



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, (PRETORIA)

13/02/2015.

CASE NO: 20200/2011

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

13 February 2015



In the matter between

NGWENYA, MXOLISI NICHOLAS

PLAINTIFF

and

PAUL MASHA INC.

DEFENDANT

J U D G M E N T

MUDAU AJ:

[1] The plaintiff, who is described in the particulars of claim as 'a major male', was injured in a motor vehicle collision upon Thabo Mbeki Drive, Heidelberg, on 2 April 2004. He instructed attorneys (the defendant) to recover compensation from the Road Accident Fund in respect of the damages he had sustained as a consequence of his injuries. The plaintiff's claim had to be lodged within three years of the date of the collision, and any action necessary thereafter to enforce the claim had to be

instituted within five years of the date of collision. The debt in issue is one within the meaning of s 11 (d) of the Prescription Act 68 of 1969 and was thus susceptible to extinction by prescription after three years. Section 12(1) of the Act provides that prescription begins to run as soon as the debt is due.

[2] In his plea the defendant contends that it could not carry out the plaintiff's mandate to pursue the claim against the Road Accident Fund as the plaintiff failed/refused to provide it with the necessary documents relating to the hospital to which he was treated after the incident. Further that the plaintiff failed/refused to provide for a reference number with regard to his admission at the hospital.

[3] In this case, the defendant was served with a notice regarding this trial on 28 May 2014. However, there was no appearance for the defendant.

[4] At the beginning of the trial, the issue of quantum was in terms of rule 33 (4) of the uniform rules separated from the question of damages.

[5] It is the plaintiff's evidence that, on the day of the accident he was walking on the other side of the road when a motor vehicle approached from behind and knocked him. As a result, he sustained injuries that required treatment in hospital. As a result of the injuries sustained, he suffered damages. It is his evidence that the defendant was given everything relevant to pursue the claim with the Road Accident Fund.

[6] The plaintiff's mother, Mrs Ngwenya also testified and confirmed the plaintiff's evidence in as far as she was affected thereby. It is her evidence that the defendant was recommended to them by a neighbour, Miss Rika, who used to work for the defendant. It is further her evidence that she gave the defendant copy of the plaintiff's hospital card as well. During 2010 when she realised that there was no progress or any feedback by the defendant regarding this matter she went to the police station to seek advice. It was there that she was given the names of the current attorneys for the plaintiff who, took over the matter.

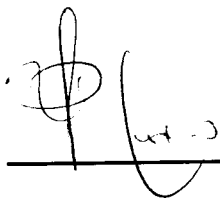
[7] It is trite that the attorney-client relationship imposes a duty on an attorney to advance the interests of his client. "*Professional negligence is the failure by an*

attorney to act with the competence reasonably expected of ordinary members of the attorney's profession. An attorney must be meticulous, accountable, ... He or she must serve his client faithfully and diligently and must not be guilty of any unnecessary delay. He or she must once he or she has undertaken the client's case, not abandon it without lawful reason or excuse. An attorney who fails to explain his or her precise instructions and lays possum invites an adverse inference against him or herself. Where a client's claim prescribes under his or her watch, he or she is guilty of a breach of his or her mandate and duty to his or her client by his or her failure to present countervailing evidence that his or her mandate and instructions were circumscribed and not open ended." (Ramonyai v L P Molohe Attorneys (2010/29310) [2014] ZAGPJHC 65 (27 February 2014) at para 16.)

[8] In this case, I am satisfied that had the defendant carried out his duties competently and diligently it would not have been difficult to pursue the plaintiff's claim against the Road Accident Fund with the information at his disposal. A *prima facie* case has been made for the damages that the plaintiff is claiming for.

[9] In the premises the following order is made:

An order is made in terms of a draft document marked 'X' dated 13 February 2015.

A handwritten signature in black ink, appearing to be 'Mudau TP', is written over a horizontal line.

**MUDAU TP
ACTING JUDGE OF THE HIGH COURT**