

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 535/2019

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST TO THE JUDGES: <u>YES/NO</u>
(3)	REVISED.
DATE: <u>12/12/19</u> SIGNATURE: <u>[Signature]</u>	

In the matter between:

LESIBA MICHAEL MAPHETO

APPLICANT

AND

SAMUEL MAMABOLO

1ST RESPONDENT

RAHLABA SAMUEL

2ND RESPONDENT

MINISTER OF POLICE

3RD RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant brought a spoliation application seeking an order that he be restored possession of a certain Tipper Truck with registration numbers FHM 670 GP by the first respondent. The first and second respondents are opposing the applicant's application. The respondents have raised a point *in limine* of prescription against the applicants claim.
- [2] The background facts are that the applicant was employed by his uncle who was renting out his trucks to construction companies. His uncle gave him one of the trucks of which he transferred it into his names. However, that truck remained being rented out by his uncle to the other construction companies. His uncle passed away on the 31st December 2004 and was buried during January 2005.
- [3] After the passing of his uncle there was a dispute about the ownership of the Tipper Truck. The applicant was called by Midrand SAPS informing him that the second respondent has opened a criminal case against him alleging that he had stolen her vehicle. On the 13th May 2006 he took the truck to the SAPS Midrand where it was taken and parked with stolen vehicles for safekeeping until the matter was resolved.
- [4] On the 18th May 2006 he went back to Midrand SAPS to enquire about the Tipper Truck and was told that it was not registered in their books and the truck was no longer there. He tried without success to resolve the matter with the SAPS.
- [5] On the 5th February 2007 he employed the services of Motsile Attorneys to assist him. Unfortunately, Mr Motsile passed away before the matter was resolved. He had to retrieve the file from the Law Society in Pretoria. On the 30th June 2011 he appointed Sebuyi Attorneys to take over the matter.

However, he terminated the services of Sebuyi Attorneys as he could not afford their fees.

- [6] On the 7th June 2012 he opened a criminal case and reported the truck as stolen at Midrand SAPS. The SAPS did not make any progress with his case. On the 22nd July 2018 he saw the truck parked inside a yard at Turfloop Location. He took the pictures of the truck and went to report the matter at Midrand SAPS. He was told to go and report the matter at the nearest SAPS.
- [7] The applicant went to Mankweng SAPS. He together with the vehicle theft unit based in Polokwane went to the premises where the truck was parked. On arrival at the premises, the first respondent introduced himself as the owner of the premises and told them that he had bought the entire estate of his uncle, including the truck from the second respondent. He also told them that the truck was not yet registered into his names as he was still paying the purchase price in instalments and was also awaiting a police clearance as the truck has been circulated as stolen. The police officers then advised him to go the civil route in order to retrieve the truck, hence the present application.
- [8] The respondents' in their point *in limine* of prescription are stating that the cause of action in this matter arose during 1999 if not 2006 when the truck was taken away from the applicant allegedly by the second respondent through the assistance of the police. The respondents are submitting that the three year period have lapsed before the applicant launched his application.
- [9] The applicant's counsel in this court submitted that the applicant had located the truck inside the yard in Turfloop Location on the 22nd July 2018. It is the applicant's contention that the debt does not arise from the contract and could therefore not be deemed to be due until the creditor, (in this instance the

applicant) had knowledge of the identity of the debtor, (first respondent) and of the facts from which the debt arose (the location of the truck).

[10] In terms of Section 12(1) of the **Prescription Act**¹ (the Act), prescription shall commence to run as soon as the debt becomes due. Section 12 (3) of the Act provides that the debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises, provided a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

[11] In **Price Waterhouse Coppers INC and Others v National Potato Co-operative Ltd & Another**² the court said

“...In a line of cases commencing with *Drennan Maud & Pathers v Pennington Town Board* this court has consistently held that all that is required is knowledge of the minimum facts required to institute action. It is unnecessary for the claimant to be aware of the legal consequences of those facts. Where the claimant does not have actual knowledge of those facts, but could by the exercise of reasonable care have acquired that knowledge, that is equivalent to actual knowledge”.

[12] As per the applicant's version, he took the truck to the SAPS Midrand after he was requested to do so by the police. The truck was kept with other stolen vehicles at the SAPS Midrand. The SAPS Midrand had a legal duty to keep the truck safe until the dispute relating to it was resolved. The truck disappeared whilst in the hands of SAPS Midrand and they could not tell the applicant as to what happened to the truck.

¹ 68 OF 1968

² 2015 ZASCA 2 (4TH MARCH 2015) AT PARA 145

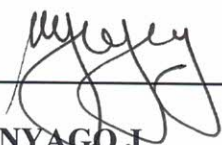
- [13] The applicant became aware that the truck has disappeared during May 2006. He also had knowledge that the truck disappeared in the hands of the SAPS Midrand. The applicant therefore knew the identity of the persons who were responsible for the disappearance of his truck. As at May 2006 the applicant could have instituted action against the third respondent as the truck disappeared in the hands of the SAPS who were supposed to keep the truck safe and were also unable to tell him how it disappeared. Even after the truck was parked with other stolen vehicles, the applicant was given a wrong case number by inspector Malapane. When applicant brought it to the attention of inspector Malapane that the case number was wrong, he promised to fix it but never did that. When the applicant followed up the matter with the seniors in the SAPS, it was confirmed to him that the case number given to him by inspector Malapane was indeed wrong.
- [14] Inspector Malapane when he took the truck for safe keeping was acting within the course and scope of his employment. The mere fact that he had brought it to the attention of inspector Malapane that the case number was incorrect and he promised to fix it, but did not do so, and also that the truck disappeared whilst in the safekeeping of the SAPS Midrand, was sufficient enough to hold the third respondent liable for the disappearance of the truck since inspector Malapane was acting within the course and scope of his employment when he took the truck for safekeeping.
- [15] The applicant had the required knowledge and minimum facts required to institute action as at May 2006, but he failed to do so. From 2006 up to 2018 it is a long period of time which has expired despite the applicant having the

identity of the person whom he could have instituted action against. The applicant has explained the steps that he took in trying to locate the truck up the 7th June 2012. From there he seemed to have given up to ever recovering the truck in question. Even from 2012 to 2018 it is still more than 3 years.

[16] I am alive to the fact that in this application the applicant is seeking a spoliation order against the facts that came to his knowledge on the 22nd July 2018. The facts of the 22nd July 2018 does not take away when cause of action arose and also when he had actual knowledge of the minimum facts required to institute action. In my view, the cause of action arose during May 2006, and by then the applicant had minimum facts required to institute action, and the identity of the persons that he could have instituted action against. Under the circumstances, I am satisfied that there is merit in the respondents' point *in limine* of prescription.

[17] In the result I make the following order:

17.1 The respondents' point *in limine* of prescription is upheld with costs on party and party scale.



MF KGANYAGO J
JUDGE OF HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

APPEARANCE:

FOR THE APPLICANT	: ADV. SA NKOANA
INSTRUCTED BY	: SEGALA SESHIBE ATTORNEYS
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	CORNER MAMBO & JULIUS NYERERE
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DATE OF HEARING	: 06 NOVEMBER 2019
DATE OF JUDGEMENT	: 12TH DECEMBER 2019