



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2015/2022

In the matter between

REAOLEBOBA BOSALETSE N.O.

FIRST PLAINTIFF

LUCY AMMON N.O.

SECOND PLAINTIFF

PUMZILE F NGXITO N.O.

THIRD PLAINTIFF

MASEHLEPHO E MOHAJANE N.O.

FOURTH PLAINTIFF

TSIETSIE JOSEPH TAU N.O.

FIFTH PLAINTIFF

DITABA L SEBONYANE N.O.

SIXTH PLAINTIFF

AADIL MATHER N.O.

SEVENTH PLAINTIFF

AMOGELANG PATRICK MABILO N.O.

EIGHT PLAINTIFF

ESIAS JEREMIA GERBER N.O.

NINTH PLAINTIFF

YUSUF KERBELKER N.O.

TENTH PLAINTIFF

FLOYD TEU N.O.

ELEVENTH PLAINTIFF

RIAAN LAMBERTUS VAN WYK N.O.

TWELFTH PLAINTIFF

(In their capacities as Trustees of the
Jagersfontein Community Trust IT 225/2009)

and

MINISTER OF MINERAL RESOURCES AND ENERGY

DEFENDANT

Coram: Van Rhyn J

Heard: 22 October 2024

Delivered: 6 January 2025

Summary: Action for damages by plaintiffs - the trustees acting on behalf of Jagersfontein Community Trust - trust's application for prospecting rights submitted during 2009 - no prospecting rights granted by Minister - summons issued during 2022 for damages and mandamus - special plea of prescription of claim for damages - plaintiffs not holder of real right - consent of landowner of property on which the trust intended to prospect required by Minister - claim for damages dismissed.

ORDER

1. The Defendant's special plea of prescription is upheld.
2. The Plaintiffs' claim for damages is dismissed with costs, which costs shall include the fees of two counsel employed by the Defendant on Scale C and Scale B, respectively, as provided for in Rule 67A read with Rule 69

JUDGMENT

[1] The plaintiffs applied for prospecting rights in respect of diamonds from the defendant, the Minister of Mineral Resources and Energy during September 2009. During 2022 the plaintiffs issued summons against the defendant, claiming damages in the amount of R30 billion emanating from the loss of earnings which the Jagersfontein Community Trust (IT 225/2009) ('JCT') would have earned from 2013 to 2021 had the defendant executed its alleged mandate to grant the JCT's application for prospecting rights. This matter concerns the adjudication of the defendant's special plea of prescription in respect of the plaintiffs' claim for damages.

[2] In the particulars of claim the plaintiffs, cited in their capacities as the trustees of the JCT, seek the following relief:

‘(a) Damages in the amount of ZAR 30 billion for the loss of earnings the JCT would have marginally earned since 2013 to 2021.

(b) We further claim specific performance from the DME in the form of a mandamus to issue the prospecting right(s) which the DME had approved *ex lege* in 2010’.

[3] The plaintiffs allege that an application for prospecting rights in respect of diamonds (alluvial, general and diamonds in kimberlite), which appear in mine dumps (also referred to as ‘tailing dumps’) on the farm known as Subdivision 16 of the Farm Jagersfontein 14 (the ‘property’), district Jagersfontein, Free State Province, was submitted to the Department of Mineral Resources and Energy (‘DME’). The plaintiffs did not state on what date during September 2009 the application was submitted. On 23 September 2009 the DME gave notice in terms of s10 of the Mineral and Petroleum Resources Development Act 28 of 2002 (the ‘Act’) in terms whereof interested and affected persons are called upon to submit their comments in writing regarding the application before 23 October 2009. The plaintiffs, in accordance with the provisions of the Act, submitted the required Environmental Management Plan and contends that, despite all the requirements for the granting of the prospecting rights being met, the defendant has delayed the granting of the prospecting rights, notwithstanding ongoing demands by the plaintiffs’ erstwhile attorneys.

[4] The defendant filed a special plea, whereby it pleaded that in terms of the provisions of s 10(1) read with s 11(d) of the Prescription Act 68 of 1969 (‘Prescription Act’) the debt, if any, will be extinguished by prescription after the lapse of three years. The Plaintiffs’ claim for the alleged damages fell due during September 2013, at the latest, and summons was only served upon the defendant on the 6th of May 2022. The defendant furthermore denied that the letter of authority appended to the particulars of claim, a resolution by the trustees of the JCT to appoint Giorgi & Gerber Attorneys to act as the legal representatives on behalf of the JCT, constitute a resolution by the trustees of the JCT. Not all the trustees have signed the resolution. The said firm of attorneys has since withdrawn as the legal representatives of the plaintiffs. At the hearing of the matter the plaintiffs were not represented by a legal representative due

to the withdrawal of all their previous attorneys of record. Mr R L van Wyk, the twelfth plaintiff, appeared on behalf of the plaintiffs.

[5] The defendant furthermore pleads that the application submitted by the plaintiffs was processed in accordance with the provisions of s 9(1)(b) of the Act which provides that if more than one application for prospecting rights, a mining right or a mining permit, in respect of the same mineral and land, has been received, the applications received on different days must be dealt with in order of receipt of such applications. It is averred that the application by the plaintiffs overlapped with two other applications in respect of the same land. The first application was lodged by Wheatfields Investments 168 (Pty) Ltd for a prospecting right. The second application was a conversion, converting old rights into new ones by De Beers Consolidated Mines Ltd ('De Beers'). Therefore, on 23 September 2009, the plaintiffs were informed and advised to:

- (a) Submit an Environmental Management Plan in terms of s16(4) of the Act;
- (b) Notify and consult the land owner or occupier or any affected party of the request to prospect;
- (c) Submit a report or results of consultation with the owner or affected occupant of the land.

[6] Pending the outcome of the first and second applications in respect of the same property and compliance with the abovementioned requirements, the application was placed in abeyance and was only re-activated and processed during February 2012. Section 16(4)(b) of the Act requires an applicant to hold a consultative meeting with a land owner, lawful occupier or another person with interest on the land in respect whereof the application for a prospecting right has been submitted with the DME. The purpose is to obtain consent from the holders of rights and all interested parties to prospect on land on which interested parties hold rights. The defendant contends that the plaintiffs failed to furnish the requisite consent from the land owner or affected parties with rights over the property. On the 19th of February 2013 the defendant dispatched a letter to the then legal representatives of the plaintiffs declining its application to prospect on the tailing dumps situated on the property.

[7] The plaintiffs deny the applicability of s10(1) and 11(d) of the Prescription Act on the grounds that a prospecting right is a limited real right which does not give rise

to a debt that can be extinguished through prescription. The plaintiffs furthermore deny that a letter was received informing the plaintiffs that the application for prospecting right at the property had been declined by the defendant.

[8] The defendant presented the testimony of Ms Kalipa Kaewuti ('Ms Kaewuti') who is employed as the regional manager at the DME at Welkom, Free State Province. Prior to and during 2013 she was the acting regional manager at the DME. Her responsibilities include the regulation of the mining industry in the Free State Province and, in her position as head of the department, is responsible to oversee the applicable time frames and the process of applications for mining and prospecting rights lodged with the DME. Subsequent to investigating the applications and after compliance with the provisions of the Act have been ascertained, recommendations to the defendant regarding the granting or the rejection/refusal of applications are made. Ms Kaewuti explained that the application submitted by the plaintiffs took approximately 4 years to complete due to the fact that other applications pertaining to the same property had been received by the DME prior to lodgement of the application by the plaintiffs. The time frame to process an application in accordance with the provisions of the Act is 6 months.

[9] On 1 March 2012 the plaintiffs were informed in writing by Ms Kaewuti that, following the decision of the Free State High Court on 13 December 2007, that De Beers is the owner of the tailing dumps situated on the property, the plaintiffs are requested to submit a consent letter from De Beers to prospect the tailing dumps on the property. I will again refer to the said judgment herein later. The consent was expected to reach the defendant by 2 April 2012. Numerous written requests to submit the consent from De Beers were forwarded to the plaintiffs and the time period within which such consent had to be submitted was extended several times in an endeavour to assist the plaintiffs with its application. On 5 February 2013 correspondence was sent per email to the then attorneys acting on behalf of the plaintiffs by Ms Kaewuti informing the plaintiffs that the application is still in process and the JCT will be informed of the outcome of the application in due course. Ms Kaewuti testified that the DME did not receive a letter of consent by De Beers as requested from the plaintiffs.

[10] Ms Kaewuti explained that it was procedure to send correspondence per email or per fax to applicants and to send the original letter per registered post. On 19

February 2013 the defendant signed the refusal to grant the prospecting rights to the plaintiffs. The defendant is not in possession of any proof that the letter of refusal was indeed sent per mail, per fax or per registered post to the attorneys who acted on behalf of the plaintiffs at the relevant time due to the time elapsed since 2013, but can only rely on the fact that it was the usual procedure.

[11] During cross examination Ms Kaewuti explained that, prior to the said letter of refusal, the plaintiffs, through its previous legal representatives, corresponded with the defendant on a constant basis to demand compliance with the prescribed time periods, to threaten with legal action and to obtain progress reports regarding the application. However, since the letter of rejection of the application was dispatched to the plaintiffs on 19 February 2013, no further correspondence and demands were received from the plaintiffs. It was not put to Ms Kaewuti that the plaintiffs sent further correspondence to the defendant after 19 February 2019. No further correspondence is contained in the file in Ms Kaewuti's possession at the DME after the letter of rejection up until a letter of demand from the plaintiffs was received during 2022. The plaintiffs declined to present any oral evidence at the hearing of the special plea.

[12] The argument on behalf of the plaintiffs is that:

- (a) In terms of s 5(1) of the Act a prospecting right, *inter alia* granted in terms of the Act, is a limited real right;
- (b) Sections 10(1) and 11(d) of the Prescription Act are not applicable because the prospecting right is a limited real right and not a personal right;
- (c) A debt is an obligation to pay money, render a service or deliver goods, and only a personal right and not a real right can give rise to a debt that can be extinguished by prescription; and
- (d) the extinguishment of a debt through prescription is a *prima facie* limitation on the plaintiffs' fundamental right to access the court, as well as a *prima facie* limitation on the plaintiffs' fundamental right and real right not to be arbitrarily deprived of property. Such limitation is not justified in an open democracy based upon freedom, equality and human dignity.

[13] The defendant contends that the special plea of prescription is only in respect of the claim for damages and not in respect of the claim for specific performance in

the form of a mandamus. As to the claim for damages, no limited real right has been created because no prospecting right was granted to the plaintiffs. In the event of the court finding that a right existed, it has in any event prescribed.

[14] Extinctive prescription regulates the effect of the passage of time on obligations and is a feature of all modern legal systems. Extinctive prescription causes effective loss of the right to enforce an obligation after a certain period of time whereas the term 'obligation' denotes the legal bond between parties produced by contract, delict, unjust enrichment or statute.¹ Section 17 of the Prescription Act provides that a court shall not of its own notion take notice of prescription. A party to litigation who wishes to raise prescription must raise the matter in the pleadings. This is what the defendant did in its special plea.

[15] Chapter III of the Prescription Act provides for the prescription of debts. It is apposite to quote s10(1) and s 11(d) of the Prescription Act:

'10. Extinction of debts by prescription

- (1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.'

and

'11 Periods of prescription of debts

The periods of prescription of debts shall be the following-

- (a) . . .
- (b) . . .
- (c) . . .
- (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.'

[16] Section 12(1) of the Prescription Act provides that prescription shall commence to run as soon as the debt is due. The term 'debt' is not defined in the Prescription Act. It has however been held that, for purposes of the Prescription Act, ' . . . the term has a wide and general meaning and that it includes an obligation to do something or refrain from doing something . . .'² A debt is due when the creditor acquires a complete cause of action for the recovery of the debt, that is, when the entire set of facts which the creditor must

¹ M M Loubser *Extinctive Prescription* (1996) at 1.

² *Barnett and Others v Minister of Land Affairs and Others* 2007 (6) SA 313 (SCA) at 321I-J.

prove in order to succeed with his or her claim against the debtor is in place or, in other words, when everything has happened which would entitle the creditor to institute action.³ Cause of action means ' . . . every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact ...'⁴

[17] The plaintiffs contend that the defendant failed to fulfil its statutory duties by arbitrarily failing or refusing to issue the prospecting rights in respect of the tailing dumps situated on the property for which the plaintiffs submitted its application on 15 September 2009. According to the plaintiffs, the above transpired subsequent to the defendant creating a legitimate expectation that defendant would issue the impugned prospecting rights. The reason for this argument is that the Plaintiffs' Environmental Management Plan (EMP) had been approved by the DME. The plaintiffs furthermore contend that s17(5) of the Act provides that the granting of a prospecting right in terms of subsection (1) becomes effective on the date on which the environmental management programme provided for by the plaintiffs is approved in terms of s 39 of the Act.

[18] Of relevance to the dispute is the following background: During March 2006 De Beers brought an application against a mining company, Ataquia Mining Pty Ltd, prohibiting any prospecting operations on the tailing dumps situated on Subdivision 16 of the farm Jagersfontein 14, being the property relevant to the plaintiffs' application for prospecting rights. The court held that De Beers is the owner of the tailing dumps situated on the property.⁵ Wheatfields Investments 168 (Pty) Ltd applied for a prospecting right in terms of s 16 of the Act on 27 July 2009 to prospect diamonds (general and in kimberlite) in respect of the tailing dumps (only) on the property. On 15 September 2009 the plaintiffs applied for a prospecting right in terms of s 16 of the Act to prospect diamonds (general, alluvial and in kimberlite) in respect of the same tailing dumps (only). De Beers subsequently lodged an appeal in terms of s 96 of the Act against the decision of the DME to accept the latter two applications for prospecting rights. From an internal memorandum by the Regional Manager: Mineral

³ *Truter and Another v Deyssel* 2006 (4) SA 168 (SCA) at [16] referred to with approval in *Links v Department of Health* 2016 (4) SA (CC) at para 31.

⁴ *McKenzie v Farmers' Co-Operative Meat Industries Ltd* 1922 AD 16 at 23.

⁵ *De Beers Consolidated Mines Ltd V Ataquia Mining (Pty) Ltd and 3 Others* (3215/06) [2007] ZAFSHC 74 (13 December 2007).

Regulation of the Free State Region dated 20 July 2010 it is evident that the stance of the DME was that prospecting rights in terms of the provisions of s 5(4) of the Act have not been granted in respect of the property. Neither Wheatfields Investments 168 (Pty) Ltd nor the plaintiffs acquired the right to prospect for diamonds on the property and any mining activity taking place on the relevant tailing dumps on the property will therefore be illegal. The said internal memorandum is included in the 'Plaintiffs' Evidence Bundle'.

[19] On 2 February 2012 the then attorneys acting on behalf of the plaintiffs, Vorster & Marx Attorneys of Paarl, addressed a letter to Ms Kaewuti enquiring regarding the progress of three applications for prospecting rights, one being that of the plaintiffs. The DME is requested to furnish the plaintiffs with reasons regarding the conversion permit issued in respect of De Beers with the view of launching a review application. From paragraph 31 of the said letter, it is evident that the plaintiffs gave instructions to the attorneys to pursue an urgent interim interdict to obtain the cessation of illegal mining of the tailing dumps and to obtain a mandamus to direct that the defendant proceed to apply the provisions of the Act in respect of the JCT's application. A response by no later than 9 February 2012 was awaited.

[20] On 1 March 2012 Ms Kewuti addressed a further letter to the plaintiffs informing the plaintiffs that following the decision of the Free State High Court that De Beers is the owner of the tailing dumps on the property, the plaintiffs are requested to consult with De Beers and to submit a consent letter to prospect the tailing dumps. On 29 March 2012 a further letter was dispatched per email to Ms Kewuti again threatening urgent court proceedings. On 3 April 2012 Vorster & Marx Attorneys addressed correspondence to Ms Kewuti explaining that the plaintiffs will comply with the DME's request to consult with De Beers even though they remain of the view that a consent letter from De Beers is not required by the Act. The defendant was once more informed that the attorneys hold instructions to proceed with an urgent application if a response and the information requested are not received by no later than close of business on 13 April 2012. From the contents of the 'Plaintiffs' Evidence Bundle', submitted during the hearing of the special plea, it is evident that the plaintiffs engaged with De Beers in an endeavour to obtain the said company's consent to prospect for diamonds on the tailing dumps on the property.

[21] On 12 April 2012 Vorster & Marx Attorneys informed Ms Kewuti that De Beers refuses to participate in a process of consultation with the plaintiffs. The plaintiffs therefore argued that the failure of De Beers to consult cannot constitute a ground for the refusal of the plaintiffs' application for prospecting rights and insisted upon the issuing of the prospecting rights by the defendant. With reference to numerous demands made to the DME since December 2011 in respect of the plaintiffs' 'pending application' the defendant is requested to grant the plaintiffs' application for the prospecting rights without further delay.

[22] From the contents of the correspondence addressed to the DME it is clear that the plaintiffs had been of the view, at least during 2012, that it had not acquired the right to prospect for diamonds on the tailing dumps on the property and therefore threatened legal action in the event of the defendant not granting the application. Section 16 of the Act provides that any person who wishes to apply to the Minister for a prospecting right must lodge the application in the prescribed manner at the office of the Regional Manager in whose region the land is situated together with the prescribed application fee. Subsection (3) provides that the Regional Manager must notify the applicant in writing if the application does not comply with the requirements of the section. Subsection (4) provides that if the application is accepted by the Regional Manager, an Environmental Management Plan must be submitted. The plaintiffs complied with the provisions of s16(4) of the Act and submitted the said document. After consultation with the landowner or lawful occupier of the relevant property or land, the result of the consultation must be submitted with the DME. The Regional Manager must, after receipt of the information, forward the application to the defendant for consideration.

[23] From the evidence tendered by the defendant it is evident that a recommendation was made not to grant the application for the prospecting rights to the plaintiffs on the basis that the landowner, De Beers, did not consent to the issuing of the prospecting rights in respect of the tailing dumps situated on its property. De Beers have not been cited as a party having an interest in the current court proceedings. I therefore agree with the submission on behalf of the defendant that the plaintiffs have not acquired a right to prospect for diamonds in respect of the property due to the fact that the application to acquire such right was declined by the defendant on 19 February 2013. The plaintiffs' argument is that its claim against the defendant is

not a 'debt' under the Prescription Act because the Act, more specifically section 5 (1) of the Act, provides that prospecting rights and mining rights are limited real rights. The plaintiffs, with reliance upon *Makate v Vodacom (Pty) Ltd* 2016 (4) SA 121 (CC) ('*Makate*') contends that a debt as contemplated in s 10 of the Prescription Act does not cover the claim of the plaintiffs and thus, so the argument goes, the claim has not been extinguished by prescription. Furthermore, s 39(2) of the Constitution places every court under a peremptory duty to interpret legislation and to develop the common law to promote the spirit, purport and objects of the 'rights and freedoms in the Bill of Rights'. The plaintiffs, as the trustees of a community trust, act for the benefit of the previously and currently disadvantaged persons of Jagersfontein and in effect, their right to access the court would be limited should the defendant's special plea be upheld.

[24] Section 5 of the Act provides that a prospecting right, mining right, exploration right or production right granted in terms of the Act and registered in terms of the Mining Titles Registration Act 16 of 1967 is a limited real right in respect of mineral or petroleum and the land to which such right relates. In terms of the provisions of s 5(2) of the Act, the holder of a prospecting right is entitled to the rights referred to in this section and such other rights as may be granted to, acquired by or conferred upon such holder under the Act or any other law. A 'holder' in relation to a prospecting or mining right/permit means the person to whom such right or permit has been granted or such person's successor in title. Section 5A of the Act provides that no person may prospect for or remove, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with the work incidental thereto on an area without permission, a prospecting right or mining right/permit, as the case may be.

[25] Section 34 of the Constitution entrenches the right of access to courts and to have disputes resolved by a court. In *Zwane v Minister of Justice and Constitutional Development and Another* [2023] ZAGPPHC 214 74773/2014 (13 March 2023) it was confirmed that the purpose of s 12(3) of the Prescription Act is to strike a fair balance between the need for a definite date beyond which a person can no longer pursue their claim if they have not acted diligently and the need to ensure fairness in cases

where rigid application would result in injustice.⁶ In terms of the dictionary meaning of 'debt', as accepted in *Makate*⁷, an obligation to pay money, deliver goods or render services is included under the definition and would prescribe within three years under the Prescription Act. Real rights give rise to competencies, not correlative personal obligations that translate into a 'debt' for the purpose of prescription.⁸ The plaintiffs' contention that its 'real right' cannot prescribe is premised upon an incorrect understanding of the test to determine whether a right is real as opposed to being a personal right as explained by the Supreme Court of Appeal⁹. The facts in *Makate* are clearly distinguishable from the matter at hand. A prospecting right has not been granted to the plaintiffs and neither has such right been registered in accordance with the provisions of the Mining Titles Registration Act 16 of 1967. The plaintiffs did not obtain any prospecting rights in relation to the property and therefore its contention that the JCT is the holder of a real right as opposed to a personal right is incorrect.

[26] The defendant has raised a special plea of prescription in respect of the claim for damages by the plaintiffs. The question is therefore whether the plaintiffs claim for damages premised on the non-issuing of the prospecting right has prescribed or not. The term 'debt' commonly refers to the relationship between the parties where the one has a duty to render some performance and the other has a correlative right to such performance. As already stated, the plaintiffs submitted its application for the prospecting right in relation to the property of which De Beers is the owner during September 2009. The defendant's duty to render the required performance, to grant the prospecting rights to the plaintiffs, remains a personal obligation between persons and the required performance by the defendant is a 'debt' in the most common sense of the word. In *ESCOM v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) the following definition of debt was provided: 'It was common cause in this Court that a debt is – "that which is owed or due; anything (as money, goods or services, which one person is under obligation to pay or render to another" '.¹⁰

⁶ *Zwane v Minister of Justice* at [13].

⁷ *Makate* at para 83 and 85.

⁸ *Absa Bank Ltd v Keet* [2015] ZASCA 81; 2015 (4) SA 474 (SCA) at para 21.

⁹ *Willow Waters Homeowners Association (Pty) Ltd v Koka N.O.* [2014] ZASCA 220; 2015 (1) SA 304 (SCA) at para 16.

¹⁰ *ESCOM v Stewarts and Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A) at 344E-F.

[27] Notwithstanding the numerous letters addressed by the plaintiffs to the defendant during 2009 to 2012 and the constant threat of legal action in the event of the defendant failing to reply or grant the prospecting rights to the plaintiffs, the plaintiffs did not proceed with legal action until 2022 when summons was issued. The plaintiffs did not bring an application to compel the defendant to come to a decision in respect of the application for prospecting rights. Section 96 of the Act provides that any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of the Act, may lodge an appeal within 30 days after becoming aware of such administrative decision. Section 6 of the Act furthermore provides that, subject to the Promotion of Administrative Justice Act 3 of 2000, any administrative process concluded or decision taken in terms of the Act must be concluded or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness. The plaintiffs have not acted diligently in that it instituted the action against the defendant approximately 9 years after it knew, or reasonably ought to have known, that the application for prospecting rights has been declined.

[28] The plaintiffs, apart from contending that the JCT did not receive the notice of refusal of its application, did not disclose when it eventually obtained knowledge of the refusal of the application for prospecting rights. In a number of cases it has been held that a debt becomes 'due' when the creditor acquires the right to institute action or when the creditor has 'a complete cause of action' in respect of such debt.¹¹ Having regard to the provisions of s 6 of the Act read with the provisions of s 96 of the Act, any cause of action which the plaintiffs may have becomes 'complete' when it gives rise to an 'enforceable claim' which would have been 30 days after a decision of the defendant being made, or in the event of the plaintiffs not being aware of such decision as contended by the plaintiffs in the matter at hand, the failure of the defendant to make such administrative decision, within a reasonable time. The plaintiffs knew, or reasonably ought to have known that the application was not granted and that the debt arose by 19 February 2013, or at the latest by September 2013. The plaintiffs' claim for damages, if any, was thus extinguished by prescription by 19 February 2016, or at the latest, by September 2016. The action against the defendant was only instituted

¹¹ *Deloitte Haskins & Sells Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991 (1) SA 525 (a) at 532H.

some 9 years after the plaintiffs knew or reasonably ought to have known that the application for prospecting rights had been declined.

[29] Section 96(3) of the Act furthermore provides that no person may apply to the court for the review of an administrative decision contemplated in subsection 96(1) of the Act until the internal appeal proceedings have been exhausted. It is not the case of the plaintiffs that they have complied with the provisions pertaining to the internal appeal proceedings, nor did the plaintiffs apply to the court for the review of the decision of the defendant not to grant the application for the prospecting rights. In the result, the plaintiffs are not entitled to the relief claimed in prayer 1 of the particulars of claim. There is no reason why costs should not follow the result.

ORDER

[30] in the result the following order is made:

1. The Defendant's special plea of prescription is upheld.
2. The Plaintiffs' claim for damages is dismissed with costs, which costs shall include the fees of two counsel employed by the Defendant on Scale C and Scale B, respectively, as provided for in Rule 67A read with Rule 69


VAN RHYN J

Appearances

For the Plaintiffs:

R L van Wyk

Instructed by:

In person on behalf of
the plaintiffs

For the Defendant:

K D Moroka SC

L Tlelai

Instructed by:

State Attorney
Bloemfontein