

SOUTH AFRICA / JUDGMENT

Masindi v Road Accident Fund (21738/2014) [2015] ZAGPJHC 112 (12 June 2015) [2015] ZAGPJHC 112

COURT

South Gauteng High Court, Johannesburg

BEFORE

M. Mbongwe

CASE / FILE NUMBER

21738/2014

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REPUBLIC
OF
SOUTH AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG
LOCAL DIVISION, JOHANNESBURG
CASE
NO: 21738/2014
In

the matter between:

KHATHUTSHELO
GLADYS MASINDI
Plaintiff
and
ROAD
ACCIDENT FUND
Defendant

JUDGMENT

MBONGWE, AJ

- [1] The Plaintiff commenced these proceedings against the Defendant by way of summons to recover compensation for bodily injuries she sustained consequent to a motor vehicle accident which occurred on the 17th June 2009. Thus this action is founded on the provisions of the Road Accident Act of 2005.

SETTLEMENT OF THE MERITS AND QUANTUM

- [2] The parties have reached settlement on the merits and quantum and agreed on a payment to the Plaintiff of the amount of R1 million (one million rand), subject to the Plaintiff's claim surviving the defendant's special plea of prescription. This judgement is consequently in respect of the determination of the issue whether the Plaintiff's claim had prescribed when summons was served on the Defendant on the 17th June 2014.

THE ISSUES AND THE LAW

- [3] It is common cause between the parties that the Plaintiff's claim was lodged with the Defendant about a year after the accident had occurred and that both the driver and the motor vehicle concerned were identified. In terms of the Road Accident Fund Act the period of prescription of the Plaintiff's claim is determined in accordance with the provisions of Section 23 (3) which read as follows:

“notwithstanding subsection (1), no claim which has been lodged in terms of Section 17

- (4) (a) or 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.”
- [4] It is common cause that in terms of the provisions of Section 23 (3) the prescribed five years period would have ended at midnight on the 16th June 2014, which was a Monday and a public holiday. It is to be noted also that Section 23 (3) does not provide for a situation where the last day of the five years period falls on a Sunday on public holiday. It is this situation that gave birth to the issue for determination in casu.
- [5] Counsel for the Defendant argued that the Plaintiff ought to have served summons on Friday the 14th June 2014 and that the 17th June 2014 fell outside the prescribed five years, and submitted that the Plaintiff's claim had prescribed.
- [6] The Plaintiff's counsel argued that in view of the last day of prescribed period falling on a public holiday and the silence of the provisions of Section 23 (3) as pointed out above, the provisions of Section 4 of the Interpretation Act 33 of 1957 should apply in this case. The said Section provides thus:

“4-RECKONING OF NUMBER OF DAYS: Where any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last, unless the last day happen to fall on a Sunday or any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every Sunday or public holiday.”

[7] I find two reasons for not accepting the argument and proposition proffered on behalf of the Defendant:

7.1 In the first instance, it is one of the cardinal rules in interpreting a statutes that the meaning given must not result in an unforeseen absurdity.

7.2 The proposition that the Plaintiff's summons should have been served on the 14th June 2014 would clearly mean that the Plaintiff is deprived of the full prescribed period of five years. This does not accord with

justice, could not have been the intention of the legislature and stands to be rejected.

[8] The submission on behalf of the Plaintiff that Section 4 of the Interpretation Act 33 of 1957 should find application in this case appears the more plausible and just` for the reason that not only does it preclude the undesirable results stated in paragraph 7.1 and 7.2 above which may certainly not have been the intention of the legislature, but also finds support in other sources. In his book titled “Re-Interpretation of statutes” (published by Juta & co Ltd 1996) at page 169 under the subheading “SUMMARY AND CONCLUSIONS,” Lourence du Plessis states: “7. In the application of the civilian method of calculation there is no special accounting for Sundays or public holidays; whereas Section 4 of the Interpretation Act 33 of 1957 provides in respect of a period of time expressed in days that, if the last day falls on a Sunday or a public holiday, the Sunday or public holiday is excluded and the following day included.”

[9] Further support for the applicability of Section 4 of Act 33 of 1957 is to be found in a full bench judgement of his Lordship Mthiyane JA in NEDCOR BANK LIMITED v THE MASTER OF THE HIGH COURT (PRETORIA) & OTHERS, case number 440/2000 decided on 27 September

2001. In that case the court had to deal with the provisions of Section 40 (2) of the Insolvency Act 24 of 1936 which require that notice of the meeting of creditors be given ten days before such meetings occurs. The relevant notice was given on the 7th July 2000 and the meeting took place on the 17th July 2000. The 16th July, being the tenth day fell on a Sunday. Section 40 (2) does not provide for a Sunday or public holiday. The court found that the provisions of Section 4 of Act 33 of 1957 found application in such a situation and held that by excluding the first and excluding the last day (date of

notice and date of meeting) as contemplated in Section 4, the 17th July 2000 constituted the tenth day prescribed by Section 40 (2). The contention that the meeting was held outside the prescribed ten days was rejected and the appeal accordingly dismissed.

CONCLUSION

[10] The shortcomings in the provisions of Section 23 (3) of the Road Accident Fund Act are exactly similar to those of Section 40 (2). There is no reason why the provisions of Section 4 of Act 33 of 1957 should not apply to the provisions of Section 23 (3) of the Road Accident Fund Act as well. I consequently find that the provisions of Section 4 of the Interpretation Act 33 of 1957 are applicable to Section 23 (3) of the Road Accident Fund Act. On this basis I find that the Plaintiff's claim had not prescribed when summons was served on the Defendant on the 17th June 2014.

[11] I, therefore, make the following order:

The special plea of prescription is dismissed with costs.

The Defendant is ordered to pay the Plaintiff the agreed settlement amount of R1 million (one million rand) by not later than 28th July 2015.

The Defendant is ordered to pay the costs of this action.

M. MBONGWE AJ

ACTING JUDGE OF THE HIGH COURT

Date of hearing : 03 June 2015

Date of judgement : 12 June 2015

APPEARANCES

For the Plaintiff : Advocate T. Tshitereke

Instructed by : Nemavhulani Attorneys, Johannesburg

For the Defendant : Advocate C. Chiang

Instructed by : Dev Maharaj Attorneys, Johannesburg

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