



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 9272/2023P

In the matter between:

STANGUOUS MZONZIMA MNCWABE

PLAINTIFF

And

S S NQAYI ATTORNEYS

DEFENDANT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Plaintiff instituted an action against Defendant claiming damages of R5 000 000.00 on the basis that Defendant, who acted as his attorney in a claim against The Road Accident Fund (RAF) did not perform his duties in terms of what is expected of an attorney. The incident occurred during 2011 and the claim against Defendant was instituted on 21 June 2023. The claim against the RAF was settled with the RAF during November 2013.

[2] The matter was defended by Defendant who filed a special plea on the basis that payment was made to Plaintiff by Defendant on 15 November 2013 and that the

claim had accordingly in terms of section 11 of the Prescription Act prescribed on 14 November 2016. On the merits it was pleaded by Defendant that he was given instruction to finalise the already lodged claim against The Road Accident Fund and that that is what he did. He was under instruction to swiftly obtain finalisation of the claim and that despite all advice and support offered by Defendant to Plaintiff he was instructed to reach a swift settlement. Plaintiff's word was final to accept the settlement proposal that was received and despite advice from Defendant Plaintiff accepted it and that Defendant did not act negligently nor did he breach any contract. There was an amendment by Defendant to the special plea setting out that Plaintiff waited more than nine 9 years before instituting these proceedings and that they had therefore prescribed. In replication to Defendant's special plea it was pleaded that Plaintiff as a lay person would not have acquired the actual, alternatively constructive knowledge of the identity of the debtor nor of the facts giving rise to the debt and therefore the claim had not prescribed as the claim only arose on 25 October 2022.

[3] Plaintiff brought an urgent application to be heard on the first day of the trial that a private investigator's report, which was discovered by Defendant, be struck out and Defendant be interdicted to use this report. At the commencement of the trial the parties sought an order by consent in this regard in the following terms.

1. Defendant is interdicted from using in evidence the report from NMK Forensics discovered on 25 September 2025.
2. Defendant is ordered to pay the costs of the urgent application dated 9 October 2025 with counsel's fees on scale B.

This order was accordingly granted.

[4] Further it was submitted by the parties that due to the special plea of prescription being raised by Defendant that it was agreed between them that Defendant would have the duty to begin. The only issues which had to be decided was the special plea of prescription and the liability of Defendant. The other issues would not be applicable at this stage. The parties also handed in a combined trial bundle which was marked Exhibit "A".

[5] Defendant testified that he is a qualified attorney practicing under his own name and was admitted as an attorney in 2009. At the time he was working at Mathonsi Attorneys and in 2013 opened his own practice and was already practicing on his own during September 2013. He commenced acting for Plaintiff while still employed by Mathonsi Attorneys. He had an appointment and consultation with Plaintiff at his office at Mathonsi attorneys which was arranged by a Mr. Ngidi and was informed that he wanted to pursue a claim against The Road Accident Fund. Plaintiff was together with his wife and a minor child. He established that there was already attorneys who had instituted a claim against the RAF, one Fatima Karodia Attorneys. He was instructed to take over the matter. Karodia Attorneys agreed but wanted a fee of R32 265.00 for work which they had done. Plaintiff was not happy with the amount which was charged by Karodia Attorneys and lodged a complaint with the KwaZulu-Natal Law Society (as it was at the time). His complaint against the fee was dismissed.

[6] He and Plaintiff conversed in isiZulu and he advised him that the claim had two heads such as general damages and special damages for example for loss of earnings etc. He established that a certain medical report and Form RAF1 had been submitted by Karodia Attorneys. In respect of special damages an amount of R1.00 only was claimed under each of the headings and stated that it would be quantified at a later stage.

[7] At the time of consultation Plaintiff was unemployed but stated that for three months prior he was employed by Ladysmith Municipality as a grass cutter. He however had no employment or salary advice and he gave him a form to take to his former employer to complete in respect of loss of income. He was also advised that he had to see an orthopaedic surgeon and be assessed by an occupational therapist. Form RAF4 had to be submitted which was done. He was referred to Dr. Gabela who completed the forms and an orthopaedic surgeon Dr. P Tzvetanov. He was examined on 21 February 2013. He referred Plaintiff to an occupational therapist on 31 May 2013 and explained to him that this was for the second portion of his claim for past and future loss of earnings. He required a certificate by his employer, all educational

certificates etc. The report of the occupational therapist was finalised on 31 October 2013.

[8] It was then his intention to refer Plaintiff to a clinical psychologist and to obtain the services of an actuary. Plaintiff refused to go for further medical examination and was adamant that the claim had to be finalised. He sent a letter to the RAF on 24 October 2013 claiming only general damages and an undertaking in respect of medical expenses annexure "A15". This was as a result of the demand of Plaintiff. It was a claim for general damages only as he refused to go for further medical examinations. Plaintiff wanted the matter settled against his advice. Plaintiff was informed that if he accepts any offer then he would not have any future claim for loss of income but he was adamant that the matter had to be settled. He stated that he can make money if he receives this money.

[9] He signed an affidavit in this regard but unfortunately it has now been destroyed. Only some documents could be retrieved from a miscellaneous file. Both Plaintiff and his wife were very active when they consulted with him and asked questions whenever they wished to do so. When something was explained he would engage until he understood it and was satisfied. He came to his office about three times a month depending on where he stayed whether at Elands Kop or Ladysmith. An offer came from the RAF on 11 November 2013 for general damages in the sum of R750 000.00 as appears from exhibit "A46" to "A48". He contacted Plaintiff to discuss the matter, showed him the offer, explained the implications thereof and that it was a full and final settlement and that if he accepts it, it would be the end of the matter. He was advised that an action can be instituted and the matter go to trial as summons had not yet been issued. He was however adamant that the offer had to be accepted. All three pages "A46" – "A48" were signed by Plaintiff.

[10] Plaintiff compelled him to accept the offer. He then followed Plaintiff's instructions and accepted the offer, as appears on Exhibit "A57". On 15 November 2013 a breakdown of the payment and expenses, was handed to Plaintiff, he accepted

it and received a cheque and signed for it, as appears from exhibit "A58". He was given a copy thereof and of the settlement offer Exhibit "A46".

[11] Defendant's mandate came to an end when payment was made to Plaintiff on 15 November 2013. Normally records are kept for five years but they were kept longer here until he moved premises and then destroyed. Plaintiff came to his offices about one year after payment had been made and complained about the fees of the former attorneys. This had already been sorted out and was explained to him. He thereafter had no further contact with Plaintiff until he received the summons in June 2023.

[12] It was put to Defendant that he had sufficient documents to submit to the RAF so as to institute a claim for loss of income. There was also the report of the occupational therapist and that there was no need for the industrial psychologist at that stage and that he failed to do so.

[13] It was put to Defendant that Plaintiff was seriously injured that his right leg had been amputated and accordingly there was a claim for loss of income. Defendant was adamant that Plaintiff refused to go for medical examinations and instructed him to accept the offer against his advice. He wanted a swift finalisation of the matter which he then did. It was put to him that he did not do his job according to the standard which was required of an attorney. He responded that he did indeed do his work correctly but that Plaintiff refused to comply with his advice. The documents for the loss of income could not be submitted to the RAF as they had been incomplete. He knew what documents had to be submitted as he was previously employed by the RAF. It was a full and final settlement. He had last spoken to Plaintiff approximately a year after he had received the payments. It was put to him the claim only arose in 2022 when he went to his present attorneys and was advised that he had a claim. In re-examination he confirmed again that Plaintiff was adamant that he wanted no delay. It would have taken one and half to two years if the matter had to go to trial. The report of the occupational therapist was only received from her two weeks before the trial. That was the case for Defendant.

[14] Plaintiff testified that he met Defendant on 9 September 2013 and signed the document Exhibit "A30" instructing Defendant. He did not know the previous attorney as they had come to the hospital. He had never seen her but one of her employees came to see him. When he was discharged from hospital he spoke to his family and they then sought the services of Defendant. He had a meeting with Defendant and explained to him the nature of his injuries and that his right leg had been amputated. He had only at a later stage signed documents and completed forms. He was expecting Defendant to handle his claim to the end but Defendant did not do as he expected. Defendant came to his home, informed him of the amount from the RAF that he would receive and that was not what he expected. A year later he was unhappy and went to the office of Defendant. He was still not happy with the amount that had been deducted for the previous attorney. He was also not satisfied with the amount of R750 000.00 which was paid. He was informed that he refused to see the medical experts. He denied that and stated Defendant took him to see doctors in Durban and Pietermaritzburg. Defendant always went with when he went to see a doctor. He expected Defendant to utilise all medical information in his favour but he did not assist him. The amount that he received was too little.

[15] The letter of undertaking given to him for medical treatment "A60" he attempted to utilise but was told he needed to get the original. He was working before the injury. After he received the money he discussed it again with Defendant in 2015. He then went to Shabalala Attorneys in 2022. He passed standard 8 at school and he instructed Shabalala Attorneys as he was dissatisfied. He testified that it was not correct that he wanted to finalise the matter quickly and did not want to see the industrial psychologist. He was prepared to go. He admitted that he received the cheque from Defendant. About a year after receiving the cheque during November 2014, he wanted to enquire about the amount received. It was put to him that he could have gone to the law society if he was unhappy with the fees and did not do so. He knew that he could do so as he had done that when he was unhappy with the fees of Fatima Karodia, the previous attorney. He was of the view that the amount of R750 000.00 was accepted without his instruction. It was put to him that in 2014 he

knew all the facts if he wanted to institute a claim against Defendant. He admitted that he knew in 2014 that he was not satisfied with the amount he received. That was the case for Plaintiff.

[16] It was submitted on behalf of Plaintiff that on 9 September 2013 he signed an appointment letter for Defendant to deal with the matter. The offer of R750 000.00 was accepted on 15 November 2013. He was not happy with the amount and on 25 October 2022 approached Shabalala Attorneys to investigate his claim against the RAF. He was then advised that he had a claim against Defendant and that is when the claim was identified. It was submitted that in terms of the Prescription Act he had to have knowledge of the debt or debtor and that it only arose when he was told by Shabalala Attorneys that he had a claim against Defendant. It was further submitted that Defendant should have exercised care as an attorney when dealing with this matter. He had to protect the interests of his client. I was referred to the decision of *Le Roux v Johannes Coetzee en Seun* 2023 (ZACC) 44 at paragraphs 21.3 to 21.5 which deals with the duties of an attorney. It was further submitted that the period of prescription only started to run in 2022. In this regard I was referred to the decision of *Sabela v Moroe Flowers* 26857/21 GPH.

[17] Defendant breached his duty when he did not advise Plaintiff correctly. Defendant had medical and expert reports which he could have utilised but that he did not do so. He should not have accepted the settlement and acted negligently by accepting the offer. Plaintiff never refused to go for medical examinations. There was no reason for him not to go and no reason for him to forfeit the loss of earnings claim against the RAF. The one document that is required, the affidavit that was referred to, is missing. Plaintiff denies that he signed the affidavit. It was submitted that Plaintiff accordingly made out a case for the relief claimed.

[18] It was submitted on behalf of Defendant that in terms of section 12(3) of The Prescription Act Plaintiff had to have knowledge of the debtor and by exercising reasonable care should have been able to do so. He was able to acquire it if he did

not have all the knowledge in 2014. It was submitted that there was no allegation that Defendant gave any negligent advice. The case against Defendant is that he accepted the offer without the authority of Plaintiff and abandoned special damages. It was not that he advised that there was no claim for special damages. It was submitted that it was a fact that Plaintiff accepted the amount of R750 000.00 for general damages. On Plaintiff's own version the facts were within his knowledge when he accepted the cheque and had knowledge of the letters which appears at page "A58" and "A46" when he was given a copy. It was not challenged and he was aware that it was only for general damages. He had constructive knowledge in 2014 and therefore his claim had prescribed as the three year period would have ended in 2017.

[19] Section 12(1) of The Prescription Act 68 of 1969 sets out:

"Subject to the provisions of subsection (2), (3) and (4) prescription shall commence to run as soon as the debt is due."

Subsection (3) states as follows:

"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."

[20] In *Claasen v Bester* 2012 (2) SA 404 (SCA) it was held at 408 D referring to the decision of *Truter and Another v Deyssel* 2006 (4) SA 168 (SCA) paragraph 20:

"Section 12(3) of the Act requires knowledge only of the material facts from which the debt arises for the prescriptive period to be in running. It does not require knowledge of the relevant legal conclusions (i.e. that the known facts constitute negligence) or of the existence of an expert opinion which supports such conclusions."

It then at 408 G carries on and states:

"These cases clearly do not leave open the question posed and not answered in *Van Staden*. They make it abundantly clear that knowledge of legal

conclusions is not required before prescription begins to run. There is no reason to distinguish delictual claims from others. The principals laid down have been applied in several cases in this court including most recently in *Yellow Star Properties 1020 Pty (Ltd) v MEC Department of Development Planning and Local Government Gauteng 2009 (3) SA 577 (SCA)* paragraph 37 where Leach AJA said that if the applicant had not appreciated the legal consequences which flowed from the facts its failure to do so did not delay the running of prescription."

[21] The issue of prescription which was raised by the special plea has to be considered on the facts of the present case. It is apparent from the evidence that when the cheque was presented to Plaintiff in 2013 he accepted it and signed for it. On his own evidence a year later because he was unhappy with the payment he went back to Defendant to discuss the matter with him. It was at the best for Plaintiff at the end of 2014. Thereafter Plaintiff did nothing until 2022. Thus for a period of approximately at least seven to eight years.

[22] When he went to see Defendant he was thus well aware who the debtor was as he had been dealing with Defendant, received payment from Defendant who did everything on his behalf. He was thus aware that if there was any irregularity or any fact with which he was not satisfied he had to take action against Defendant who was the debtor. Further the facts which gave rise to the debt was also known to him as he was well aware that the facts were the payment that was made by the RAF. His evidence was that due to the injuries he sustained it was not sufficient and he was not satisfied therewith. If he was not satisfied therewith he had knowledge of who the debtor was and the facts giving rise to the debt and one would have expected him to then take action against Defendant to ensure that the actions of Defendant are at least investigated or instituted a claim against Defendant.

[23] This he did not do, although he had knowledge thereof as he previously when he was not satisfied with the amount paid to his previous attorney, he took the matter

up with The KwaZulu-Natal Law Society when it was decided against him. It is therefore difficult to understand why, having all this knowledge, Plaintiff did nothing until 2022 when he approached an attorney and then instituted an action against Defendant. Plaintiff had all the knowledge to institute an action against Defendant as soon as he had spoken to Defendant at the best for him at the end of 2014. If he did not have such knowledge he could have acquired it by exercising reasonable care. As set out in Classen's case above he did not have to have knowledge of the legal consequences. The claim against Defendant therefore became prescribed at the end of 2017/2018.

[24] The other issue which due to the conclusion which I have reached above is no longer of importance is that of liability. From the evidence of Plaintiff on his own admission he was not shy, he asked questions, he sought answers from Defendant and signed for the amount of the claim which was paid out to him. It appears improbable that if Plaintiff was so dissatisfied with the amount paid out to him as he testified that he would do nothing about it for a period of about eight years. He did nothing further after returning to Defendant one year after receiving the payment.

[25] The evidence of Defendant was straight forward. His demeanour was good and his evidence was not improbable. He made it clear during his evidence that at all times Plaintiff wanted money as soon as possible. That he did and it was then paid to him. If Defendant wanted to only claim general damages it appears to be improbable that he would have gone to the expense of obtaining the reports which he did. That would not have been necessary for general damages. His evidence of the events are therefore accepted.

[26] Plaintiff's version, in my view, is improbable and it appears that at the time he accepted the offer as he wanted the money but in later years decided that he wanted more and was of the view that he could then obtain more. However it was no longer possible as the claim was settled on general damages only and a medical certificate in full and final settlement.

Order

- (a) Plaintiff's claim against Defendant has prescribed.
- (b) Plaintiff's claim against Defendant is dismissed with costs.



P C BÉZUIDENHOUT J.

JUDGMENT RESERVED ON:

14 OCTOBER 2025

JUDGMENT HANDED DOWN ON:

29 OCTOBER 2025

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