

SOUTH AFRICA / JUDGMENT

Santam Insurance Ltd v Mathekgana (A29/2015) [2015] ZAGPPHC 997 (22 October 2015) [2015] ZAGPPHC 997

COURT

North Gauteng High Court, Pretoria

BEFORE

A.A. Louw

CASE / FILE NUMBER

A29/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case

number: A29/2015

22/10/2015

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

REVISED

In

the matter between: SANTAM
 INSURANCE
 LIMITED Appellant
 and
 ALPHEUS
 MATHEKGANA Respondent

Heard: 16 September 2015

Delivered: 22 October 2015

JUDGMENT

A.A.LOUW J

Introduction

- [1] This is an appeal with the leave of the court a quo (Mngqibisa-Thusi J) against the whole of her judgment given on 11 November 2014.
- [2] The appellant, an insurance company was the defendant, and the respondent the plaintiff in the court a quo.
- [3] It is common cause that a contract of insurance existed between the appellant and the respondent in terms whereof the appellant insured inter alia the respondent's motor vehicle. The terms of the contract of insurance were common cause.
- [4] On 15 August 2009 the car was damaged beyond economical repair. On 18 August 2009 the respondent reported the loss and was provided with a substitute hired vehicle for a period not exceeding 30 days.
- [5] On 9 December 2009 the appellant repudiated the respondent's claim by way of a letter addressed to his residential address in Eldoraigne. The respondent claims that he received the letter only on 27 January 2010.
- [6] The respondent therefore instituted his claim in the amount of R572 150 on the basis that the appellant was not entitled to reject his claim.
- [7] The appellant raised a special plea namely a plea in terms of the Prescription Act, 68 of 1969, on the basis that the respondent's summons was signed on 3 December 2012 and only served sometime thereafter.
- [8] On the merits the appellant pleaded that by virtue of general condition 9.6 of the contract the respondent became time-barred to sue after 12 months from the date of the event that gave rise to the claim. Thus the appellant denied that after this period it can be liable at all. It furthermore pleaded that the appellant furnished untrue, incomplete and fraudulent information with regard to the date alternatively the circumstances of the motor vehicle accident.

The trial

- [9] At the trial the issues of prescription and whether the respondent became time-barred in terms of clause 9.6 of the agreement were separated from other issues.
- [10] No evidence was led by either party. The respondent was not legally represented.

[11] At a stage before the repudiation letter the appellant laid fraud charges against the respondent at the Brooklyn police station. After various court appearances the case was withdrawn on 11 May 2012.

The

judgment

[12] In short the trial court rejected the appellant's aforementioned defences on the following bases:

(1) The respondent only became aware of the appellant's intention not to compensate him on receipt of the repudiation letter of 27 January

2010. On this basis the court held that prescription only began to run from 27 January 2010. The summons was served on 7 December 2012 and thus that a period of three years had not expired.[1]

(2) When he was charged with lodging a fraudulent claim the period of prescription was also suspended because he could not be expected to have instituted an action whilst the criminal case was pending. The court specifically held:

"It is only once the criminal court has made its decision that the period of prescription would resume running. "[2]

(3) In regard to clause 9.6.3 it was held not to be applicable as the subject matter of the claim was pending in the criminal court.

[13] Thus both these defences were dismissed with costs.

Prescription

[14] In accordance with general principles a claim by the insured against the insurance company arises on the date of the occurrence of the loss. Even, if we accept for present purposes, that the debt only became due[3] a few days later i.e. when the loss was reported, it will make no difference to the outcome herein.

[15] The only section dealing with interruption of prescription which is presently relevant is section 15 of which the following subsections are relevant:

"(1) The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.

(6) For the purposes of this section 'process' includes a petition, a notice of motion, a rule nisi, a pleading in reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced"

[16] Section 13 of the Act describes the circumstances under which the completion of prescription is delayed. The only relevant subsections of section 13 are the following:

“(1) If-

- (a) the creditor is ... prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15(1); or
- (f) the debt is the object of a dispute subjected to arbitration; or
- (i) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist,

the period of prescription shall not be completed before a year

has elapsed after the day referred to in paragraph (i).”

[17] It is further apposite to quote clause 9.6 of the general conditions of the policy:

“9.6 Time Limits

9.6.1 If we reject your claim or dispute the amount of your claim, which decision was communicated to you in writing, you may within 90 days from the

date of our communication make written representation to us.

9.6.2 if we still reject your claim or dispute the amount of your claim despite your written representation, you may institute legal proceedings against us within six months from the date we communicate to you the rejection of your written representation.

9.6.3 We are not liable after 12 months from the date of the event that gives rise to a claim, unless the claim is:

- the subject of pending court action or arbitration; or
- for amounts for which you may become legally liable. ”

Discussion

[18] It is not clear what the honourable trial judge meant by the statement:

“that the running of the prescription period was suspended when the plaintiff was charged with lodging a fraudulent claim...”[4] (my emphasis)

“Suspension” or “suspended” are not terms used in the Prescription Act.

[1]

judgment

para 16

[2]

judgment

para 17

[3] Section 12(1) of the Prescription Act

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2015/997.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/santam-insurance-ltd-v-mathekgana-unknown-topic-agpphc-2015>

Prepared on 11 October 2026 · Esheria