appears to me to have been a rush to litigation. In those circumstances I am not disposed to order that the Respondent pay the costs of the application. The application is accordingly adjourned *sine die.* There will be no order as to costs.

[68] No 18, N C Mbatha. Case No 7139/2007

In this case the Applicant alleges that she applied for a child support grant in

respect of her two children in August 2006. She says that after three months she started to receive the grant, that is, in about November or December 2006. However payments were stopped in February 2007 and she was advised to reapply. There is no proof of the award of a grant or of payment being made. The Applicant claims that she re-applied but does not present the receipt that would evidence this. On 16 May 2007 a pensions advisory service wrote a letter complaining about a suspension without notice or reasons and said that unless "such relief is received", without specifying the relief in question, proceedings would be commenced. Precisely one month later the founding affidavit was sworn and proceedings instituted. For reasons that can only be explained on the basis that this was run off on a word processor without any thought at all, the relief claimed includes a demand for medical documents. There is a further oddity in that the initial receipt for the Applicant's application bears a thumbprint. The applicant herself signed her affidavit so there is no reason for this.

[69] I am concerned at the paucity of information presented in this case and also at the fact that the claim is for reasons in regard to the withdrawal of the original grant whilst no claim is made in respect of the fresh application apparently lodged on an unknown date in 2007. The letter of claim is vague and unhelpful as it does not refer to the fresh application. However if the Applicant has simply had her child support grant withdrawn without reason that is unacceptable. I accordingly grant the following order:

(a) The respondent is ordered within 10 days of the date of this order to provide the Applicant's attorneys with written reasons for stopping payment of any child support grant that was paid to her until February 2007.

(b) The Applicant is given leave in the light of those reasons to apply on the

same papers, supplemented as necessary for such further relief flowing from those reasons as she may be advised to seek.

(c) The costs of the application up to today's date are reserved.

[70] No 19. N Malinde. Case No 10548/2006

This is yet another application seeking an order that an appeal against the rejection of an application for a disability grant be dealt with. I was told from the Bar that an appeal had been held and the appeal dismissed on the 1st December 2006. That leaves only the costs of the application. The application suffers from the same deficiencies as that in case no 17 dealt with in paragraph [67]. For the reasons given in that case I am not satisfied that there was not an undue rush to litigation in this matter and I do not think it appropriate to accept counsel's invitation for the matter to be adjourned for the issue of costs to be dealt with on another day. That would only cause fresh costs to be incurred and the courts have repeatedly set their face against permitting parties to incur additional costs in order to argue about costs. The application is accordingly adjourned *sine die.* There will be no order as to costs.

[71] No 20. M A Thusi. Case No 13796/2007

This is an application along the same line as those prepared by the firm of attorneys that prepared those in matters number 9 - 15 and 22 - 26 of the roll. In this instance the approach adopted is to sue both the MEC: Social Welfare and Population Development for KwaZulu-Natal and SASSA. The complaint is that the Applicant applied for a child support grant on or about 2 November 2005; that the grant was approved in June 2006 and that when the Applicant sought to

collect it in June 2005 there was no payment for her. She then alleges that she re-applied for the grant in January 2007 and has been paid it since then. I assume that when the Applicant says that she tried to collect her grant in June 2005 she means June 2006. On those facts her claim relates to the non-payment of the original grant from June 2006 to January 2007. However that is not the relief for which she asked. That relief was an order that her application for a social grant - which is something different from a child support grant - be processed and that it should be paid. The affidavit as with others prepared by this firm of attorneys refers to the 1992 Act and not the 2004 Act. It is replete with general allegations about procedures that the Applicant would not be in a position to know about or testify to. I was asked to adjourn the application in order for the Respondent - whichever of the two cited that refers to - to take instructions. I was asked to do so on the basis that the Respondent pay the costs of the adjournment.

[72] In view of the deficiencies in the application papers I am not prepared to grant any order for costs in favour of the Applicant or in effect her attorneys who are responsible for the mess in which I find the papers. As there seems to be a prospect that if the matter is adjourned it may be resolved to the benefit of the Applicant I am prepared to grant an adjournment. I do not believe however that the question of the costs to date should stand over. Had the matter been unopposed I would not have granted a costs order and it seems to me appropriate to put that in place now. Accordingly the application is adjourned *sine die*. As regards the costs of the application up until today's date there will be no order as to costs and I direct that the Applicant's attorneys shall not be entitled to recover any costs in regard to this application from the Applicant up until today's date. Any future costs after today's date will be dealt with by the court that is seized of this application in the future.

[73] No 41. F Z Ndebele. Case No 14466/2007

The complaint in this matter is that the Applicant applied for a disability grant during November 2003 and has never received a grant. She says that she has never received a letter telling her of the outcome of her application and her many visits to the district office have not yielded any payments or explanations. These allegations relating as they do to a period of four years are so hopelessly vague that the Respondent, which was not even in existence for the first two and a half years of the period, has no ability to investigate or rebut them. Under the 1992 Act there was no specific obligation on the MEC and his Department to furnish a written response to every application and so an applicant seeking reasons for the refusal of an application would have had to ask for such reasons pursuant to section 5 of PAJA. There is no evidence that the Applicant did this. Under section 14(3)(b) of the 2004 Act there is an obligation on SASSA to furnish reasons in writing where an applicant does not qualify for a social assistance grant. However this application was made some years before 1 April 2006 and may for all I know have been disposed of before SASSA came into being. That being so it is difficult to see how it can be held responsible for completed acts prior to it assuming responsibility for the payment of social assistance grants. The letter of demand dated 17 September 2007 claims payment of arrears without any attempt to establish an entitlement to a grant and simultaneously seeks the outcome of the application. As Nugent JA said in *Kate'*s case, *supra*, this is litigation by way of a blast of shrapnel at the opponent in the hope that something may hit the target. For the reasons I have given in other applications that is not acceptable. Accordingly whilst I am prepared to grant an adjournment as requested by the Applicant on the basis that there is a prospect that this may lead

to a speedy resolution of the matter and, if the Applicant is entitled toa grant, payment, I am not prepared to allow the costs simply to stand over. Accordingly the application is adjourned *sine die.* As regards the costs of the application up until today's date there will be no order as to costs and I direct that the Applicant's attorneys shall not be entitled to recover any costs in regard to this application from the Applicant up until today's date. Any future costs after today's date will be dealt with by the court that is seized of this application in the future.

[74] No 42. G Mthiyane. Case N 14467/2007

Save for a change in the dates this application and the fact that it relates to a child support grant this case stands on the same footing as the previous one. The same order should be made. Accordingly the application is adjourned *sine die.* As regards the costs of the application up until today's date there will be no order as to costs and I direct that the Applicant's attorneys shall not be entitled to recover any costs in regard to this application from the Applicant up until today's date. Any future costs after today's date will be dealt with by the court that is seized of this application in the future.

[75] No 43. A J Dlamini. Case No 14468/2007

In this case the Applicant complains that she received a child support grant in respect of her child, about whom no information save the name is supplied, in September 2003 and that payment ceased 'during 2003'. The letter of claim dated 13 September 2007 is equally un-illuminating. There is no explanation from the Applicant in regard to w hat she did during the nearly four years during which she

did not receive this grant. There is no evidence to indicate that the removal of the grant was unlawful. Indeed other than the *ipse dixit* of the Applicant there is no evidence that she applied for or was granted or paid a child support grant. As I have said this is not good enough. I was again asked to adjourn the matter *sine die.* I will do so but on the same basis as the two preceding matters. Accordingly the application is adjourned *sine die.* As regards the costs of the application up until today's date there will be no order as to costs and I direct that the Applicant's attorneys shall not be entitled to recover any costs in regard to this application from the Applicant up until today's date. Any future costs after today's date will be dealt with by the court that is seized of this application in the future.

SUMMARY

[76] That disposes of the cases before me. I make the orders set out at the end of paragraphs 56, 58 61, 62, 63, 64, 65, 69, 70, 72, 73, 74 and 75 of this judgment.

M J D WALLIS

Date of Hearing:	7 March 2008
Date of Judgment:	19 March 2008
Counsel for Applicants 6,7,8,16,18 and 19:	Mr R Ungerer
Instructed by:	Tees Attorneys

Counsel for Applicants 9 – 15 and 22 –26:	Mr A. Mohamed Essop
Instructed by:	Dawood Patel
Counsel Applicant 17:	Ms M. De Klerk
Instructed by:	A.D. Millar & Kimber
Counsel for Applicants 20 and 42 and 43:	Ms D. Sridutt
Instructed by: and	Fatima Karodia (Matter 20) Macritchie & Buck (Matters 42 and 43)
State Attorney:	Mr K. Govender and Ms S. Naidoo
Amici Curiae:	Mr L.B. Broster SC and Mrs A. Annandale