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South Africa

- High Court condones Minister of Police's six-year delay in delivering his plea

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SOUTH AFRICA

High Court condones Minister of Police's six-year delay in delivering his plea

Tuesday 25 November 2025 marked the beginning of the 16 Days of Activism for No Violence Against Women and Children (16 Days), a period in which we are all annually called to stand firmly against gender-based violence and femicide (GBVF) and which spotlights the executive, legislative and judicial branches of Government's crucial role in this ongoing fight. On the heels of GBVF being classified a national disaster, three High Court, Western Cape Division, judges – Thulare J, Fortuin J, and Adams AJ – marked the beginning of the 16 Days period by delivering their judgment in favour of the Minister of Police (Minister), effectively allowing the Minister's feeble explanations for an astonishing six-year delay in the delivery of his plea in a matter that relates to the sexual abuse and rape of a then 18-year-old transgender woman while in police custody to pass judicial scrutiny. A period meant to mark renewed vigour, solidarity, and commitment to the collective fight against GBVF instead began with judicial disappointment.

Background

Ms B was arrested by the South African Police Service (SAPS) in 2016 after an altercation at her family home – where she lived with her family who refused to accept her identity. On arrival at the station, Ms B announced to SAPS officials that she is transgender and identifies as a woman. Despite this, and despite Ms B outwardly presenting herself as a woman, Ms B was told by SAPS officials that *"God made you a man"* and was placed in a cell with three cisgender men. Ms B's placement into a holding cell with men was a clear and direct breach of SAPS' own policy on the detention of transgender persons, which requires that transgender persons be detained in separate detention facilities at the police station where they were arrested. Should a separate facility not be available at that police station, SAPS officials are required to transport and detain the transgender person at an identified facility within the cluster. Such are the lengths to which SAPS officials are required to go in respecting and protecting a transgender detainee.

Ms B had every right to expect protection from the police, especially while in their custody. Instead, during the night in question and in addition to their failure to adhere to policy, no officer patrolled or checked on the cell where Ms B was being held as they are required to do. Consequently, she was raped and sexually assaulted by two of the three men in the cell with her.

Action proceedings were launched against the Minister in November 2019 for, among other things, his vicarious liability for SAPS officials' failure to comply with their own policies. Since the matter was instituted, the Minister has displayed a clear and consistent attitude of disinterest, including ignoring the mere existence of the claim for the first three years. Although the Minister filed his notice of intention to defend, he failed to deliver his plea **one month thereafter** as required by the Uniform Rules of Court (Rules). The Minister was thus barred from filing his plea in February 2020. The five long years that followed were marked by a combination of deafening silence from the Minister's office despite countless attempts to have the Minister engage in the proceedings, and, when there was activity from his office, eleventh-hour applications to derail the hearing of Ms B's default judgment application. So committed was his office to delaying justice for Ms B, that the Minister pursued an application for special leave to appeal to the Supreme Court of Appeal (SCA) to challenge the High Court's decision to refuse the late delivery of his plea. The SCA granted the Minister leave and allowed his application to condone the then five-and-a-half-year late delivery of his plea to be heard by the full bench of the court on 21 July 2025.

The full bench's judgment of 25 November 2025 granted the Minister's application for condonation and afforded the Minister an even further 20 court days in which to deliver his plea.

Procedural compliance

The case spotlights the importance of procedural compliance with the Rules – especially where state institutions are litigants – and the constitutional imperatives of access to justice and the right to human dignity, particularly in light of the gravity of GBVF in South Africa.

Courts may condone non-compliance with the Rules governing the delivery of a plea if good cause is shown. Certain factors are considered by the court, including the explanation for the delay, the existence of a *bona fide* defence and the prospects of success of the applicant in the main trial. In its judgment, the court acknowledged that the Minister's delay in filing his plea was unreasonable. The Minister's explanation for the delay was that his office was undertaking investigations to verify the identity of Ms B, attempting to locate the two accused men in question, consulting with SAPS officers, and attempting to obtain Ms B's documentation from the Department of Home Affairs.

The Minister conceded that his years long investigations and the resulting delay, which bore no fruit, were *"excessive and unreasonable"*, and, importantly, provided no evidence to confirm that these investigations and consultations were actually taking place. Although no timeline is provided in the Rules as to the length of any delay caused by a defendant to be considered unreasonable, an excessive delay without a reasonable explanation undermines the court's Rules as well as the interests of the plaintiff and of justice. Still, despite this evidence before it, the full bench found that the *"evidence does not reveal wilful disregard of the Rules or a calculated attempt to delay proceedings"*.

The interests of justice

The court found that it is in the interests of justice and fairness to allow the Minister yet another opportunity to deliver his plea. The court found that "*While the respondent [Ms B] may suffer inconvenience and additional costs due to the delay, the prejudice to the Minister in being denied the opportunity to defend the claim is far greater.*" For a seasoned full bench – made up of two women and one man – to reach this conclusion is astonishing and heartbreaking in equal measure. This, against the backdrop of Ms B's profoundly traumatic and life-altering experience due to SAPS' negligence, paints a picture of disregard for the gravity of GBVF, its lifelong consequences and the duties of state institutions to fiercely guard against this.

To suggest the prejudice suffered by the Minister is "*far greater*" depicts a trivialisation of the dreadful experiences of women and members of the LGBTQIA+ community in our country and sends a message: that a claim against the state can be blatantly ignored for years to the detriment of GBVF survivors, only to be condoned by a judiciary meant to check executive failure.

Of further interest is that the court highlighted the impact of litigation on state funds, particularly that section 195 of the Constitution requires state organs to conduct litigation efficiently and accountably. Yet the "*administrative inefficiency*" identified by the court as the cause of the Minister's delay appeared to in fact benefit the Minister by being treated as a mitigating factor. In an attempt to soften the overall blow, the court granted costs in the application in the court *a quo* in favour of Ms B. Ms B's entire legal team acts pro bono, and so the costs order in truth provides little comfort to her. It is instead only a further strain on the public purse.

The impact of delays in light of GBVF classification as a national disaster

For years, survivors of GBVF have called for the state to direct adequate resources to the fight against GBVF, to no avail. The harrowing number of daily human rights violations paints a grim picture of the lack of police accountability, and the continued SAPS failure to prevent foreseeable harm and take responsibility for its negligence in protecting survivors, who are predominantly women and members of the LGBTQIA+ community. It is this normalisation of police inaction and failure that created the impetus for a national shutdown on 21 November 2025 and a call for GBVF to be recognised as a national disaster. Illuminating the devastating nature of violence against women and members of the LGBTQIA+ community, the national shutdown forced the nation to turn its attention to the reality of those affected. Disappointingly, the status quo was affirmed mere days thereafter, a judicial signal to Ms B that her need for finality, fairness and justice remains invisible as the Minister is pardoned for ignoring and disregarding her claim.

The judgment required the Minister to deliver his plea 20 court days thereafter, which, accounting for the holiday period, meant the plea was due on 23 January 2026. Even then, the Minister still delivered his plea three weeks late, after our office desperately chased the state attorney for engagement on an almost daily basis.

It is in the face of this continued disappointment and failure that our Practice must stand even more firmly in fighting for Ms B's justice. It is her only hope.

Brigitta Mangale and Sibonokuhle Baart

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