



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable
Case No: JS382/2023

In the matter between:

ABRAM MAKANYANE MATHEBE

Applicant

And

CULLINAN DIAMOND MINE (PTY) LTD

First Respondent

CHIEF INSPECTOR OF MINES

Second Respondent

Heard: 26 March 2025

Delivered: 01 August 2025

JUDGMENT

ANESTIDIS, AJ

Introduction

[1] The matter was set down for the ventilation of the first respondent's special plea

to the applicant's statement of case.

[2] During July 2023, the applicant launched a statement of case, wherein he made *inter alia* the following averments:

- 2.1 the applicant sustained an occupational injury on duty, namely asthma;
- 2.2 a specialist medical practitioner confirmed his condition and issued a certificate instructing his employer (the first respondent) to remove him from site with immediate effect;
- 2.3 the first respondent refused to do so, despite several requests made to various employees and offices within the first respondent;
- 2.4 the "DMRE" instructed the first respondent to move the applicant to a different position, which the first respondent duly did;
- 2.5 the applicant's medical condition deteriorated and he was placed on sick leave for six months;
- 2.6 the first respondent failed to comply with various provisions of the Mine Health and Safety Act¹ (the MHSA);
- 2.7 the DMRE failed to follow up on his complaint and he then referred his matter to the public protector (a former respondent in this matter) wherein he complained against the DMRE for not being considerate to his situation; and
- 2.8 the applicant sought the following relief:
 - 2.8.1 compensation for general damages to his health;
 - 2.8.2 loss of earnings in that he has been unable to find work in mining, due to his condition; and
 - 2.8.3 for the public protector to take responsibility for its failure to complete the investigation, circumvent due processes and prejudice to the applicant.

[3] Various annexures are annexed to the statement of case. In terms of annexure A thereto, it is recorded that according "*to the mine records he worked at the mine until he served his resignation notice in February 2018..., and in March 2018 he was done (sic) an exit medical and was found fit to exit the mine...*"

[4] During August 2023, the first respondent delivered a reply to the applicant's statement of case, *albeit* that it applied for condonation for the late filing of same.

¹ Act 29 of 1996.

Condonation for the late filing of the first respondent's reply was duly granted by this Court on 20 February 2024.

[5] During or around October 2024, the applicant delivered what appears to be two distinct notices of intention to amend his statement of claim in order to (i) substitute the chief inspector of mines in place for the public protector, as the second respondent and (ii) substitute paragraph 6 of his statement of case. During February 2025, this Court granted only the substitution of the second respondent, with the result that the public protector was substituted for the chief mining inspector.

The Special plea

[6] With reference to paragraph 3 of the first respondent's reply to the applicant's statement of case, it raised the following "*POINT IN LIMINE*":

"3. The First Respondent submits that the above Honourable Court does not have the jurisdiction to entertain the Applicant's alleged dispute for, inter alia, the following reasons:

3.1 the alleged dispute does not fall within any of those contemplated in terms of Section 158 of the Labour Relations Act, No. 66 of 1995 ("**Act**");

3.2 the relief sought by the Applicant, is not relief that the above Honourable Court has the jurisdiction to grant."

[7] Thankfully, both the applicant and first respondent filed heads of argument in relation to the first respondent's Special plea.

[8] I shall address the parties' respective submissions on the relevant issues, under the relevant headings hereunder.

[9] Further, since the applicant resigned from the first respondent with effect from February 2018, and his statement of case was only launched in July 2023 (some five years and five months later), I raised *mero motu* and requested the parties to address the Court during the oral argument of the matter in relation to the issue of prescription, which neither party raised or addressed in either of their respective pleadings or heads of argument.

Analysis

[10] In truth, this is a rather peculiar referral, which requires a considerable amount of deciphering. I seek to, hereunder, specifically address and deal with the relevant issues as raised by both parties.

Unfair Labour Practice: Section 186(2) of the Labour Relations Act 66 of 1995 (the LRA)

[11] At paragraphs 2, 7.1 and 8 – 9 of the applicant's heads of argument, the applicant contends that his dispute and referral fall within the ambit of an unfair labour practice, more specifically concerning unfair acts or omission in relation to the provision of benefits.

[12] However, irrespective of whether or not the first respondent's alleged conduct could be classified as falling within the ambit of an unfair labour practice (which is extremely dubious, in and of itself), this Court simply and clearly does not have jurisdiction to entertain such a dispute, as a Court of first instance.

[13] Section 191(1)(a) of the LRA prescribes that a dispute about an unfair labour practice must be referred in writing to (i) a bargaining council if the parties fall within the registered scope of that council or (ii) the Commission for Conciliation, Mediation and Arbitration (CCMA), if no council has jurisdiction.

[14] Section 191(1)(b)(ii) prescribes further that a referral in terms of section 191(1)(a) must be made within 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence.

[15] Section 191(2) prescribes that, if the employee shows good cause at any time, the council or commission may permit the employee to refer the dispute after the relevant time limit in subsection (1) has expired.

[16] Further, section 191(5)(a)(iv) prescribes that, if a council or commissioner has certified that the dispute remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the council or CCMA received the referral and the dispute remains unresolved, the council or CCMA must arbitrate the dispute at the request of the employee if the dispute concerns an unfair labour practice.

[17] In *casu*, the applicant has never referred any unfair labour practice to a bargaining council or the CCMA against the first respondent, whether for conciliation or arbitration. There is no reference to or evidence of any such referral or a LRA 7.12 certificate of outcome from a bargaining council or the CCMA.

[18] In any event, section 191(5)(a)(iv) clearly prescribes that, after referral to the relevant bargaining council or the CCMA, such council or the CCMA must then arbitrate the dispute.

[19] Accordingly, and quite clearly, this Court does not have jurisdiction to entertain the applicant's dispute, as a Court of first instance, in so far as it allegedly constitutes an unfair labour practice dispute.

Section 157 of the LRA

[20] At paragraphs 11 – 14 of the applicant's heads of argument, the applicant relies on section 157 of the LRA to argue that this Court is bestowed with jurisdiction to entertain the applicant's claims.

[21] However, section 157 of the LRA cannot be viewed or considered in isolation. At the very least, section 157 should be read and considered together with section 158 of the LRA (titled: "*Powers of Labour Court*").

[22] Section 158(1)(a)(v) and (vi) prescribes that this Court may make any appropriate order, including an award of compensation or damages in any circumstances '*contemplated in this Act*'.

[23] Against the above, it is apt to refer to certain pertinent paragraphs in the applicant's heads of argument, which confirm and/or clarify certain aspects of the applicant's (handwritten) statement of case.

[24] At paragraph 3 of the applicant's heads of argument, the following legal issues are recorded (with reference to the applicant's statement of case):

24.1 the first respondent failed to abide by the instructions of the Pulmonologist (specialist) to save his health from further deterioration;

24.2 the first respondent failed to invoke the provisions of the MHSA, sections 11 and 9 in particular; and

24.3 apart from the agreement made between the first respondent and applicant, the first respondent failed to assist the applicant with his medication as a chronic patient resulting from the incident.

[25] At paragraphs 5.3 and 5.4 of the applicant's heads of argument, it is recorded that, after the applicant's statement of case was amended, the following two issues were introduced:

25.1 the Chief Inspector of Mines failed to act as required by Chapter 5 of that Act to ensure that the Company complies with that Act; and

25.2 despite the agreement concluded with Rand Mutual Assurance regarding the applicant's medication, the first respondent failed to renew the applicant's script and pay RMA so that he could get his medication as a chronic patient resulting from the incident.

[26] Further, at paragraph 6 of the applicant's heads of argument, it is confirmed that the applicant seeks the following relief:

26.1 Compensation for general damages; and

26.2 Loss of earnings in that the applicant is unable to work in mining due to his chronic condition (Acute Asthma).

[27] Accordingly, I find that sections 157 and 158 of the LRA (or any other provision in the LRA for that matter) do not empower this Court to entertain or grant the relief sought by the applicant, specifically concerning:

27.1 Compensation for general damages, which are not contemplated in the LRA;

27.2 Loss of earnings due to the applicant's alleged inability to work in the mining industry due to his chronic condition (Acute Asthma), which species of damages/compensation is not contemplated in the LRA;

27.3 the first respondent's alleged failure to abide by the instructions of the Pulmonologist (specialist) to prevent or save the applicant's health from further deterioration;

27.4 the first respondent's alleged failure to invoke the provisions of the MHSA, sections 11 and 9 in particular (which is dealt with more fully under the next heading);

27.5 despite the agreement between the first respondent, applicant and/or Rand Mutual Assurance regarding the applicant's medication, the first respondent's alleged failure to either renew the applicant's script, pay RMA or assist the applicant with obtaining his medication as a chronic patient resulting from the alleged incident/disease.

[28] In furtherance of the above, it must be highlighted that the applicant has not pleaded any violations or threatened violations of any rights in Chapter 2 of the Constitution of the Republic of South Africa, 1996 (the Constitution).

[29] Despite the above, it is necessary to delve deeper into the applicant's claim for "*compensation for general damages*".

[30] On this score, the following paragraphs from the seminal judgment of *Chirwa v Transnet Ltd and others*² serve as a useful guide:

"[115] The effect of section 157(2) is to confer limited constitutional jurisdiction on the Labour Court in respect of matters involving alleged or threatened violations of the rights in the Bill of Rights. It did so in a language similar to section 101(3) of the interim Constitution with one notable difference; the constitutional jurisdiction of the Labour Court is limited to issues arising out of employment and labour relations. The manifest purpose of section 157(2) was therefore to confer constitutional jurisdiction on the Labour Court. It did so in

² [2008] 2 BLLR 97 (CC) at para 115 onwards.

terms which were almost identical to the jurisdiction conferred on the High Court.

[116] The provisions of the section 101(3) of the interim Constitution have been repealed by the Constitution. In terms of section 169 of the Constitution, a High Court may decide any constitutional matter except a matter that is within the exclusive jurisdiction of the Constitutional Court or “a matter that is assigned by an Act of Parliament to another court of a status similar to a High Court”. It is clear from the provisions of section 169(a)(ii) of the Constitution that a High Court has no jurisdiction to determine a matter that is assigned by the LRA to the Labour Court. Section 170 of the Constitution makes it plain that the Labour Court has constitutional jurisdiction in respect of matters assigned to it by the LRA. It provides that “a court of a status lower than a High Court may not enquire into or rule on constitutionality of any legislation or other conduct of the President”. The Labour Court is a court which has a status similar to that of a High Court. The scope of section 157(2) must be determined in the light of the objects of the LRA to which I have already referred.

[117] What must be stressed is the point already made, namely, that one of the primary objects of the LRA is to establish specialist courts with exclusive jurisdiction to decide matters arising from labour and employment relations. It is perhaps worth repeating what we said in NEHAWU concerning the role of the Labour Appeal Court and the Labour Court. There we said:

‘The LAC is a specialised court, which functions in a specialised area of law. The LAC and the Labour Court were established by Parliament specifically to administer the LRA. They are charged with the responsibility for overseeing the ongoing interpretation and application of the LRA and development of labour relations policy and precedent. Through their skills and experience, judges of the LAC and the Labour Court accumulate the expertise which enables them to resolve labour disputes speedily.’

[118] The achievement of the objective to develop a coherent and evolving jurisprudence in labour and employment relations, lies in the ability of the Labour Court to deal with all matters arising from labour and employment relations, whether such matters arise from the LRA or directly from the provisions of the Bill of Rights. By extending the jurisdiction of the Labour Court to disputes concerning the alleged violation of any right entrenched in the Bill of Rights,

which arise from employment and labour relations, section 157(2) has brought within the reach of the Labour Court, employment and labour relations disputes that arise directly from the provisions of the Bill of Rights. The power of the Labour Court to deal with such disputes is essential to its role as a specialist court that is charged with the responsibility to develop a coherent and evolving employment and labour relations jurisprudence. Section 157(2) enhances the ability of the Labour Court to perform such a role.

[119] The objective to establish a one-stop court for labour and employment relations is apparent in other provisions of the LRA...

[120] Viewed in this context, the primary purpose of section 157(2) was not so much to confer jurisdiction on the High Court to deal with labour and employment relations disputes, but rather to empower the Labour Court to deal with causes of action that are founded on the provisions of the Bill of Rights but which arise from employment and labour relations. The constitutional authority of the Legislature to confer that power on the Labour Court is found in section 169(a)(ii) of the Constitution. That provision authorises Parliament to assign any constitutional matter “to another court of a status similar to a High Court” and to deprive the High Court of the jurisdiction in respect of a matter assigned to another court.

[123] While section 157(2) remains on the statute book, it must be construed in the light of the primary objectives of the LRA. The first is to establish a comprehensive framework of law governing the labour and employment relations between employers and employees in all sectors. The other is the objective to establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the LRA. In my view, the only way to reconcile the provisions of section 157(2) and harmonise them with those of section 157(1) and the primary objects of the LRA, is to give section 157(2) a narrow meaning. The application of section 157(2) must be confined to those instances, if any, where a party relies directly on the provisions of the Bill of Rights. This, of course, is subject to the constitutional principle that we have recently reinstated, namely, that “where legislation is enacted to give effect to a constitutional right, a litigant may not bypass that legislation and rely directly on the Constitution without challenging that legislation as falling short of the constitutional standard”.

[124] Where, as here, an employee alleges non-compliance with provisions of the LRA, the employee must seek the remedy in the LRA. The employee cannot, as the applicant seeks to do, avoid the dispute resolution mechanisms provided for in the LRA by alleging a violation of a constitutional right in the Bill of Rights. **It could not have been the intention of the Legislature to allow an employee to raise what is essentially a labour dispute under the LRA as a constitutional issue under the provisions of section 157(2). To hold otherwise would frustrate the primary objects of the LRA and permit an astute litigant to bypass the dispute resolution provisions of the LRA**. This would inevitably give rise to forum-shopping simply because it is convenient to do so or, as the applicant alleges, convenient in this case “for practical considerations”. What is, in essence, a labour dispute as envisaged in the LRA should not be labelled a violation of a constitutional right in the Bill of Rights simply because the issues raised could also support a conclusion that the conduct of the employer amounts to a violation of a right entrenched in the Constitution.” (own emphasis)

[31] In this case, the applicant has not pleaded or made any allegations concerning any violations of the Bill of Rights in the Constitution. A belated argument to this effect was made by the applicant in his heads of argument, however, this remains inappropriate and unacceptable and does not, alone, salvage the applicant’s case regarding constitutional invalidity and/or violations.

[32] The first respondent has correctly argued that, in any event, the applicant cannot rely directly on constitutional rights which are already given effect to by legislation such as the LRA and/or the MHSA. Where legislation gives effect to a constitutional right/s, a party cannot simply rely (directly) on the constitutional right/s which that legislation regulates without challenging the constitutionality of that law.³

[33] To make matters worse, for the applicant that is, the applicant’s claim does not have any (i) valid or legitimate reliance on any provision in the LRA, save for the

³ See: *SANDU v Minister of Defence and Others* 2007 (8) BCLR 863 (CC) at para 51 – 54; *Letshabane v Minister of Human Settlements* [2024] 3 BLLR 306 (LC) para 30 – 39; *NUMSA v Tshwane University of Technology* [2020] 11 BLLR 1141 (LC) para 23 – 29; and *MEC for Education, KZN v Pillay* 2008 (1) SA 474 (CC) para 40.

belated unfair labour practice argument, which I have dealt with more fully above and (ii) clear or valid reference to any violations of the Bill of Rights in the Constitution, save for certain belated references in the applicant's heads of argument.

[34] For the above reasons, I find that this Court does not have jurisdiction in terms of section 157 of the LRA to entertain or adjudicate the applicant's claims, including his claim for compensation for general damages, as pleaded by the applicant.

The Mine Health and Safety Act

[35] The applicant has pleaded that the first respondent breached sections 9 and 11 of the MHSA. However, the applicant, on the face of it, does not seek any relief arising from or in relation to such alleged breaches. Differently put, the applicant has not requested this Court to make any findings specifically in relation to sections 9 or 11 of the MHSA.

[36] Section 9 of the MHSA deals with Codes of Practice to be prepared by employers. Section 11 of the MHSA deals with an employer's obligation to assess and respond to risk.

[37] Section 82 of the MHSA provides that the Labour Court has exclusive jurisdiction to determine any dispute about the interpretation or application of any provision of that Act except where that Act provides otherwise.

[38] On the face of it, this Court would indeed have jurisdiction to hear and adjudicate a dispute/claim concerning the interpretation or application of sections 9 and 11 of the MHSA.

[39] However, as per the applicant's pleadings, and as also argued by the applicant in his heads of argument, the applicant does not seek any relief specifically in regard to sections 9 and 11 of the MHSA. Rather, the applicant seeks damages and/or recompense for loss of earnings, due to an alleged workplace disease contracted by him. It appears that the applicant relied upon the alleged breaches of sections 9 and 11 of the MHSA to bolster his argument and claims for damages and reimbursement for

loss of earnings, and serve as general (factual) allegations levelled against the first respondent, in support of the applicant's alleged claims.

[40] On this basis, I find that any purported dispute between the parties concerning the applicability and/or contravention of sections 9 and 11 of the MHSA is not a dispute which is legitimately before this Court and, therefore, need not be specifically entertained or adjudicated upon, especially where the applicant seeks no specific or clear relief in relation to these sections. Rather, the dispute and claims before this Court concern the applicant's claims for general damages and loss of earnings, as explained above.

A possible delictual claim

[41] At paragraph 20 of the applicant's heads, the applicant clearly states that his claim is "not" a claim arising out of an ordinary delict. The applicant goes on to argue that, where the nature of a dispute arises out of a delict '*connected with the objects and remedies available in the LRA*', the Court will have jurisdiction.

[42] Problematically for the applicant, any purported delictual claim which he has/had against the first respondent, is not, in my view, connected with the objects and/or remedies in the LRA, or even the Basic Conditions of Employment Act⁴ (BCEA) or Employment Equity Act⁵ for that matter.

[43] As such, I find that this Court does not have jurisdiction on this basis to entertain or adjudicate the applicant's claims and relief sought.

Section 77 of the BCEA

[44] In yet a further (creative) attempt to bestow this Court with jurisdiction in this matter, the applicant has relied upon section 77(3) of the BCEA to argue that this Court has jurisdiction to hear the applicant's claim.

⁴ Act 75 of 1997.

⁵ Act 55 of 1998.

[45] Again, this is clearly not the case.

[46] Section 77(1) of the BCEA prescribes that the Labour Court has exclusive jurisdiction in respect of all matters in terms of the BCEA. Section 77(3) of the BCEA provides that the Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.

[47] In *casu*, the applicant has not identified, referenced or pleaded any clause or term in his employment contract with the first respondent, let alone that the first respondent breached any such clause or term of his employment agreement. The applicant's argument in this regard is, at best and generously stated, rather vague and ambiguous.

[48] Therefore, I find that section 77 of the BCEA does not bestow this Court with the requisite jurisdiction to entertain, hear or adjudicate the applicant's claims and relief.

Prescription

[49] Finally, and much to my surprise, both parties failed to deal with the issue of prescription, at all, in this matter.

[50] A copy of the applicant's resignation letter from the first respondent's employ is contained in the various Court bundles. The resignation letter reads as follows:

"Dear management

LETTER OF RESIGNATION

SERVING A NOTICE UNTIL 2018 – FEBRUARY – 28

It has been a privilege writing this note to your attention

After a careful consideration, I have concluded that I am now leaving Petra Cullinan Mine which I served for 15 years.

I am within my rightful mind and ready to go now, I leave many people behind and will surely miss those good personalities I was exposed to for this duration I served however, I will meet other new people and make new friends as well.

Thank you for accepting this letter

Kind regards
 Abram Makanyane Mathebe
 2018-01-23”

[51] Accordingly, on the basis that the applicant contracted or sustained an occupational disease during his employment with the first respondent, the latest possible date, in law, which the applicant’s cause of action could have arisen *vis-à-vis* the first respondent, in terms of his claims and the relief sought of damages and loss of earnings, was 28 February 2018.

[52] Therefore, the applicant had until 28 February 2021 to institute his claims against the first respondent, in relation to damages and/or loss of earnings arising from an alleged occupational disease sustained by the applicant during his employment with the first respondent.

[53] However, the applicant only launched this claim during July 2023, being some five years and five months after, at the latest, any possible cause of action arose *vis-à-vis* the first respondent.

[54] The relevant sections of the Prescription Act⁶ provide as follows:

“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.

...

11. Periods of prescription of debts.—The periods of prescription of debts shall be the following:

(a) thirty years in respect of—

(i) any debt secured by mortgage bond;

(ii) any judgment debt;

(iii) any debt in respect of any taxation imposed or levied by or under any law;

(iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or

⁶ 68 of 1969.

other substances;

(b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);

(c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);

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

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.”

[55] Extinctive prescription commences to run as soon as the debt is due. Van Heerden JA in *Truter and another v Deyse*⁷ held that in relation to section 12(1) of the Prescription Act:

“The term ‘debt is due’ means a debt, including a delictual debt, which is owing and payable. A debt is due in this sense when the creditor requires a complete cause of action for the recovery of the debt, that is, when the entire set of facts which the creditor must 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 and to pursue his or her claim.”

[56] A debt is not deemed to be due until the creditor has or ought to have had knowledge of the identity of the debtor, and of the facts from which the debt arises. This

⁷ (2006) 4 SA 168 (SCA) at para 16.

applies to debts arising from contract, delict or any other source embraced by the provisions of the Prescription Act. Consequently, prescription begins to run when the creditor has or ought to have had knowledge of both the identity of the debtor and the facts from which the debt arises. A creditor will be deemed to have knowledge of the identity of the debtor, and the facts from which the debt arose, if he or she could have acquired it by exercising reasonable care.

[57] As regards to the question as to when the identity of a debtor has been established, Diemont JA in *Gericke v Sack*⁸ said:

“In common parlance I apprehend that the identity of an individual can be said to be determined when one or more of his characteristics is established so that he is definitively recognisable or known . . . It may be that in some cases the debtor is so distinguished, or notorious, that no address is necessary, or in other cases that his name is so commonplace that a detailed address is called for. Regard will have to be had to the particular circumstances of each case, but for practical purposes it seems to me there should be sufficient information for the process-server to be able to identify the debtor by name and address.”

[58] This principle is trite and there exists a plethora of case law authority on this issue.

[59] For purposes of this matter, it is apt to refer to the authority of *Dlamini v Kubushi*,⁹ wherein the High Court held as follows when dealing with a damages claim that had prescribed:

“11.1 ... Section 12(1) of the Prescription Act 68 of 1969 provides:

‘Subject to the provisions of subsections (2) and (3), prescription shall commence to run as soon as the debt is due.’

The Prescription Act 68 of 1969 contains no definition of the term ‘due date’. It is accepted that in the interpretation of statutes words must be given their ordinary grammatical meaning and it is a primary rule in the construction of statutes that the language of legislation should be read in its ordinary sense (see Union

⁸ 1978 (1) 821 (A) at p 829 G.

⁹ [2008] JOL 21108 (O) at para 11.

Government (Minister of Finance) v Mack 1917 AD 731 at 739; S v Cocklin & 'n ander 1971 (3) SA 776 (A) at 781).

The usual meaning of the word due is "owing and already payable" Lagerwey v Rich & others 1973 (4) SA 340 (T) at 345.

11.2 In order for the question of prescription to [a]rise, two things are prerequisite – the debt must have arisen and the debt must be due. For purposes of the adjudication of the special plea, I have assumed that a debt has arisen. The only question is, is it due?

Section 10 of the Prescription Act 68 of 1969 provides for the extinction of a debt after the lapse of certain periods stipulated in section 11 of the Act. A debt which arises from a breach of contract does not become recoverable until loss or damage has been suffered (see Electricity Supply Commission v Stewarts & Lloyds of SA (Pty) Ltd 1981 (3) SA 340 (A) at 344F–G and Oertel & andere NNO v Direkteur van Plaaslike Bestuur & andere 1983 (1) SA 354 (A) at 370B).

Both Mr Röntgen, who appeared for the plaintiff and Mr Cronje, who appeared for the defendant, agreed that a claim for damages is a debt as envisaged in section 10(1) of the Prescription Act 68 of 1969 and that in terms of section 11(d) of the Act the period of prescription applicable to such a debt is three years.

As it stands it is the case for the defendant that the plaintiff's claim for damages against the defendant has become prescribed by the effluxion of time and that any summons instituting action ought to have been served on the defendant on or before either 25 February 1996 being three years from the date of the plaintiff's signature of the claim for compensation under the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989, that is 26 February 1993, alternatively on or before 1 March 1997 being three years from the date on which the plaintiff signed the discharge (exhibit A11) accepting the settlement from the insurance company, that is 2 March 1994."

[60] In this case, the applicant quite clearly had full and direct knowledge of (i) the debtor, being his former employer and (ii) the complete set of facts which formed any possible cause of action against the first respondent. The latest possible date that this was all known to the applicant was 28 February 2018, being his final day of employment with the first respondent.

[61] As such, in my view, the applicant's claims, howsoever formulated, have clearly prescribed and are no longer legally enforceable.

Costs

[62] In relation to costs, this Court has a broad discretion in terms of section 162 of the LRA to make orders for costs according to the requirements of the law and fairness. In my view, those requirements are best satisfied by each party bearing their own costs.

[63] For all the above reasons the following order is made:

Order:

1. The respondent's Special plea is upheld, and the applicant's claim is entirely dismissed for want of jurisdiction.
2. There is no order as to costs.

A. Anestidis

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	Advocate M M Mathebe
Instructed by:	Legal Resources Centre
For the 1 st respondent:	Geoffrey Allsop (attorney)
Instructed by:	Pinsent Masons South Africa Inc