



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

**CASE NO: EL 535/2017
NOT REPORTABLE**

In the matter between

MNCEDISI VENA

Plaintiff

and

MINISTER OF POLICE

Defendant

**JUDGMENT IN RESPECT OF INTERLOCUTORY
ISSUE ARISING UPON TRIAL**

HARTLE J

[1] The parties in this matter agreed to argue a special plea on prescription by way of a stated case. They were not intent on doing so until I noted the oddity that they imagined that the plea could be disposed of by way of argument and without resort to oral evidence.

[2] An essential feature of this action, which I cannot ignore, is that although a special plea of non-compliance with the provisions of the Institution of Legal Proceedings against Certain Organs of State Act, No. 40 of 2002 (“ILPACOSA”) was also raised on the pleadings, the plaintiff disposed of this by bringing an application for condonation under its provisions.

[3] This application was not opposed by the defendant and an order was granted condoning the plaintiff’s non-compliance with the provisions of section 3 (2) of the ILPACOSA.

[4] The plaintiff alleged in his founding affidavit filed in support of the said application that his claim had not prescribed. The essence of his claim which relates to the negligent handling of a criminal investigation in which he was the complainant and which he alleges led to him suffering damages, is that the investigating officer assigned to the case made a misrepresentation that there was no documentary evidence to support his case against the relevant accused person. This, in his view, led to the Deputy Director of Public Prosecutions provisionally declining to prosecute the matter on 28 May 2014. Even after the Deputy Director of Public Prosecutions advised of his decision, it seems from the contents of the statutory notice dated 16 November 2015, however, that the plaintiff continued unsuccessfully to engage with the investigating officer and the station commander at the N1 Police Station in respect of the unsatisfactory conduct of the investigation. One of the unfortunate results of this mismanagement of the matter is that the suspect, who was in fact arrested by him, was released.

[5] It was later established, also by his own efforts, that the suspect had left the country.

[6] It is asserted in the statutory demand that certain monies of which the plaintiff had been fleeced by the suspect could not be recovered or properly dealt with according to law “*because the police had not done their work diligently*”. The summons was issued on 4 May 2017, within three years at least of the Deputy Director of Public Prosecution’s provisional decision not to prosecute.

[7] In his particulars of claim the plaintiff pleads that on 3 June 2015 the National Prosecuting Authority, Mdantsane Magistrate's Court, declined to prosecute the case which appears to be a further fact relative to the plaintiff's contention that the claim has not prescribed.

[8] The special plea that was supposed to be the subject of the trial before me appears to construe the date on which the debt arose as being in 2012 (sic) which is when the "*improper conduct and negligent conduct of investigation*" occurred.

[9] The plaintiff has not replicated to the plea of prescription.

[10] In the stated case prepared by the parties' counsel, the essential dates on which the plaintiff relies as to when prescription started to run are not asserted with any clarity.

[11] These facts are in my view critical to the question of law whether the claim has prescribed and counsels' respective contentions in respect thereof, but they have been omitted in the stated case.

[12] I raised the inadequacy of the stated case during argument with counsel. Mr. Silevana seemed to agree that something was amiss and made a plea for the statement to be amended or amplified. The defendant on the other hand, represented by Mr. Ngadlela in these proceedings, was insistent that the stated case bound the plaintiff and could not be amended even after I pointed out to him that it does not even nearly reflect the important facts that were outlined in the condonation application.

[13] The waters seem also to have been muddied by an implied suggestion that the plaintiff did not acquire knowledge of the facts and the identity of the defendant until the plaintiff consulted with Malusi & Co. Attorneys who at some stage represented him. This does not seem to be relevant, but from the defendant's perspective the important factual outlay on which he seeks to base his contention that the cause of action arose earlier, or that the plaintiff had constructive knowledge of the identity of the debtor and the facts from which the debt arises earlier than the

date on which the plaintiff claims prescription ought to have commenced running, is also absent or at least incomplete. (Not all the key dates and their relevance in fact are manifest in the stated case.)

[14] Since the burden is on the defendant to establish the special plea¹ it is also not in his best interests for this court to determine the legal question of prescription on the basis of the stated case as it is presently formulated.

[15] A stated case that forms the basis for the contentions and arguments thereupon in terms of Uniform Rule 33 (1) should be the product of the parties' agreement and not be dictated by the court.

[16] Mr. Silevana asked this court to permit an amplification/amendment thereof which I think would be wise. Such an amplification would also assist the defendant to advance his case in a clearer fashion. However he did not indicate how he would like to amend and the parties have, by obvious reason that the proposed amendment was not cast in writing or properly formulated, seriously engaged with the proposed "new" material that he believes should be included.

[17] Where facts in a stated case are inadequately stated, it appears that a court should decline to entertain it.² Although I commenced hearing argument, I can see no reason why, given the parties obvious dissent that the agreement comprehensively straddles all the necessary facts relevant to the issue that must be determined, I should be precluded from making such a ruling at this point. Indeed to proceed with the matter under these circumstances will have serious ramifications for both parties and not be in the interests of justice.

[18] It should fall to the parties to either revise their agreement, or, if not so inclined, for the matter to proceed on trial to obviate any prejudice to either of them.

¹ *Gericke v Sack* 1978 (1) SA 821 (A) at 826 H – 827 D.

² See in this regard *Minister of Police v Mboweni* 2014 (6) SA 256 (SCA) at 261 H. See also *Bane & Others v D'Ambrosi* [2010] 1 All SA 101 (SCA) 17 September 2009 at [7] confirming the expectation that parties are to be unequivocally bound by the facts mentioned in the stated case, and *Mtokonya v Minister of Police* 2018 (5) SA 2 (CC) (19 September 2017) which also sets out the consequences and binding nature of a stated case.

[19] The order that issues is as follows:

1. The court declines to hear the stated case as presently formulated on the basis that the facts recorded therein have been inadequately stated.
2. The matter ought therefore to proceed on trial, if not on the basis of an amplified amended statement of case such as the parties may agree upon.
3. The costs are in the cause.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF HEARING : 2 & 3 June 2025

DATE OF JUDGMENT : 4 June 2025

Appearances:

For the applicant: Mr. V Silevana instructed by Sotenjwa Attorneys, East London (ref. Sotenjwa).

For the defendant: Mr. D Ngadlela instructed by The State Attorney, East London c/o Shared Legal Services, King William's Town (ref. Mrs Dlanjwa).