REPUBLIC OF SOUTH AFRICA

Reportable

THE LABOUR COURT OF SOUTH AFRICA,

IN JOHANNESBURG

JUDGMENT

Case no: J 1926/12

In the matter between:

POPCRU obo H B MOYO	Applicant
and	
MINISTER OF CORRECTIONAL SERVICES	First Respondent
NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES	Second Respondent

Heard: **03 August 2012**

Delivered: **06 August 2012**

Summary: (Urgent interdict – unlawful deductions for a debt – prescription).

JUDGMENT

LAGRANGE, J

Introduction

1] The applicant employee was involved in an accident in a vehicle belonging to the respondent in 2004. As a result of the accident, the respondent suffered damages of some R 40, 0000-00. The respondent has been deducting approximately R 1,100-00 of the applicant's salary since January 2012, to recover the amount of the loss for which it holds the applicant liable.

2] The applicant has never accepted liability for the loss nor has any court found him liable for the damage to the respondent's vehicle. It was only in July 2010, after a number of internal recommendations had been made that the loss be written off, that the Respondent's Chief Financial Officer decided that the applicant should be held accountable for the whole amount. In January 2012 the Respondent started making deductions.

3] What brought matters to a head was a letter received by the applicant on 25 July 2012, announcing that the respondent intended deducting 70 % of his service bonus payable in August 2012 to reduce the debt.

4] The union had already launched a separate application in March this year to set aside a financial circular issued by the respondent in terms of which it announced its intention to offset 70 % of service bonuses and merit awards to reduce the outstanding debt of correctional services staff. However, the incidence of deductions made pursuant to the circular will obviously vary according to when an individual official is due to receive such bonuses and the value of their alleged debt.

5] As things stand, the respondent will proceed to make the deduction this month from the applicant. It was not disputed that the deduction will amount to 35 % of the applicant's total remuneration due to him in August.

6] Section 23 of the Basic Conditions of Employment Act, 75 of 1997 ('the BCEA') states:

"(1) An employer may not make any deduction from an employee's remuneration unless –

a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or

(b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

(2) A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if—

(a) the loss or damage occurred in the course of employment and was due to the fault of the employee;

(b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;

(c) the total amount of the debt does not exceed the actual amount of the loss or damage; and

(d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money."

7] The planned deduction will exceed 25 % of the employee's remuneration for the month, thereby clearly breaching ss 23(2)(d) of the BCEA. The respondent has not provided any evidence that the deduction in August satisfies the requirements of ss 23(1)(a) or (b) either. The latter subsections apply equally to the monthly deductions made from the applicant's remuneration since January 2012.

8] The applicant claims that not only are the deductions in breach of the abovementioned provisions of the BCEA, but the debt which the respondent is proceeding to recover by way of deductions has prescribed.

9] In terms of s 11(d) of the Prescription Act 68 of 1969 ('the Prescription Act'), an ordinary debt prescribes after three years.

10] The respondent says that it did not have knowledge of the driver of the other vehicle involved in the accident at the time it occurred. The respondent's CFO who deposed to the respondent's answering affidavit rightly states that, "...a debt , whether contractual, delictual or arising otherwise is not deemed to be due until the creditor has knowledge of the debtor and the facts giving rise to the debt." Section 12 of the Prescription Act provides that:

> *" **12. When prescription begins to run.**—(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.*
>
> *(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.*
>
> *(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."*

11] While the legal proposition is correct, the respondent does not explain why it was only in 2010, that the applicant's liability became clear. From the supporting documents there is nothing to suggest that the respondent knew anything more in 2010, when it decided to hold the applicant liable, than what it knew in 2005. It certainly makes no allegation of what information it only acquired in 2010, that enabled it to establish the applicant's liability to its satisfaction. It also does not explain why it could not have acquired such information by exercising reasonable care.

12] In the circumstances, the respondent has no defence to a claim of prescription in respect of the principal debt. Likewise, even if the question of the debt having prescribed were ignored, the respondent provides no defence to the claim that it is acting in breach of ss 23(1) of the BCEA in respect of both the monthly deductions and the planned 70 % deduction in August. It also has no answer to the claim that the August deduction will breach ss 23(d) of the BCEA. Consequently, the applicant has demonstrated a clear right not to have any deductions made in respect of the alleged debt.

13] The respondent argues, with justification, that the applicant has known about the ordinary deductions since January and that the union was aware of the planned 70 % deduction since the circular was issued in March. Mr Ramawele, for the respondent did agree that the union would not necessarily have known about the deductions faced by each particular member, so it would not necessarily have known about the applicant's August deductions earlier.

14] However, the applicant has demonstrated a clear right not to have the deductions imposed and even though he could recover the unlawful deductions in due course through the mechanisms of the BCEA, there is no reason for the court not to prevent future deductions being made, as there is no dispute about the fact that they would be unlawful.

15] In respect of the deductions made from January to July 2012, since there is no serious dispute of fact, there is no good reason not to dispose of the dispute over those deductions at the same time thereby avoiding both parties incurring unnecessary costs in the future and taking up the court's time with a matter on which the merits have already been determined.

<u>Order</u>

16] In the light of the above, I find that the debt incurred by the respondents as a result of the conduct of the applicant arose no later than 2005 and accordingly prescribed no later than 31 December 2008;

17] It is ordered that:

17.1 The respondents must repay the applicant the aggregate sum of all the monthly amounts of R 1,136,82 already deducted from his monthly salary since January 2012, within 30 days of the date of this judgment.

17.2 The respondents are interdicted and restrained from making any further deductions from the applicant's remuneration in respect of the aforesaid debt with immediate effect.

17.3 The respondents must pay the costs of the application including the costs of counsel.

R LAGRANGE, J

Judge of the Labour Court of South Africa

APPEARANCES

APPLICANT:	J L Basson instructed by Grosskopf Attorneys
RESPONDENTS:	R P A Ramawele instructed by the State Attorney