NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

08.10.10
DATE SIGNATURE

CASE NO: 3101/2008

ION POP
PLAINTIFF

AND

MINISTER OF SAFETY AND SECURITY
FIRST DEFENDANT

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
SECOND DEFENDANT

CIVIL TRIAL
CORAM SAPIRE AJ

**JUDGMENT**

This action in which the Plaintiff makes certain claims against the two defendants was initiated by service of a Summons commencing action. Service of the Summons took place in February 2008.

The Plaintiff is acting in person and he himself appears to be the draftsman and author of his Particulars of Claim. After citing the parties the Plaintiff alleges that on the 4th of February 2002 and at Pretoria the Defendant wrongfully and maliciously set the law in motion by laying a false charge of extortion and defeating the ends of justice. It is not clear from the Particulars of Claim which of the Defendants so acted nor does it appear from the pleadings who the individual was who acted on behalf of whichever Defendant is alleged to have acted wrongfully.

The further allegations are tortuous and difficult to understand.
The Plaintiff further does allege that while laying the charge and giving the alleged disinformation the Defendant had no reasonable or probable cause for so doing nor did he have any reason to belief in the truth of the information given.

The Plaintiff goes on to allege that as an result of the Defendant's conduct the Plaintiff was arrested and held in custody for two days until he was released on bail in the Magistrate's Court, Pretoria.
The Plaintiff proceeds to allege that on the 26th of February 2002 he was furnished with a document by the Investigating Officer. The Plaintiff interpreted this document as a court order or intimation of a court order directing him to leave the country immediately. Acting on such belief the Plaintiff followed the purported order and went to Europe and stayed in different countries only to return to South Africa

on the 10th of January 2004.This appears to be the basic fact on which the second claim is founded. Suffice it to say that the document appears to have been misunderstood

On the 27th of May 2004 the Senior Prosecutor declined to prosecute the Plaintiff and the charges which constituted the basis for his arrest, was subsequently withdrawn.

Further allegations in the Particulars of Claim deal with damages allegedly suffered by the Plaintiff.

The Plaintiff amended his Particulars of Claim but the amendment did not substantially alter the facts relevant to this judgment. What is important is that the events which give rise to Plaintiff's claim were completed in February 2002 or possibly in May 2002 when the charge was withdrawn. One may assume that as far as the First Defendant is concerned the claim is based on malicious prosecution and wrongful arrest while the claim against the Second Defendant if such a claim exists arises from the document handed to the Plaintiff by the Investigating Officer. This also took place in 2002.

The Plaintiff gave evidence which in substance accorded with what it said in it's Amended Particulars of Claim.

The Defendant has raised Special pleas based on the provisions of the Prescription Act of 1943, in the first instance and secondly on the provisions of the Institution of Legal Proceedings against Certain Organs of State, Act 40 of 2002. To these Special Pleas no replication has been made.

The first special plea is that of prescription. The allegations in this regard are that Plaintiff's causes of action in respect of both claims arose in 2002 and that the summons commencing action was not served until 11th February 2008, by which time the three year period of prescription applicable to both claims had long expired. The claims were in this way extinguished.

In the second special plea it is alleged that the Defendants are, as Governmental Departments in the central government, organs of State as defined in the second mentioned Act.

In terms of Section 3 (i) of the Institution of Legal Proceedings against Certain Organs of State, 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 his or her or it's intention to institute the legal proceedings in question".

In terms of Sub-Section (ii) "the notice must within 6 (six) months from the date on which the debt became due be served on the organ of State in accordance with the provisions of Section 4(i) and must briefly set out the facts giving rise to the debt and such particulars of such debt as are within the knowledge of the creditor".

Section 3(iii) provides that for the "purposes of sub-section 2(a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the organ of State and of the facts giving rise to the debt." The sub-section further provides "that a creditor must be regarded as having acquired such knowledge as soon as he or she or it could have required it by exercising reasonable care unless the organ of State wilfully prevented him or her from acquiring such knowledge. Prima facie any claims which the plaintiff has or may have against the defendants or either of them, arose on the date on which the alleged wrong took place. It is on that date that the debts are deemed to have become due. In the absence of a replication raising facts which deferred or postponed the debts becoming due the prima facie date for the arising of the debts is uncontradicted.

Section 4 provides that "if an organ of State relies on a creditor's failure to serve a Notice in terms of such section 2(a) a creditor may apply to a Court having jurisdiction for condonation for such failure. The court may grant such relief if it is satisfied that the debt has not been extinguished by prescription, good cause exists for the failure by the creditor and the organ of State was not unreasonably prejudiced by the failure."

In the present case the documents which the plaintiff relies on as the required notices were in fact served in 2009 after the issue of

Summons and thus completely out of time. No formal application for condonation was made by the Plaintiff but in view of him being unrepresented I considered whether his oral mention of condonation could amount to such an application.

The only evidence before the court was that of the plaintiff himself. Before even he was cross examined, on his own account it was clear that the special pleas were substantiated. At that stage I ordered the question of the special pleas be argued so as to curtail the hearing.

The law is clear, that as the claims on which he relies arose in 2002 and had prescribed long before the action was instituted the Defendants' Special Pleas, namely that the claims had prescribed and that no notice as required by the provisions of Institution of Legal Proceedings against Certain Organs of State, Act 40 of 2002 had been given to the Defendants, the plaintiff was non suited.

The action is dismissed with costs.

SAPIRE, AJ

**PLAINTIFF:**

Mr Ion Pop
In person

754 Besembiesie Street
MONTANA PARK
0182

Fax No: 086 - 610 7310

**DEFENDANT'S ATTORNEYS:**

P H T KLEYNHANS (with right of appearance in the High Court in accordance with Section 4(2) of Act 62 of 1995)

**THE STATE ATTORNEY**
Bothongo Heights
8th Floor
167 Andries Street
PRIVATE BAG X91
**PRETORIA,0001**

**Ref: 545/08/Z58**
**Tel: 012-309 1500**
**Enq: Mr P H T Kleynhans**

**DEFENDANT'S COUNSEL:** **ADV. C NAUDE**
**PRETORIA**