IN THE HIGH COURT OF SOUTH AFRICA /ES

(GAUTENG DIVISION, PRETORIA)

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

CASE NO: 73006/2012

DATE: 3/2/2017

IN THE MATTER BETWEEN

P J HUYSER	APPLICANT/PLAINTIFF
AND	
QUICKSURE (PTY) LTD	1ST RESPONDENT/DEFENDANT
NEW NATIONAL ASSURANCE CO LTD	2ND RESPONDENT/DEFENDANT

JUDGMENT

PRINSLOO, J

[1] The applicant (plaintiff in the main action, but I will refer to him as "the applicant" for the sake of brevity) applies to join the second respondent as the second defendant in the main action ("the second respondent").

[2] The second respondent opposes the application on the basis that any claim which the applicant may have had against it, has become prescribed, and service of this joinder application on the second respondent did not serve to interrupt the running of prescription in terms of the provisions of section 15(1) of the Prescription Act, Act 68 of 1969 ("the Act").

[3] The first respondent, presently the only defendant in the main action, ("the first respondent") did not enter the fray.

[4] It seems to me that the essential question for decision is whether, in this particular case, service of the application to join the second respondent as a second defendant interrupted the running of prescription of the applicant's claim against the second respondent as intended by the provisions of section 15(1) of the Act.

[5] Before me, Ms Granova appeared for the applicant and Mr West appeared for the second respondent.

Brief synopsis of the underlying facts and chronological details

[6] On or about 20 December 2012 the applicant, as plaintiff, instituted action against the first respondent, as defendant, on the following basis:

- The first respondent is a private company which carries on business as a registered insurance company in terms of Act 27 of 1943 in Brakpan, Gauteng.

- The parties entered into a written agreement of insurance in terms of which the defendant undertook to insure the plaintiff's motor vehicle being a 2010 Toyota Landrover Prado 3.0VX with registration number ZHJ […]GP against the risks mentioned in the contract, one of them being accidental loss of or damage caused to the vehicle. A copy of the agreement of insurance is attached.

- The defendant undertook to provide cover to the plaintiff in respect of the said motor vehicle up to the sum insured for loss or damage to the insured property by any cause not otherwise excluded.

- On 1 October 2010 on the N4 road close to the Watermeyer off-ramp, Pretoria, the vehicle of the plaintiff was damaged as a result of an accident that occurred.

- The value of the motor vehicle, calculated as on 1 October 2010, is the sum of R630 000,00.

- The policy of insurance was of full force and effect on 1 October 2010.

- The plaintiff gave written notice of the incident and loss to the defendant and has complied with all other obligations under the policy.

- Despite this, the defendant has refused to make any payments to the plaintiff in respect of the loss of the motor vehicle. The amount of R630 000,00 is claimed with interest and costs.

[7] The policy which the applicant attached to the summons is a lengthy affair in fine print but it is headed, in much bigger bold letters "**Quicksure Personal Insurance Policy**".

[8] Underneath this heading, in fine print, the following is stated:

> "Issued and administered by Quicksure (Pty) Ltd, an authorised Financial Services Provider (FSP number 16902), on behalf of the insurance companies named in the schedule which forms part of this policy. We agree to provide insurance in terms of this policy during any period for which a premium has been paid. The proposal and declaration made by you are the basis of and form part of this policy."

There is no schedule of insurance companies attached to the policy which is attached to the particulars of claim.

[9] In fairness, it must be added that under the "definitions" it is stated that "we/us the insurer" means the insurance company named in the schedule.

[10] Everyone of the 17 finely printed pages contains, at the top left corner, a logo consisting of a very large Q with underneath it the name "Quicksure".

[11] On 8 February 2013 the defendant (first respondent) entered an appearance to defend the action and the plea was served on the plaintiff's attorney on 20 March 2013, which is an important date for present purposes.

[12] Equally important is paragraph 3 of the plea, the contents of which inspired the applicant to launch this application. It stipulates:

> "The Defendant denies that it entered into a written agreement with the Plaintiff as alleged or at all.
>
> The Defendant denies that it undertook to insure Plaintiff's motor vehicle being a 2010 Toyota Landrover Prado 3.0VX with registration number ZHJ […] GP against the risks mentioned in the contract, one of them being accidental loss of damages caused or damages caused to the vehicle. At all material times hereto the Defendant and its agents acted as insurance administrators on behalf of New National Assurance Co Ltd (registration number 1971/10190/03)."

The rest of the plea consists, by and large, of bare denials and, in the final paragraph, the defendant/first respondent admits that it refused to make any payment to the plaintiff.

[13] On or about 17 October 2013 the applicant, as a result of the revelation made in the plea, launched this application to join the second respondent as a defendant to the action. The relevant prayers in the notice of motion read as follows:

> "1. That the second respondent (New National Assurance Co Ltd) be joined as defendant in the main action under case number 73006/2012.

2. That all pleadings filed on record be served upon the party joined in terms of prayer 1 within 10 (ten) days of date of this order.

3. That the costs of the application be reserved."

[14] According to the return of the Deputy Sheriff, the application was served on the second respondent at its principal place of business in Durban on 27 November 2013.

[15] In the concise founding affidavit, the applicant, importantly in my view, states that the purpose of the application "is to obtain an order for the joinder of the second respondent as second defendant in the main action on the grounds that the second respondent has a direct and substantial interest in the subject matter of the action and the determination of the dispute involves substantially the same question of law and fact as against the first respondent".

[16] After summarising the background of the case, as it also appears from the particulars of claim, the applicant refers to the first respondent's (defendant's) plea served on 20 March 2013 and the applicant says the following:

"6.3 The first respondent in paragraph 3 of its plea indicated that they, (the first respondent), merely acted as 'insurance administrators' on behalf of the second respondent. The relevant part of the first respondent's plea reads *inter alia* as follows:

'*At all material times hereto the defendant and its agents acted as insurance administrators on behalf of* ***New National Assurance Co Ltd*** *(registration number 1971/10190/03)*.'

6.4 I did not have knowledge of the identity of the second respondent as debtor until the first respondent's plea was served on my attorneys of record on 20 March 2013."

A copy of the plea is also attached to the founding affidavit.

[17] Of equal importance, in my view, is what the applicant emphasises in paragraph 7 of the founding affidavit (I quote the full paragraph, although it contains matter which is repetitive of what I have already quoted when referring to what the applicant described as the purpose of the application):

"7.1 It is essential to join the second respondent as second defendant in the main action as the second respondent has a direct and substantial interest in the subject matter of the action and the determination of the dispute involves substantially the same issues of law and fact as against the first respondent.

7.2 In light of the aforementioned it would be convenient as well as cost effective, were the second respondent to be joined in the main action.

7.3 I respectfully state that to refuse this application would substantially prejudice the applicant/plaintiff and that to grant it could not cause any prejudice to the respondents in any manner.

7.4 I accordingly request the Honourable Court that an order be granted as set out in the Notice of Motion."

[18] In February 2014 (the exact date is not mentioned) the manager of the Legal Department of the second respondent deposed to its answering affidavit. It is not clear when this answering affidavit was filed, but the filing sheet is dated 4 February 2014.

[19] The deponent states that the application is opposed on the basis that the applicant's claim against the second respondent "has already prescribed and it will serve no purpose to join the second respondent as second defendant in the action".

[20] By way of background, it is mentioned that the insurance contract was already entered into in 2007. Reference is made, as I did already, to the fine print message underneath the bold heading of the **Quicksure Personal Insurance Policy,** to reflect that the mentioned policy is issued "on behalf of the insurance companies named in the schedule which forms part of this policy". I also mentioned that the schedule was not attached to the policy which is an annexure to the particulars of claim neither was it attached to the copy of the policy which is an annexure to the opposing affidavit.

[21] It is mentioned by the deponent that the Toyota Prado of the applicant was included in the insurance contract in May 2010, some months before the accident occurred.

[22] The allegation is then made that the joinder of the second respondent as second defendant in the action "will serve no purpose in that any claim which the applicant may have had against New National Assurance Co Ltd in terms of the insurance contract and arising from the damage to the motor vehicle on 1 October 2010 has already prescribed on 30 September 2013 in terms of section 11(d) of the Prescription Act 68 of 1969".

It is alleged that the claim would have become prescribed on the day before the 1 October 2010 accident when the vehicle was damaged and that the applicant had knowledge of the identity of the debtor New National Assurance Co Ltd as far back as June 2007 and was again reminded thereof in May 2010 when the policy schedule was amended. It is also submitted that the claim became prescribed before the joinder application was launched in October 2013 (after the accident).

[23] The applicant's allegation in his plea, *supra*, that he did not have knowledge of the identity of the debtor until the plea was served on his attorney on 20 March 2013 is rejected as unfounded. This submission is based on the allegation that the applicant knew about the identity of the second respondent much earlier. It is also alleged that the applicant could have ascertained the identity of the debtor by making enquiries to Quicksure (the first respondent) in view of the reference in the Quicksure policy to insurance companies listed in the schedule.

[24] Importantly, the deponent on behalf of the second respondent also attaches a letter on the Quicksure letterhead dated June 2007 addressed to the applicant purportedly enclosing the Policy Schedule, which is also attached to the answering affidavit.

The letter, bearing the Quicksure logo and containing no reference whatsoever to the second respondent goes under the heading

"Quicksure verwelkom u"

and refers to the attached Policy Schedule. It ends with the phrase

"Ons vertrou dat u bostaande in orde vind en verseker u van ons beste dienste te alle tye.

Die uwe

Letitia Bekker namens Quicksure".

The schedule is emblazoned with the heading

"**Quicksure Platinum Polis**

Sertifikaat van Versekering".

In very fine print underneath that one finds the words "onderskryf deur New National Assurance Co Ltd" There is no clear reference elsewhere in this "Quicksure Platinum Polis" to the second respondent being the insurer. Also attached as an annexure to the answering affidavit is the 2010 amendment to the policy schedule containing wording identical to the other schedule under the same heading

"**Quicksure Platinum Polis**

Sertifikaat van Versekering".

[25] The replying affidavit is dated February 2016, two years after the answering affidavit. This delay is not explained, neither did I receive any argument on the issue or hear submissions with regard to the ostensible late filing of the replying affidavit. There were no objections in this regard from the second respondent.

What does emerge from the papers, however, and from submissions made at the start of the proceedings by Ms Granova, is that there was a long process involving complaints lodged by the applicant to the insurance Ombudsman against the first respondent, during which period, so it was argued, there was no mention of the alleged involvement of the second respondent as the insurer. This only emerged when the plea was filed "years later" in the words of Ms Granova.

[26] I turn to the replying affidavit.

The applicant, correctly, points out that the only issue in dispute is whether the claim against the second respondent has prescribed. He confirms that the first time he became aware of the "legal nexus" between him and the second respondent was when the plea was received on 20 March 2013. Until that date, he had never dealt with the second respondent's officials or received any correspondence carrying the name or logo of that party or indicating its connection with the applicant as the insurer.

[27] The applicant pleads that before he issued summons, he lodged the complaint with the insurance Ombudsman against the first respondent. At no stage during those proceedings did the first respondent allege that it was not bound by the insurance contract. At all relevant times the applicant only dealt with the first respondent. Importantly, at no stage did he receive any copies of the policy schedule/amended policy schedule which indicated the second respondent as the insurer.

On the basis that he became aware of the "legal nexus" between him and the second respondent on or about 20 March 2013, the applicant insists that this application was launched within the three year period from the time that he became aware of the identity of the particular debtor so that the claim could not have become prescribed.

This would have been a reference to section 11(d) of the Act which stipulates that, save where an Act of Parliament provides otherwise, the period of prescription shall be three years.

At the same time, it is convenient to mention the provisions of section 12(3) of the Act:

> "(3) A 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 that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care."

[28] During the hearing before me, counsel for the second respondent, quite properly in my view, made the following concessions:

- The allegation by the applicant, in the founding affidavit, that he did not have knowledge of the identity of the second respondent as a debtor until receipt of the latter's plea on 20 March 2013 was accepted as correct; and

- The argument raised in the answering affidavit that the applicant could have established the identity of the second respondent as a debtor at an earlier stage by making enquiries with the first respondent was not pursued; and

- It was accepted, on behalf of the second respondent, and for purposes of this dispute, that the allegations in the replying affidavit that the applicant never received the documents referred to in the answering affidavit are correct.

[29] The main thrust of the argument offered by Mr West, if I understood it correctly, is that the claim against the second respondent became prescribed on the following basis: prescription started running on 20 March 2013 when the plea was received. Three years later, on 19 March 2016, the claim became prescribed as intended by the provisions of section 11(d) of the Act. This is so, because the matter only came before me on 25 July 2016, after the three year period had expired.

The fact that the joinder application was served in November 2013 already, does not assist the applicant, because service of the joinder application did not interrupt the running of prescription as provided for in section 15(1) of the Act. As authority for this proposition, counsel relied heavily on the judgment in the *Peter Taylor* case, to which I will refer in greater detail in due course.

<u>Section 15 of the Act</u>

[30] It is useful to quote the wording of section 15 which goes under the heading "Judicial interruption of prescription":

> "(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.
>
> (2) Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection (1) shall lapse, and the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside.

(3) If the running of prescription is interrupted as contemplated in subsection (1) and the debtor acknowledges liability, and the creditor does not prosecute his claim to final judgment, prescription shall commence to run afresh from the day on which the debtor acknowledges liability or, if at the time when the debtor acknowledges liability or at any time thereafter the parties postpone the due date of the debt, from the day upon which the debt again becomes due.

(4) If the running of prescription is interrupted as contemplated in subsection (1) and the creditor successfully prosecutes his claim under the process in question to final judgment and the interruption does not lapse in terms of subsection (2), prescription shall commence to run afresh on the day on which the judgment of the court becomes executable.

(5) If any person is joined as a defendant on his own application, the process whereby the creditor claims payment of the debt shall be deemed to have been served on such person on the date of such joinder.

(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."

[31] On the question of the interruption of prescription, I add, for the sake of detail, that Ms Granova developed her argument in terms of section 12(3) of the Act (a 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) to the point where she argued that, in the

spirit of this provision, the debt only became due when the answering affidavit was filed in February 2014 because it is not disputed that all the details, and documentation, were not conveyed to the applicant before then. She argued that, if the issue were to be ventilated before a court by means of evidence, such a conclusion may well be arrived at. That would lead to a finding that the three year period would only run its course by February 2017.

In view of the stance adopted by the applicant in the replying affidavit to the effect that the proverbial penny dropped on 20 March 2013 when the plea was filed, and not having been called upon to consider evidence on this argument (which may be referred to as "Ms Granova's 12(3) argument"). I find myself unable to pronounce definitively thereon.

Nevertheless, and perhaps depending on the final outcome of the present proceedings, it may be procedurally possible at some future stage, for the applicant, if so advised, to have Ms Granova's 12(3) argument tested in evidence. No doubt, the applicant will bear in mind that (4?) February 2017 is fast approaching.

<u>Brief overview of some authorities relevant to the question whether, in this particular case, the joinder application interrupted prescription of the applicant's claim against the second respondent</u>

[32] I turn to some of the authorities which are relevant to this subject.

(i) ***Cape Town Municipality and Another v Allianz Insurance Co Ltd* 1990 1 SA 311 (CPD)**.

[33] This matter does not involve a joinder application but the provisions of section 15 of the Act and the question of interruption of prescription do come into play.

[34] The two plaintiffs had been jointly insured by the defendant under a policy in terms of which the defendant had undertaken to indemnify them against damage caused to a sewerage pipeline then under construction. The pipeline was damaged by storms in May and June 1984. When the defendant failed to admit liability, the plaintiffs instituted proceedings against the defendant, claiming an order declaring the defendant "to be liable in law to indemnify the plaintiffs in terms of the policy in respect of all loss and damage to the works". Shortly before the hearing of the action (set down for 20 October 1987), the defendant filed a special plea, pleading that the plaintiffs' right to an indemnity, if any, was a debt in terms of the Prescription Act; that by no later than 7 October 1984 the plaintiffs had had knowledge of the identity of the debtor and of the facts from which the debt had arisen; that prescription had therefore commenced running on 7 October 1984 and that, accordingly, by 7 October 1987 the plaintiffs' right to an indemnity had prescribed. The plaintiffs, in replication, contended that the institution of proceedings for a *declarator* had interrupted the running of prescription.

The defendant argued that, for judicial interruption of prescription to have occurred, the process served upon it by the plaintiffs would have to have been one whereby payment of the debt was claimed (<u>my note</u>: this is a reference to the wording of section 15(1) of the Act to which I have referred). Since the defendant's debt could only have been discharged by paying money, the claim, in order to effect interruption of prescription, had to have been one sounding in money. The plaintiffs had not claimed money, but had merely claimed a *declarator*. The summons in question had therefore not been one for "payment of the debt" within the meaning of section 15(1) of the Act, and prescription had not been interrupted. Moreover, the *declarator*, if granted, would never become executable as required by section 15(4).

[35] In dismissing the special pleas with costs the learned Judge said the following at 334G-335B:

> "Bearing in mind that some of the key wording of section 15 must be given a wide and general meaning, consistent with a legislative intention to speak broadly rather than to define, and having regard to the spirit, scope and purpose of the Act, I conclude that section 15 must be interpreted as follows.
>
> 1. It is sufficient for the purposes of interrupting prescription if the process to be served is one whereby the proceedings begun thereunder are instituted as a step in the enforcement of a claim for payment of the debt.
>
> 2. A creditor prosecutes his claim under that process to final, executable judgment, not only when the process and the judgment constitute the beginning and end of the same action, but also where the process initiates an action, judgment in which finally disposes of some elements of the claim, and where the remaining elements are disposed of in a supplementary action instituted pursuant to and dependent upon that judgment.
>
> I am fortified in interpreting thus by what was said in the *Murray and Roberts* case (my note: a reference to *Murray and Roberts Construction (Cape) (Pty) Ltd v Upington Municipality* 1984 1 SA 571 (AD) at 578H):

'Where the creditor takes judicial steps to recover the debt, and thereby to remove all uncertainty about its existence, prescription should obviously not continue running while the law takes its course.'

Those are admittedly general remarks, but they point, in my view, to the sense and purpose which section 15 must have in the whole context of prescription law.

Applying the interpretation set out above, it follows that the prescription was interrupted in terms of section 15 of the Prescription Act by the service of plaintiffs' summonses and as of now remains interrupted."

[36] When considering the proper approach to adopt when interpreting the Act, including section 15, the learned Judge, dealing with various authorities, at 330C-J, pointed out that there is also "a discernible looseness of language" when compared to the predecessor of the Act, the 1943 Prescription Act. At 330I, the learned Judge concludes:

"Accordingly, one's starting point is that the language to be interpreted has an inherent elasticity. To be taken together with that is the consideration already mentioned that the legislative draftsman has not attempted in this particular statute to legislate exhaustively for all eventualities."

[37] I will later revisit certain features of this judgment.

(ii) ***Naidoo and Another v Lane and Another* 1997 2 SA 913 (D&CLD)**.

[38] The plaintiffs instituted action against the first defendant, Mr C A Lane, who was at that stage the only defendant, in April 1993 for damages allegedly suffered by them and their minor children as a result of alleged breach of contract by the first defendant Mr Lane. On 24 January 1995 the plaintiffs served a notice of motion by means of which they commenced an application for the joinder of the Minister of Safety and Security as second defendant, the existing defendant to become the first defendant. The application sought leave to amend the summons and particulars of claim by substituting, for the existing summons and particulars, the summons and particulars which were annexed. In December 1995, an order was made in respect of the application for joinder in the terms in which the notice of motion was crafted. On 30 January 1996 the amended summons and particulars of claim were served on the second defendant. The second defendant raised a special plea to the effect that the claim of the parents (the two plaintiffs) had become prescribed. Understandably, prescription was not raised in respect of the representative claims for the children which were minors at all relevant times.

[39] It was common cause that in the case of each of the plaintiffs (parents) the debt, for purposes of the Act, became due at the latest on 23 July 1992 and that unless the running of prescription was interrupted, such "debt" prescribed at midnight on 22 July 1995.

The plaintiffs relied for such interruption exclusively on the service on 24 January 1995 of the application. The issue was therefore whether the application was a "process whereby" the plaintiffs claimed "payment of" each "debt" within the meaning of section 15(1) of the Act.

[40] Before listing, and briefly commenting upon, the findings of the learned Judge, by drawing from the summary contained in the headnote, it is useful to quote the relevant portions of the notice of motion which, in my view, distinguishes *Naidoo* from the case now under consideration. The wording of the notice of motion appears in *Naidoo* at 916E-J. The notice of motion stated that the plaintiffs –

> "intend to make application to this Court for an order in the following terms:
>
> 1. that the applicants are given leave to join the Minister of Law and Order as a second defendant in the action instituted by the applicants (as first and second plaintiffs) against Charles Anthony Lane under case number ...;
> 2. that the plaintiffs are given leave to amend the summons and particulars of claim in the action under case number ... by substituting, for the existing summons and particulars of claim, the summons and particulars of claim annexed to the founding affidavit of the first plaintiff (first applicant) marked "B" and "C";
> 3. that this order is to be served together with the summons and particulars of claim on the Minister of Law and Order;
> 4. that in so far as it may be necessary:
>
>   (a) the existing notice of intention to defend by Charles Anthony Lane stands and he need not file any further notice of intention to defend in response to the amended summons;

(b) Charles Anthony Lane as the first defendant is given leave to amend his plea in so far as it may be necessary;

(c) the provisions of the Uniform Rules of Court will apply to the further proceedings in this action.

5. (a) That, in the event of this application not being opposed, the costs of the application are to be costs in the cause of the action, alternatively are reserved for decision of the court hearing the trial of the action.

(b) That, in the event of the application being opposed, the party so opposing the application pay the costs arising out of such opposition."

Annexed to the notice of motion was an amended summons and amended particulars of claim. The latter contain allegations of alleged unlawful conduct on the part of certain police officers acting within the scope of their employment with the second defendant, resulting in vicarious liability on the part of the latter. It seems clear that the cause of action against first defendant Lane (breach of contract) was different from the cause of action against the second defendant Minister.

The application was initially opposed, but the opposition was abandoned, and on 22 December 1995 the matter came before another Judge who granted the order along the lines of what was applied for in the notice of motion.

On 30 January 1996 the amended summons and amended particulars of claim were served on the second defendant. This led to the filing of the special plea of prescription to which I have referred.

[41] I turn to listing some of the findings of the learned Judge, as summarised in the headnote, and I also offer some brief comments in comparison with the present case under consideration:

- The legislature intended, by its reference to "debt" in the Act, to refer to the obligation co-relative to the particular right of the creditor concerned, whether such obligation be one to pay money or to perform some act. This is a reference to the wording of section 15(1) of the Act stipulating that 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. I am in respectful agreement with this observation, which also seems to be in line with what was decided in *Allianz*.

- By its reference to a process whereby the creditor "claims payment of the debt" in section 15(1) of the Act, the legislature therefore intended to refer to a process by which the creditor claimed performance of the particular obligation owed to him, ie a process by which the creditor purported to enforce the right co-relative to such obligation.

Importantly in my view, the learned Judge, at 918F-I, appeared to endorse a submission by counsel for the applicant (not disputed by counsel for the respondent) that the application (perhaps best described as one preliminary to a joinder) was a "process" within the meaning of section 15(1) read with section 15(6) of the Act. At the risk of unnecessary repetition, I nevertheless revisit the provisions of section 15(6) to the effect that for purposes of section 15, "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.

It seems that in *Naidoo*, counsel for the Minister, after conceding that the application was a "process" falling inside the ambit of these subsections, argued that although it was a "process", it was not one "whereby payment of" such "debt" was "claimed" within the meaning of those subsections. It was argued that the second defendant could not become a party to the action, and no claim against him for payment of such "debt" would exist, for purposes of section 15(1), until the amended summons and amended particulars of claim were served on him as envisaged by the order of 22 December 1995. It appears that he submitted that, on the application as it stood, there could be no prosecution of any claim under the application *per se* in view of the provisions of subsections (2) and (4) of section 15, the wording of which I have quoted.

Counsel for the applicant countered these submissions by arguing that the application itself was a process by which payment was claimed of each "debt", notwithstanding that the successful prosecution of the claim for such "debt" necessarily would involve the taking of further procedural steps, including the service of the amended summons and amended particulars of claim.

Of course, in the case before me, the applicant launches a straightforward application to join the second respondent as a second defendant right away. There is no question of a preliminary type of joinder such as the one presented in *Naidoo*.

At this point it is convenient to record that such a distinction is also recognised by the learned Judge in *Waverley Blankets Ltd v Shoprite Checkers (Pty) Ltd and Another* 2002 4 SA 166 (CPD) where it was held that a joinder application, indeed, interrupted prescription. This is the next case which must come up for consideration, but it is appropriate to now quote what the learned Judge said at 174E-I:

> "In *Naidoo and Another v Lane and Another* 1997 2 SA 913 (D) it was held that service of an application for joinder did not interrupt prescription. Meskin J held that it was not 'process whereby the creditor claims payment of the debt' in terms of section 15. I respectfully disagree. In that case the applicant sought leave to join. Leave was granted and directions were given for implementing the joinder. In the present matter the plaintiff sought joinder, and the order of the court, granted by consent, was that the second defendant be joined in the action. No directions were given. On this narrow and technical basis it is possible to distinguish *Naidoo*'s case. But my disagreement is more fundamental than that. The notice of motion seeking joinder was undoubtedly 'process', see section 15(6). It can also be regarded as a 'document whereby legal proceedings [were]

commenced' against the second defendant. It seems to me, with respect to Meskin J, that the application for joinder was the first step whereby the plaintiff (as creditor) claimed payment of the debts from the second defendant, or as Howie J put it in *Cape Town Municipality and Another v Allianz Insurance Co Ltd* 1990 1 SA 311 (C) at 334H:

'1. It is sufficient for the purposes of interrupting prescription if the process to be served is one whereby the proceedings begun thereunder are instituted as a step in the enforcement of a claim for payment of the debt.'" (Emphasis added.)

It is noteworthy that Meskin J himself, in *Naidoo*, as did Comrie J in *Waverley Blankets* (I quoted the passage) agrees with the same conclusion of Howie J in *Allianz* at 334 that it is sufficient for the purposes of interrupting prescription if the process to be served is one whereby the proceedings begun thereunder are instituted as a step in the enforcement of a claim for payment of the debt – *Naidoo* at 919F-H.

- The proceedings begun under the application were proceedings to join the proposed second defendant as a party: by means of the application *per se*, neither plaintiff purported to enforce the right co-relative to the obligation to pay damages allegedly owed to such plaintiff by the proposed second defendant. Each plaintiff clearly intended that enforcement of the right co-relative to such obligation was to be effected by the substitution of the amended summons and particulars of claim, the service thereof on the proposed second defendant and the successful prosecution of the action under such amended summons and particulars. A process which was merely informative, and which was not one by which *per se* the creditor purported at all to enforce the right co-relative to the relevant obligation, was not a process for purposes of such section.

My first respectful observation, in commenting on these findings, is that they appear to fly in the face of the learned Judge's own endorsement of the observation by Howie J that it was sufficient for purposes of interrupting prescription if the process to be served was one whereby the proceedings begun thereunder were instituted as a step in the enforcement of the claim.

Secondly, of course, the present application for joinder before me is not "merely informative" but a straightforward application for joinder of the second respondent as a second defendant in the action.

The relief sought in prayer 2 of the notice of motion that the pleadings be served on the party after the joinder is simply procedural in nature. It does not affect the nature of the main relief sought, neither will it affect the consequences if the joinder were granted. Any other procedure or developments which may follow upon the joinder, will be nothing more than that, and taken care of by the provisions of the Uniform Rules of Court. The following is stated by the learned author Harms *Civil Procedure in the Superior Courts* at B-102:

> "Joinder and non-joinder are matters of substance rather than form. The common-law rules relating to the obligatory joinder of parties

> remain unaltered. The principal rule in this regard is that anyone with a direct and substantial interest in a matter must be joined. That person may be joined either as plaintiff or as defendant or as applicant or respondent."

This is exactly in line with the purpose of the application before me as described by the plaintiff in the founding affidavit and, more particularly, in paragraphs 4 and 7 thereof, the contents of which I have quoted – see also the observation in *Bowring NO v Vrededorp Properties CC and Another* 2007 5 SA 391 (SCA) at 398F-H where it is observed that "the enquiry relating to non-joinder remains one of substance rather than the form of the claim" and authorities there mentioned.

Of course, there is also clear authority for the joinder of a number of defendants either jointly, jointly and severally, separately or in the alternative under appropriate circumstances, in Uniform Rule 10(3).

- I find it useful to refer to some extracts from the judgment of Roper J in this Court in *S.A. Steel Equipment Co (Pty) Ltd v Lurelk (Pty) Ltd* 1951 4 SA 167 (TPD) where the plaintiff, like in the present case, also became uncertain as to which party ought to be held liable for the damages caused. The uncertainty only arose during preparation for trial. Joinder of a number of further defendants was granted by the Witwatersrand Local Division and the Full Court of this Division dismissed an appeal against such an order. I take the liberty to quote extracts from what the learned Judge said at 172 and 173:

> "They may have considered it unnecessary to make that provision in view of the fact that the Courts of South Africa have always claimed a Common Law power or inherent jurisdiction to add defendants either on the application of a party or on its own motion or at least to suggest the addition of further defendants who must at least receive notice of the proceedings."

At 172E-F.

And:

> "The power of the Supreme Court to order the joinder of further defendants in an action which has already begun is undoubted and, as I have said, it has been exercised in many cases. The reason for the existence of such power is that the Court is enabled to ensure that persons interested in the subject-matter of the dispute and whose rights may be affected by the judgment of the Court shall be before the Court, <u>and it also enables the Court to avoid multiplication of actions and to avoid waste of costs</u>." (Emphasis added.)

At 172H-173A.

And:

> "If the plaintiff had been uncertain as to which of the respondents was liable to him before he instituted his action he could have made use of the Rule *ab initio* and, <u>though it is suggested that his proper course in the present case is to abandon the present proceedings, pay the defendant's costs and start afresh, in my view the same result will be</u>

> achieved if the Court allows him to join the other respondents as defendants in the action now. Such a course will result in the avoidance of multiplicity of actions and waste of costs which the Court has always aimed at in the exercise of its power to join. I see no reason why the Court should not allow the plaintiff to do now what he could have done after the issue of summons had he been in any uncertainty as to who was the employer ... In my view the Court has the power to amend which was exercised by the Court below." (Emphasis added.)

At 173C-F.

What the applicant seeks to do with the present joinder application, is exactly what thousands of plaintiffs before him had been allowed to do and, indeed, had been encouraged to do when uncertain about which party to hold liable: join the defendants rather than to institute action afresh against other parties and, for example, thereafter to consolidate the actions. Doing so, avoids multiplication of actions and a waste of costs. This was spelt out in eloquent terms by the learned Judge in *S.A. Steel*.

As pointed out, it is generally accepted that the joinder application is a "process" in the spirit of section 15(6) of the Act. This process was served on the second respondent only months after the commencement of the running of the three year prescription period in March 2013. It is a process aimed at joining the second respondent as a co-defendant in the trial in terms of the well recognised and encouraged procedure illustrated in *S.A. Steel*. If a joinder is granted and the trial then takes its course, final judgment can be expected (unless, for example, there is a settlement) as foreshadowed in Rules 15(2) and 15(4), for example. The claim will then be prosecuted against the second respondent "under the process in question" as intended by the provisions of the subsections mentioned. At the very least, the proceedings against the second defendant, begun under this process, were instituted as a step in the enforcement of the claim for payment of the debt which would have led to interruption of prescription according to the finding of the learned Judge in *Allianz*.

In a word, to reject this approach which I have attempted to formulate, would be to argue that a fresh summons issued and served on the second defendant at the time when the joinder application was issued and served, would serve to interrupt prescription but the joinder application, which is the preferred procedure, would not. For the reasons mentioned, such a conclusion, in my respectful view, cannot be correct.

- Each of the plaintiffs relied for purposes of the application on a right which clearly was not the same, or even substantially the same, as the rights sought to be enforced in the action against the first defendant.

I respectfully agree fully with this observation. As mentioned, the cause of action against first defendant Lane was patently different from that against the Minister.

(iii) ***Waverley Blankets Ltd v Shoprite Checkers (Pty) Ltd and Another* 2002 4 SA 166 (CPD).**

[42] I have already referred to this case when dealing with the judgment in *Naidoo* and I quoted the passage, at 174E-H, where the learned Judge distinguished a straightforward application for joinder from what happened in *Naidoo*, where the applicant sought leave to join. I also pointed out that the learned Judge in *Waverley Blankets* concluded that the notice of motion seeking joinder was undoubtedly "process" as intended by section 15(6). This, as I mentioned, was a conclusion supported by the learned Judge in *Naidoo*. From the passage already quoted, it appears that Comrie J, in *Waverley Blankets*, also held that the notice of application for joinder "can also be regarded as a "document whereby legal proceedings [were] commenced". It was "a step in the enforcement of a claim for payment of the debt" as held by Howie J in *Allianz*, although in a different context.

[43] The rather complicated set of facts in *Waverley Blankets* would be difficult to summarise succinctly, but it appears that the applicant had sold and delivered goods to the "old" OK Bazaars during a lengthy period. Presumably this would have been blankets. Later the old OK Bazaars was taken over by Shoprite Checkers so that the latter was joined, by agreement, as a second defendant, and the former released. The issue appears to have been whether the joinder served to interrupt the running of prescription in respect of some of the earlier transactions.

At 174I-175E the learned Judge, in *Waverley Blankets*, considered the question whether the joinder could eventually lead to final judgment in the trial in which the respondent had been joined as a defendant. The learned Judge did so by dealing with what Howie J said on the subject (from 327I onwards) although, of course, in *Allianz* there was no question of a joinder but the issue was whether the preliminary action for declarators could serve to interrupt the running of prescription in respect of the later action for payment of the debt.

From 174I, Comrie J then continues:

> "One of the defendant's contentions was summarised by Howie J as follows at 327I:
>
> 'The crux of defendant's contention is that for such interruption to have occurred in the present case, the process had to have been one whereby payment of the debt was claimed; as defendant's debt could only be discharged by paying money, the claim, in order to effect interruption of prescription, had to be sounding in money; plaintiffs had not claimed money but merely sued for *declarators*; therefore, the summonses in question were not for 'payment of the debt' within the meaning of section 15(1) of the Act, and prescription had not been interrupted. Moreover, said defendant's counsel, it is clear that the *declarators* could never 'become executable' as required by section 15(4).'
>
> The learned Judge rejected this contention and his reasoning led him to formulate the second proposition at 334I:
>
> '2. A creditor prosecutes his claim under that process to final, executable judgment, not only when the process and the judgment constitute the beginning and end of the same action, but also where the process initiates an action, judgment in which finally disposes of some elements of the claim, and where the remaining elements are disposed

> of in a supplementary action instituted pursuant to and dependent upon that judgment.'

> The present case is not on all fours with this proposition in that here the joinder order did not resolve any issues of liability. It appears to me, however, that there is still a sufficiently close link between the joinder application and a final judgment sounding in money in the plaintiff's favour, if such should be granted on the merits. Thus the joinder application led to the joinder order, which in turn led to further pleadings and eventually to trial. But for prescription, it is open to the plaintiff to prove its case on the merits and to secure a final judgment. Compare sections 15(2) to (4). If prescription was not interrupted by the joinder application then, as will appear, it has not been interrupted at all, which strikes me as an artificial and unjust outcome tending to defeat the purpose of the statute."

[44] I find myself in respectful agreement with these observations of the learned Judge with regard to the effect of the joinder. Of course, as I pointed out, the learned Judge himself distinguished a joinder of this nature from the "provisional" type of application for leave to join which was applicable in *Naidoo*.

As to the effect of a joinder, it is, in any event, difficult to conceive of any situation where the joinder by itself resolves any issues of liability. It is not designed to do so. Neither would the institution of an action for later consolidation (as an alternative procedure, and as discussed when dealing with *S.A. Steel, supra*). As pointed out by Comrie J, the joinder application leads to the joinder order, which in turn leads to further pleadings and eventually the trial where the applicant has the opportunity to prove its case on the merits and to secure a final judgment in the spirit of, for example, sections 15(2) and 15(4). The same applies to the alternative procedure of instituting a fresh action. That also leads to pleadings and finally a trial followed by judgment.

In this regard, it is of particular importance, in my view, to bear in mind that Howie J, on careful consideration of his words, said exactly the same:

> "... but also where the process initiates an action, **judgment in which** finally disposes of some elements of the claim ..." (Emphasis added.)

It stands to reason that the joinder procedure in itself cannot resolve any issues of liability. That happens in the trial following upon the joinder.

It is useful to quote the following passage from *Allianz* where Howie J appears to deal with elements of this subject in the following terms at 329H-J:

> "With specific reference to the interruption of prescription, the common law position was that the running of prescription was interrupted by the debtor's acknowledgement of the debt, or by judicial interpellation. The latter involved serving a summons so as to institute action: *Kleynhans v Yorkshire Insurance Co Ltd* 1957 3 SA 544 (A) at 551C. *Wessels (op cit* para 2804 at 755) conveys that such action would be for the recovery of the debt. The purpose of serving as opposed just to issuing the summons was to effect an *in ius vocatio* so that the debtor would not be condemned without the opportunity of being heard. See the *Kleynhans* case *supra* at 551E-G:

> 'In common law the first thing to be done in a judicial proceeding was to call one's opponent before the judicial authority under whose jurisdiction he was <u>in order to have the dispute ended by judgment</u>.'" (Emphasis added.)

The same, of course, applies to a joinder procedure as opposed to the (less preferred!) procedure of instituting a fresh action.

Essentially on the same subject, and considering the 1943 Act, Howie J said the following at 331C-E:

> "The 1943 Act required that for the interruption of prescription the process served had to be one whereby proceedings were instituted for the enforcement of a right. Construing that requirement in *Santam Insurance Co Ltd v Vilakasi* 1967 1 SA 246 (A) at 253H, the majority of the Court held that the process envisaged was one whereby action was instituted 'as a step in the enforcement of a claim or right' whereby the creditor 'formally involves the debtor in Court proceedings for the enforcement of his claim'.
>
> In my view, it would be in keeping with the purposes of prescription and its operation in common law, and it would in no way defeat or impede the aim of the present Prescription Act, applying the same elasticity of language referred to earlier, to interpret section 15(1) along the same lines as set out in *Vilakasi*'s case."

[45] The learned Judge, Comrie J, in *Waverley Blankets*, then went on to find that the running of prescription *vis-à-vis* the second defendant was interrupted on a particular date by service of the plaintiff's application for joinder.

(iv) ***Peter Taylor and Associates v Bell Estates (Pty) Ltd and Another* 2014 2 SA 312 (SCA).**

[46] I take the liberty to summarise the essence of this judgment by paraphrasing from the headnote. The case concerns an appeal against a High Court order granting the first respondent's (Bell Estates') application for the appellant's (Taylor's) joinder as co-defendant in an action that Bell Estates had instituted against their insurer (the second respondent) for breach of contract arising from the insurer's repudiation of Bell Estates' insurance claim. The judgment of the Court *a quo*, which was reversed by the Supreme Court of Appeal in this matter, is reported as *Bell Estates v Renasa Insurance Co Ltd and Another* 2012 3 SA 296 (KZD). The joinder was sought on the basis that Taylor, as Bell Estates' insurance broker, had been privy to the requirement that the insurer cited non-compliance which warranted their repudiation, and that Taylor therefore owed Bell Estates a duty to convey the requirement but had failed to do so. Taylor's contention was that any claim which Bell Estates may have had against them had prescribed. The High Court, relying on the judgment in *Waverley Blankets*, held that the notice of joinder constituted a "process whereby the creditor claims payment of the debt" for purposes of section 15(1) of the Act, and that, consequently, service thereof had interrupted the running of prescription of the claim of Bell Estates against Taylor.

It was held on appeal that *Waverley* was wrongly decided, based on a misreading of the judgment in *Allianz*. The conclusion in *Allianz*, that for the purpose of interrupting prescription it was sufficient if the process to be served was one whereby the proceedings begun thereunder were instituted as a step in the enforcement of a claim for payment of the debt, as applied in *Naidoo* had to be accepted.

When the joinder application was analysed in the context of *Allianz*, it would be stretching the interpretation of the Act too far to say that the application in the present matter (*Peter Taylor*) constituted a "process whereby the creditor claims payment of the debt" and that its service therefore interrupted prescription. First, it could not be said that judgment in the joinder application (assuming it to be in favour of the applicant) would finally dispose of some elements of the claim – indeed, it would not dispose of any. Second, the causes of action in the joinder application and the claim for damages had nothing in common – it certainly could not be said that the two processes involved the self-same, or substantially the same, cause of action. The appeal was accordingly upheld with costs.

[47] I am bound by this judgment, unless there is room for a conclusion that it is distinguishable from the present case.

[48] The reasoning of the learned Judge of Appeal as to why the appeal had to fail, appears to be based on two legs – at 319B-D, where the learned Judge of Appeal states:

> "First, it cannot be said that judgment in the joinder application (assuming it to be in favour of the applicant) 'finally disposes of some elements of the claim'. Indeed, it would finally dispose of no elements of the claim, but would merely

> make it possible, from a procedural perspective, for the plaintiff to institute a claim against the defendant who had been joined. Second, the causes of action in the joinder application and the claim for damages have nothing in common. It certainly cannot be said that the two processes involve the self-same, or substantially the same, cause of action." (Emphasis added.)

[49] It is not clear whether the judgment is to be interpreted as meaning that the two "legs" exist independently from one another, in the sense that non-compliance with either would be dispositive of the appeal, leading to its failure. For present purposes, I must assume this to be the case, so that, if the present case is not distinguishable from *Peter Taylor* on both "legs", I am duty bound to dismiss the application for joinder before me.

[50] I find it convenient to first turn to the second "leg".

In *Peter Taylor* the causes of action against the two proposed defendants were clearly quite different: the cause of action against the insurer was for indemnification in terms of an insurance contract between the insured and the first defendant and the claim against the broker (Peter Taylor) was for damages on the grounds that the broker failed to properly advise his client. The same, of course, was the case in *Naidoo*.

In the present case, the causes of action are identical: in both cases the applicant claims indemnification on the basis of exactly the same contract of insurance. The only question is who the real insurer is. This issue has to be resolved by means of evidence.

As an example of a case where the causes of action were different, the learned Judge of Appeal, at 319D, referred to *Neon and Cold Cathode Illuminations v Ephron* 1978 1 SA 463 (AD) where it was held that the signing of a lease as surety and co-principal debtor in respect of the due payment of rentals flowing from a lease agreement, does not transform the accessory obligation of the surety into a joint principal obligation as co-lessee with the lessee.

In the result, I have come to the conclusion, and I find, that, on the second "leg", the present case is distinguishable from *Peter Taylor*.

[51] I turn to the first "leg".

[52] In *Peter Taylor*, the learned Judge, at 318H-319B, adopted the reasoning of Meskin J in *Naidoo* at 921B-D to the effect that "if such a judgment were to be obtained, the application itself in no way would have grounded such judgment: it would exist simply as a preliminary process by means of which the plaintiffs had placed themselves in a position by means of the subsequent service of the process constituted by the amended summons and the amended particulars of claim to claim payment of the damages suffered by them".

The joinder relief sought in *Peter Taylor* appears to be comparable with, although not identical to, the relief sought in *Naidoo* in respect of which Meskin J appears to have formulated his views, which were adopted by the learned Judge of Appeal.

[53] I make a few further remarks:

- I have pointed out that in *Waverley Blankets*, Comrie J, at 174E-H, distinguished the relief sought in *Naidoo* from the joinder order granted in *Waverley Blankets* where he said -

> "... in that case the applicant sought leave to join. Leave was granted and directions were given for implementing the joinder. In the present matter the plaintiff sought joinder, and the order of the Court, granted by consent, was that the second defendant be joined in the action. No directions were given. On this narrow and technical basis it is possible to distinguish *Naidoo*'s case ..."

  I already expressed the view that the relief sought in the matter before me is comparable to that in *Waverley Blankets*, so that, to that extent, the present case is distinguishable from *Peter Taylor*.

  As far as I can gather, this distinction was not debated before the learned Judge of Appeal so that it appears to be appropriate to rely thereon for present purposes.

- At the risk of unnecessary repetition, I nevertheless revisit the words of Comrie J following upon his conclusion that the two matters are distinguishable:

> "But my disagreement is more fundamental than that. The notice of motion was undoubtedly 'process', see section 15(6). It can also be regarded as a 'document whereby legal proceedings [were] commenced'

> against the second defendant. It seems to me, with respect to Meskin J, that the application for joinder was the first step whereby the plaintiff (as creditor) claimed payment of the debts from the second defendant, or as Howie J put it in ('*Allianz*'):
>
> '1. It is sufficient for the purposes of interrupting prescription if the process to be served is one whereby the proceedings begun thereunder are instituted as a step in the enforcement of a claim for payment of the debt.'"

I have dealt with this subject at some length. It does not appear, on my reading of *Peter Taylor*, that this particular point (the fact that it is generally accepted, also by Meskin J, that the joinder application was a "process" as intended by section 15(6) and that it was sufficient, according to Howie J, for the purpose of interrupting prescription if the process is one whereby the proceedings begun thereunder are instituted as a step in the enforcement of a claim for payment of the debt). I have already dealt with this subject at some length, and expressed the view, respectfully, that, in the present case, this is unquestionably the situation: the joinder was recognised over time (see *S.A. Steel*) as the preferred alternative to the institution of action. The process leads to the trial which leads to the judgment enforcing the claim – see also *Waverley Blankets* at 175D-E. This particular angle to the rather complex question does not appear to have been argued before the learned Judge of Appeal, nor dealt with in terms.

Moreover, there appears to be a clear distinction between the *Naidoo* type of provisional joinder which, according to Meskin J, does not finally dispose of some elements of the claim "but would merely make it possible, from a procedural perspective, for the plaintiff to institute a claim against the defendant who had been joined" – in the words of the learned Judge of Appeal at 319C-D, and the present case where, if the relief now sought were to be granted, there would be no question of or need for a further claim to be instituted. To this extent, as well, it seems to me that the present case is distinguishable from *Peter Taylor*.

- I add that the learned Judge of Appeal, at 315A-B and 315I-J, pointed out that it was not in dispute in *Peter Taylor* that the Rule 10(3) notice was served before the three year prescription period had expired but, by 31 May 2010, when Taylor raised a plea of prescription in his affidavit, three years had already expired. I cannot quite make out what the significance of this is, with respect, but a further distinguishing aspect between the two cases is the fact that in the present matter, when the prescription plea was raised in February 2014, the three year period, which started running in March 2013, had not yet expired.

- Another distinguishing aspect which does not appear to have been argued before the learned Judge of Appeal, as I read his judgment, is that the learned Judge, after adopting the reasoning of Meskin J, and analysing the joinder application in the context of *Allianz*, came to the conclusion that it cannot be said that judgment in the joinder application "finally disposes of some elements of the claim". It appears, with the greatest respect, that this approach may overlook the distinction between *Allianz* and a joinder application. There was no joinder application in *Allianz*. Howie J referred to the preliminary action for *declarators* **judgment in which** finally disposes of some elements of the claim (emphasis added). This is the culmination of the actions for *declarators* when the judgment is finally obtained. Similarly, in my respectful view, and as I have attempted to illustrate repeatedly, the judgment is finally obtained in the trial which flows from the joinder. Only at that stage are elements of the claim disposed of (if not all the elements) and not at the earlier stage of the process, namely when the joinder is granted. As Howie J puts it at 331D-E when referring to *Vilakasi*, "the process envisaged (also to do with the interruption of prescription) was one whereby action was instituted 'as a step in the enforcement of a claim or right' whereby the creditor 'formally involves his debtor in court proceedings for the enforcement of his claim'". There was also the reference by Howie J, at 335A-B to *Murray and Roberts* at 578 where it is stated:

> "Where the creditor takes judicial steps to recover the debt, and thereby to remove all uncertainty about its existence, prescription should obviously not continue running while the law takes its course."

[54] In all the circumstances, I have come to the conclusion that the present case is distinguishable from *Peter Taylor* for the reasons mentioned.

I also, with respect, endorse the remark by Howie J, at 334G, that "some of the key wording of section 15 must be given a wide and general meaning, consistent with a legislative intention to speak broadly rather than to define, and having regard to the spirit, scope and purpose of the Act".

Against this background, and for the reasons mentioned, I have come to the conclusion that it would be appropriate, and in the interests of justice, to grant the joinder application in the present matter.

<u>Costs</u>

[55] Given the complex nature of this issue, it seems to me that it would be appropriate to order that the costs of this application should be costs in the cause.

<u>The order</u>

[56] I make the following order:

1. The second respondent is joined as a second defendant in the main action.
2. All pleadings filed on record are to be served on the second respondent/defendant within ten days from the date of this order.
3. The costs of this application will be costs in the cause.

W R C PRINSLOO
<u>JUDGE OF THE GAUTENG DIVISION, PRETORIA</u>

73006-2012

HEARD ON: 25 JULY 2016
FOR THE APPLICANT: A GRANOVA
INSTRUCTED BY: T C HITGE INCORPORATED
FOR THE 2ND RESPONDENT: H P WEST
INSTRUCTED BY: LOUWRENS COETZER & PARTNERS