



**THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

**CASE NO: 2133 / 2022**

(1) REPORTABLE: YES  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

**10 December 2025**

DATE

SIGNATURE

In the matter between:

**MADALA JOHN MAFUYEKA**

**PLAINTIFF**

And

**MINISTER OF HEALTH**

**FIRST DEFENDANT**

**MEC FOR THE DEPARTMENT OF  
HEALTH MPUMALANGA**

**SECOND DEFENDANT**

**HOD FOR THE DEPARTMENT OF  
HEALTH MPUMALANGA**

**THIRD DEFENDANT**

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## JUDGMENT

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### **RATSHIBVUMO DJP:**

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down is deemed to be on 10 December 2025 at 08H00.

#### [1] Introduction.

This is a judgment on the special pleas raised by the Defendants against the Plaintiff's claims. Although the copy of the summons in the court file does not bear the Registrar's date stamp of issue, it is undisputed that it was issued in 2022 and served on the Defendants by the Sheriff on 20 May 2022. According to the particulars of the claim, on 01 June 2014 (the date of the incident), the Plaintiff was the First Defendant's employee, working as a nurse at Thulamahashe Community Health Centre.

[2] On that date, the Plaintiff was attacked by a member of the public (the assailant) who had brought a patient there for medical assistance. Upon her arrival, the patient was struggling to breathe, apparently due to underlying medical conditions. The Plaintiff attempted to resuscitate her with no success. She died soon after her arrival. The assailant then attacked the Plaintiff by kicking him on his left knee, accusing him of having caused the patient's death. The security officers on duty at the premises intervened and stopped the attack. The Plaintiff now claims R10 million from his employer based on negligence in failing to ensure that the workplace was

safe, as well as claims for emotional distress, pain and suffering, and future medical expenses.

[3] The Defendants raised three special pleas, which formed the basis of the trial before this Court.

- a. The first special plea: It was pleaded that the Plaintiff's claim was precluded by the provisions in section 35 of the Compensation for Occupational Injuries and Diseases Act, no. 130 of 1993 (COIDA).
- b. Secondly, the Defendants pleaded that the Plaintiff's claim has become prescribed in terms of the Prescription Act No. 68 of 1969 (the Prescription Act).
- c. Thirdly, the Defendants pleaded non-compliance with section 3 of the Institution of Legal Proceedings Against Certain Organs of the State Act, No. 40 of 2002, in that the Plaintiff failed to give the Defendants a notice of his intention to institute legal proceedings against the First Defendant, an organ of the State, within six months of the debt being due.

[4] No evidence was presented by either party in respect of all the special pleas. Their legal representatives opted to address the court as the factual disposition was not in dispute.

[5] COIDA plea.

The Defendants' plea was to the effect that the Plaintiff's recourse was in COIDA and not the Defendants, as the incident took place in the course of the Plaintiff's employment. The Defendant relies on section 35 of COIDA which provides that no action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational injury or disease resulting in the disablement or death of such employee against such employee's employer, and no

liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.

[6] In what appears to be a direct response to this special plea, the Plaintiff decided to amend the front page of the court papers to also include the Director-General, Department of Employment and Labour, and the Compensation Commissioner as the First and Second Third Parties, respectively. This was done without joining them as parties and without any relief sought against them and without amendment of the further particulars to include them. In fact, no papers were served on them. It was no surprise that they were not represented in court. Since these were not issues for this Court to address, I make no further remarks in this regard.

[7] In further response, the Plaintiff filed a document titled "Plaintiff's Notice to Amend", which contained a replication to the Defendant's plea. In replication, the Plaintiff submitted that circumstances such as those of the Plaintiff were excluded by COIDA. In advancing this argument, the Plaintiff relied on section 22 of COIDA, which provides,

“22 Right of employee to compensation

(1) If an employee meets with an accident resulting in his disablement or death such employee or the dependants of such employee shall, subject to the provisions of this Act, be entitled to the benefits provided for and prescribed in this Act.

(2) No periodical payments shall be made in respect of temporary total disablement or temporary partial disablement which lasts for three days or less.

(3) (a) If an accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable in terms of this Act, unless-

(i) the accident results in serious disablement; or...

[8] The Plaintiff appeared to labour under the impression that, once the injury resulted from the employer's negligence, the employee would have no recourse under COIDA. This is evidence from further submission made in replication, in which he relied on section 56 of COIDA, which provides,

“56 Increased compensation due to negligence of the employer

(1) If an employee meets with an accident or contracts an occupational disease which is due to the negligence-

(a) of his employer;...

The employee may, notwithstanding any provision to the contrary contained in this Act, apply to the commissioner for increased compensation in addition to the compensation normally payable in terms of this Act.”

[9] Contrary to the replication, the provisions quoted above do not preclude the employee's claims against the employer for negligence. By contrast, the provisions permit an employee to receive higher compensation if it is proven that the injury resulted from the employer's negligence.

[10] The Plaintiff's recourse is therefore not to be found in the sections dealing with “negligence”, but in the definition of accident. Section 25 of COIDA limits the benefits prescribed in the Act if the employee was involved in an accident resulting in his/her disablement or death. According to the definition of accident under COIDA, only accidents arising “out of and in the course of an employee's employment” and resulting in a personal injury, illness, or the employee's death qualify for benefits under its provisions.

[11] In *Prinsloo v MEC, Department of Education, Mpumalanga Province*,<sup>1</sup> this Court grappled with the conundrum of distinguishing between incidents that occur out of the course of an employee's employment and those that occur in the course of

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<sup>1</sup> (2022) 43 ILJ 2118 (MM).

employment. In that judgment, reliance was sought and found in the judgment by the Supreme Court of Appeal (the SCA) of *Churchill v Premier of Mpumalanga and Another*.<sup>2</sup> It is not always difficult to determine whether an incident occurred in the course of employment. It is, however, not always straightforward to determine whether the same incident arises out of the employment.

[12] In *Churchill*, the SCA quoted with approval from its earlier judgment of *MEC for Health, Free State v DN*<sup>3</sup> where a similar special plea had been raised against a claim by a doctor who was raped while on duty in the hospital premises by a member of the public. In dismissing the special plea, Harms ADP said, “the question that might rightly be asked is whether the act causing the injury was a risk incidental to the employment... I am unable to see how a rape perpetrated by an outsider on a doctor, a paediatrician in training, on duty at a hospital, arises out of the doctor’s employment. I cannot conceive of the risk of rape being incidental to such employment.”<sup>4</sup> [My emphasis].

[13] The closer the link between the injury sustained and the performance of the employee’s ordinary duties, the more likely it is that the injury was sustained out of their employment. The further removed from those duties, and the less likely that those duties will bring the employee into a situation in which such injuries might be sustained, the less likely it is that they arose out of their employment.<sup>5</sup>

[14] In *Prinsloo*,<sup>6</sup> this Court reasoned as follows,

“The motive of the learner in attacking the Applicant is irrelevant. Questioning the motive for the attack falls into the very error identified in *MEC for Health, Free State v DN*<sup>7</sup> of using the motive of the perpetrator to establish the requisite connection between the incident and the duties of the injured party. It is rather apposite to ask

<sup>2</sup> (889/2019) [2021] ZASCA 16; [2021] 2 All SA 323 (SCA); 2021 (4) SA 422 (SCA) (4 March 2021).

<sup>3</sup> 2015 (1) SA 182 (SCA)

<sup>4</sup> *MEC for Health, Free State v DN* (*supra*) at para 31-32.

<sup>5</sup> See *Churchill supra* at paragraph 20.

<sup>6</sup> *Supra*, at paragraph 24.

<sup>7</sup> *Supra* at para 31.

whether the wrong that caused the injury is connected to the employee's employment. Put differently, the question that might rightly be asked is whether the act causing the injury was a risk incidental to the Applicant's employment."

[15] It follows, therefore, that the assault on the Plaintiff was not a risk factor to his job as a nurse or medical caregiver. The attack was not incidental to his duties. On this basis, this special plea stands to be dismissed.

[16] Prescription plea.

It was pleaded that the claim against the Defendants has been extinguished by prescription in terms of section 11(d) of the Prescription Act No. 61 of 1969 (the Prescription Act). In replication, the Plaintiff denied that the claim had prescribed. Basing his replication on section 14(1) of the Prescription Act, he argued that the running of prescription was interrupted by an express or tacit acknowledgement of debt by the employer. According to the Plaintiff, the employer signed a document marked as Annexure MAF 02 and, in so doing, acknowledged its liability for the Plaintiff's injury. It was further submitted that paying the Plaintiff's hospital's travelling expenses by the employer also constituted an acknowledgement of the debt.

[17] In the alternative, the Plaintiff submitted that "prescription could only commence when the criminal trial was finalised. The criminal trial could not be regarded as complete until the outcome of the criminal prosecution was made known between 2014 to 2017."<sup>8</sup> It was only after the criminal trial was finalised that the Plaintiff was advised to commence a civil action against the accused; however, the action was unsuccessful because the accused was not employed and unable to pay the Plaintiff.<sup>9</sup>

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<sup>8</sup> See paragraph 2.6 of the Replication on p. 76 of the paginated bundle.

<sup>9</sup> See para 2.7 of the Replication on p.76 of the paginated bundle.

[18] It was further replicated that “before meeting Advocate DJ Sibuyi in January 2022, the Plaintiff did not know that he had a right to a civil lawsuit claim against the employer. a debt became due when he acquired a cause of action to approach the court to recover the debt. Therefore, the Plaintiff’s rights became enforceable in 2022.”<sup>10</sup>

[19] A further special plea was raised by the Defendants to the effect that the Plaintiff failed to comply with section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act, No. 40 of 2002. In terms of this section, no legal proceedings for the recovery of a debt may be instituted against an organ of state unless the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question. A notice must be served on the organ of state within six months from the date on which the debt became due.

[20] In replication, the Plaintiff claims to have sent the letter of his intention to institute a claim against the Defendants within the stipulated period. Just as he replicated in respect of the prescription plea, he claims that the service was effected within six months of his becoming aware that the debt was due, after consulting his legal representative. For the reason that this replication overlaps with the one in respect of prescription, the submissions in respect of the two pleas shall be dealt with together.

[21] Section 14(1) of the Prescription Act provides that the running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor. I have some difficulty understanding the Plaintiff’s replication in respect of this plea. I do not know whether the Plaintiff was unaware of the debt being due until 2022, when he consulted his legal representative, as he suggests, or whether he

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<sup>10</sup> See para 2.9 of the Replication on p.76-77 of the paginated bundle.



was aware of it and his employer also acknowledged it. In his main replication, the Plaintiff claims that the prescription was interrupted by the employer's acknowledgement of debt.

[22] It is trite that a proper acknowledgement of debt that interrupts the running of prescription must be directed at the creditor. There cannot, therefore, be an acknowledgement of the debt, which is an unequivocal acceptance of indebtedness, that interrupts the running of prescription unless the creditor is also aware of that debt. The Plaintiff was either aware of the debt, as acknowledged by the Defendants, or was unaware of its existence until 2022. In the absence of evidence, the court remains uncertain which of these applies, as this aspect remains unclear.

[23] Assuming the Plaintiff was aware of the debt being due and payable on 10 June 2014, the date on which Annexure MAF 02 was completed, there is nothing in the form that appears to be an express or tacit acknowledgement of liability by the employer. To the contrary, Annexure MAF 02 is a form completed by the Plaintiff's supervisor (employer), in terms of section 6(A)(b) of COIDA. This form must be completed to enable an employee to claim compensation as pleaded in respect of the first special plea. In this form, the employer provided details of the facts leading to the employee's injury, which are not in dispute. Reliance on Annexure MAF 02 gives credence to the Defendants' first special plea.

[24] Even if the completion of this form constituted an interruption of the debt, of which it is clearly not, then prescription would have run from the date of interruption until the end of three years calculated from the date of interruption.<sup>11</sup> The debt would still have been extinguished on 10 June 2017.

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<sup>11</sup> See *Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality* 2017 (3) SA 146 (GJ) and *Aussenkehr Farms (Pty) Ltd v Trio Transport CC* [2002] 3 All SA 309 (A).

[25] The Plaintiff's assertions to the effect that he had to wait until the completion of the criminal trial have no bearing on this claim or its prescription, as the claim is not against the National Prosecution Authority. From the replication, it appears as though the claim against the man who assaulted him was completed between 2014 and 2017, but was unsuccessful owing to his being unemployed. The replication is vague as to when the claim against this man was instituted and/or completed. It is unclear whether these years refer to the completion of a criminal trial or to the date of its completion. What is clear, though, is that he was aware of a delictual claim arising from that incident.

[26] In *President of the Republic of South Africa and Another v Tembani and Others*<sup>12</sup>, the Constitutional Court held,

“In terms of section 12(3) of the Prescription Act and section 3(3)(a) of the Institution Act, this is subject to the qualification that time does not start to run (that is, the debt is not deemed to be “due”) until the creditor has actual or constructive knowledge of the identity of the debtor and the “facts from which the debt arises”. The “facts” do not include that the debtor’s conduct was wrongful or negligent or that the creditor has a right to sue the debtor, nor does it include legal conclusions that may be drawn from the facts. This Court has cited with approval the proposition that time starts to run against a creditor when it has “the minimum facts that are necessary to institute action” and that the running of prescription is not postponed until the creditor “becomes aware of the full extent of its legal rights” [My emphasis].

[27] In *Minister of Finance and Other v Gore N.O.*<sup>13</sup>, the SCA held,

“The statutory prescription periods are meant to protect defendants from undue delay by litigants who are laggard in enforcing their rights. To suggest that the plaintiff was dilatory would be inapt, to say the least. It would therefore be most surprising if it were to be non-suited for delay. In our view, that is not the law. This Court has, in a series of decisions, emphasised that time begins to run against the creditor when it has the minimum facts that

<sup>12</sup> (CCT 162/22) [2024] ZACC 5; 2024 (9) BCLR 1152 (CC); 2025 (2) SA 371 (CC) (6 May 2024) at paragraph 86.

<sup>13</sup> 2007 (1) SA 111 (SCA) at paragraphs 16-17.

are necessary to institute action. The running of prescription is not postponed until a creditor becomes aware of the full extent of its legal rights, nor until the creditor has evidence that would enable it to prove a case 'comfortably'

[28] The Plaintiff appears to suggest in the replication that he could not have been expected to acquire the requisite knowledge during the 8 years following his injury, until he met and consulted with his legal representative in January 2022. If prescriptions were to start running only after consultations with experts, prescription law would be rendered pointless and redundant. To this, the Constitutional Court had this to say in *Mtokonya v Minister of Police*<sup>14</sup>,

“Furthermore, to say that the meaning of the phrase '*knowledge . . . of the facts from which the debt arises*' includes knowledge that the conduct of the debtor giving rise to the debt is wrongful and actionable in law would render our law of prescription so ineffective that it may as well be abolished. I say this because prescription would, for all intents and purposes, not run against people who have no legal training at all. That includes not only people who are not formally educated but also those who are professionals in non-legal professions. However, it would also not run against trained lawyers if the field concerned happens to be a branch of law with which they are not familiar. The percentage of people in the South African population against whom prescription would not run when they have claims to pursue in the courts would be unacceptably high.”

[29] It is evident that the Plaintiff was aware of the facts that give rise to the action against the Defendants as far back as 2014. He had, by then, acquired the minimum facts necessary to litigate. For that reason, I find that the prescription began running without interruption in 2014. In light of the above, the Plaintiff's replication to the special plea on having failed to comply with section 3 of Act 40 of 2002 shall suffer the same fate as the replication in prescription.

[30] Order.

For the aforesaid reasons, I make the following order:

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<sup>14</sup> 2018 (5) SA 22 (CC) at paragraph 63.

30.1 The special plea on prescription is upheld.

30.2 The Plaintiff's claim is dismissed with costs.

  
T. KATSHIBVUMO

**DEPUTY JUDGE PRESIDENT  
MPUMALANGA DIVISION OF THE HIGH COURT**

**APPEARANCES:**

**FOR THE PLAINTIFF:**

**ADV. DJ SIBUYI**

**(TRUST ACCOUNT ADVOCATE)**

**MTHUNZI CHAMBERS**

**C/O:**

**THOBELA CINDY ATTORNEYS  
MBOMBELA**

**FOR THE DEFENDANTS:**

**ADV. MH MHAMBI**

**INSTRUCTED BY:**

**STATE ATTORNEYS  
MBOMBELA**

**C/O:**

**MZUZU ATTORNEYS  
MBOMBELA**

**DATE HEARD: 10 NOVEMBER 2025**

**JUDGMENT DELIVERED: 10 DECEMBER 2025**