Reportable:	**NO**
Circulate to Judges:	**NO**
Circulate to Magistrates:	**NO**
Circulate to Regional Magistrates:	**NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

CASE NO: 2056/2020

In the matter between:

MAHIKENG LOCAL MUNICIPALITY **PLAINTIFF**

and

MIKE ISHMAEL BINAZIR **DEFENDANT**

Heard: 22 January 2026

Delivered: 07 April 2026

Summary: Opposed motion – contract law – purchase and sale agreement of land (immoveable property) belonging to the municipality – purchaser's non fulfilment (breach) of a condition in sale agreement, also registered as condition to title in title deed– plaintiff seeking to exercise its right per the reversionary clause – nature thereof (option) and manner of exercise of reversionary right – defendant's special plea: plaintiff's claim has prescribed in terms of section 11(d) of the Prescription Act No, 68 of 1969 (the Act) – applicability of sections 11(d) and 11(b) of the Act – discussion of *Mounthaven case* – prescription defence upheld.

ORDER

Consequently, the following order is made:

(i) The Defendant's special plea of extinctive prescription in terms of section 11(d) of the Prescription Act, No 69 of 1969, to the plaintiff's claim, is upheld.

(ii) The plaintiff is ordered to pay the costs of this application on a party-and-party basis on Scale B, in terms of Rule 67 A of the Uniform Rules of Court, to be taxed.

JUDGMENT

HENDRICKS JP

<u>Introduction</u>

[1] This is an opposed interlocutory application in terms of Rule 6 (11) of the Uniform Rules of Court. The defendant has raised a special plea of extinctive prescription, seeking a determination of that issue prior to the hearing of the main action.

[2] The plaintiff, Mahikeng Local Municipality ("the Municipality"), instituted action against the defendant, Mr. Mike Ishmael Binazir, for the re-transfer of immovable property sold to him pursuant to a written deed of sale concluded on 26 August 2005.

[3] It is common cause that transfer of the property was effected on 16 April 2007. The deed of sale, read together with the conditions of title, imposed an obligation on the defendant to erect a structure on the property within a period of two years from date of transfer. It further provided that, upon breach of that obligation, the Municipality would be entitled to claim re-transfer of the property against repayment of the purchase price.

[4] The defendant failed to comply with that obligation within the stipulated period, which expired on 15 April 2009. More than a decade later, during December 2020, the Municipality instituted action seeking to enforce its right to re-transfer of the property.

[5] The defendant accordingly raises a special plea that the Municipality's claim has been extinguished by prescription in terms of section 11(d) of the Prescription Act 68 of 1969, on the basis that the claim constitutes a "debt" which became due upon breach and prescribed after three years.

[6] The Municipality resists that plea. It contends that the right it seeks to enforce is not a "debt" within the meaning of the Prescription Act, but rather a contractual election or option, exercisable at its discretion. On that basis, it submits that the statutory regime of extinctive prescription does not apply, alternatively that a longer prescriptive period of fifteen (15) years is applicable.

[7] The crisp issue for determination is therefore whether the Municipality's claim for re-transfer of the property constitutes a "debt" as contemplated in Chapter III of the Prescription Act, and, if so, when that debt became due for purposes of prescription.

[8] Although framed as a narrow question of law, that issue lies at the intersection of contract, property, and prescription. Its resolution requires a proper characterization of the reversionary clause, and a careful application of binding authority concerning the nature of obligations to effect transfer of immovable property. The issues arising for determination are narrow, but decisive.

[9] The primary question is whether the Municipality's claim for the re-transfer of the property, arising from the defendant's breach of the building condition contained in the deed of sale and title deed, constitutes a "debt" as contemplated in Chapter III of the Prescription Act 68 of 1969.

[10] If the question is answered in the affirmative, two further questions arise:

(i) The first is when the alleged debt became "due" for purposes of section 12(1) of the Prescription Act — that is, when the Municipality acquired a complete cause of action to enforce re-transfer.

(ii) The second is whether the applicable prescriptive period is that provided for in section 11(d) of the Act, namely three years in respect of "any other debt", or whether, as suggested in argument, section

11(b), which provides for a fifteen-year period in respect of certain debts owed to the State arising from the sale of land finds application.

[11] If the Municipality's claim constitutes a debt which became due upon breach on 15 April 2009, and if section 11(d) applies, then the claim would, prima facie, have prescribed on 15 April 2012, well before the institution of action in December 2020.

[12] Conversely, if the claim does not constitute a "debt" within the meaning of the Act, but rather a contractual election or option falling outside the prescription regime, then the special plea cannot succeed.

[13] The determination of these issues turns, in essence, on the proper characterization of the right created by the reversionary clause, and the application of binding authority concerning whether an obligation to effect transfer of immovable property constitutes a "debt" for purposes of prescription.

[14] It is therefore necessary to consider, at first, the nature of the right relied upon by the Municipality, and secondly, whether that right is susceptible to extinctive prescription under the Act. The material facts are largely common cause.

[15] On 26 August 2005, the plaintiff, Mahikeng Local Municipality ("the Municipality"), concluded a written deed of sale with the defendant, Mr. Mike Ishmael Binazir, in terms of which it sold to him a specified erf for the purchase price of R12 144.00. Transfer of the property was duly effected and registered in the Deeds Office on 16 April 2007, whereupon ownership passed to the defendant.

[16] The deed of sale imposed a material condition upon the defendant, namely that he would erect, or cause to be erected, a structure on the property in accordance with the applicable land use requirements within a period of two years from the date of registration of transfer, or within such extended period as the Municipality might allow. This obligation was not merely contractual, it was also incorporated as a restrictive condition of title and endorsed against the title deed of the property.

[17] The agreement further provided that, in the event of a failure by the defendant to comply with this obligation, the Municipality would be entitled to invoke the reversionary clause. In terms of that clause, the Municipality could claim re-transfer of the property against repayment of the purchase price.

[18] It is common cause that the defendant failed to erect any structure on the property within the stipulated two-year period. That period expired on 15 April 2009. No extension of time was granted by the Municipality, and no variation of the agreement was concluded between the parties.

[19] The defendant's failure to comply with the building condition constituted a breach of the deed of sale and the corresponding condition of title. Notwithstanding that breach, the Municipality did not immediately seek to enforce its rights. Instead, it instituted action proceedings only during December 2020, more than eleven years after the expiry of the two-year period.

[20] In these proceedings, the Municipality seeks to enforce the reversionary clause by compelling the defendant to re-transfer the property to it, upon repayment of the purchase price.

[21] The defendant, in response, has raised a special plea of extinctive prescription, contending that the Municipality's claim became due upon breach on 15 April 2009 and was extinguished by the lapse of three years thereafter. It is against this factual matrix that the issue of prescription falls to be determined. The law relating to extinctive prescription is governed by the Prescription Act 68 of 1969.

[22] Section 10(1) of the Act provides that a debt shall be extinguished by prescription after the lapse of the period prescribed by law. Section 11(d) stipulates that, save where an Act of Parliament provides otherwise, the period of prescription in respect of "any other debt" is three years.

[23] The Act does not define the term "debt". It is, however, well established that the term bears a wide and general meaning. It includes an obligation

to do something; to refrain from doing something; or to render performance. In *Desai NO v Desai*,[1] the court held that an obligation to procure the registration of transfer of immovable property constitutes a "debt" for purposes of the Act.

[24] The central enquiry in matters of this kind is therefore whether the right sought to be enforced gives rise to an obligation on the part of the debtor to perform, in this instance, to effect transfer of immovable property, and, if so, when that obligation became due.

[25] The nature of reversionary clauses in agreements for the sale of land has been authoritatively considered by the Supreme Court of Appeal in *eThekwini Municipality v Mounthaven (Pty) Ltd*.[2] In the *Mounthaven* matter, the court held that a claim by a municipality to compel the re-transfer of immovable property pursuant to a reversionary clause constitutes a "debt" as contemplated in Chapter III of the Prescription Act. The court further held that such a right is, in substance, a personal right, notwithstanding its recordal in the title deed, and that the obligation to effect transfer is susceptible to extinctive prescription.

[26] That reasoning was not disturbed by the Constitutional Court of South Africa when it refused leave to appeal in the same matter.[3] On the contrary, the Court endorsed the proposition that a claim to procure

[1] *Desai NO v Desai NNO and Others* 1996 (1) SA 141 (SCA).
[2] *eThekwini Municipality v Moutnhaven (Pty) Ltd* 2018 (1) SA 384 (SCA).
[3] *eThekwini Municipality v Mounthaven (Pty) Limited* 2019 (4) SA 394 (CC).

transfer of immovable property constitutes a claim to deliver goods, and therefore falls within the ordinary meaning of a "debt".

[27] The position was reaffirmed by the Supreme Court of Appeal in *Bondev Midrand (Pty) Ltd v Puling*,[4] where the court considered a reversionary clause framed in discretionary terms; namely, that the seller would be "entitled, but not obliged" to claim re-transfer upon breach. The court nevertheless held that the claim for re-transfer constituted a "debt" which became due upon the purchaser's failure to comply with the building condition, and that such claim prescribed after the lapse of three years in terms of section 11(d).

[28] Importantly, the court rejected the notion that the discretionary nature of the right, or its characterization as an "option", removes it from the ambit of prescription. Once the jurisdictional fact of breach occurs, the creditor acquires a complete cause of action, and the corresponding obligation to re-transfer becomes enforceable. It follows that the juridical characterization of a reversionary clause as an "option" in contract law does not determine whether the resulting claim constitutes a "debt" for purposes of the Prescription Act. The enquiry is one of substance.

[29] In addition, it is trite that prescription begins to run when the debt is "due", that is, when the creditor has a complete cause of action and is entitled to enforce the obligation. In the context of building clauses of this nature, that

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[4] *Bondev Midrand (Pty) Limited v Puling and Another, Bondev Midrand (Pty) Limited v Ramokgopa* 2017 (6) SA 373 (SCA).

moment arises upon the expiry of the stipulated period for performance without compliance.

[30] As to section 11(b) of the Act, which provides for a fifteen-year prescriptive period in respect of certain debts owed to the State arising from the sale of land, its application is limited. The Supreme Court of Appeal has held in *Holeni v Land and Agricultural Development Bank of South Africa*[5] that the phrase "the State" must be interpreted restrictively and does not necessarily encompass every organ of state.

[31] In any event, section 11(b) presupposes the existence of a "debt". It does not assist a party who contends, as the Municipality does in this case, that the right in question is not a debt at all. These principles make plain that a claim to compel the re-transfer of immovable property pursuant to a reversionary clause is, in law, a debt which is subject to extinctive prescription, and that such prescription ordinarily runs from the date upon which the underlying breach occurs.

[32] Applying the above principles to the facts of this matter, the starting point is the proper characterization of the Municipality's claim. The Municipality seeks to compel the defendant, Mr. Mike Ishmael Binazir, to re-transfer immovable property to it pursuant to a reversionary clause triggered by his failure to comply with a building condition.

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[5] *Holeni v Land and Agricultural Bank of South Africa* 2009 (4) SA 437 (SCA).

[33] That claim gives rise to an obligation on the part of the defendant to effect the transfer of immovable property. In accordance with the authorities discussed above, such an obligation constitutes a “debt” for purposes of the Prescription Act.

[34] What needs to be determined is when that debt became due. It is common cause that the transfer of the property was registered on 16 April 2007, and that the defendant was obliged to erect a structure within two years of that date.

[35] That period expired on 15 April 2009. Upon the defendant’s failure to comply with the building condition by that date, the Municipality became entitled to enforce the reversionary clause.

[36] At that point, the Municipality had a complete cause of action. The debt, namely the obligation to re-transfer the property, was therefore due for purposes of section 12(1) of the Prescription Act. Prescription accordingly commenced to run on 15 April 2009.

[37] In terms of section 11(d) of the Act, the applicable prescriptive period is three years. Absent interruption or delay, the Municipality’s claim would have prescribed on 15 April 2012.

[38] The Municipality instituted action only during December 2020, more than eleven years after the debt became due. There is no suggestion in the papers that the prescription was interrupted in terms of section 14 or delayed in terms of section 12(2) to (4) of the Act. Nor has any factual basis been advanced to bring the claim within the extended period contemplated in section 11(b).

[39] The Municipality instead contends that its right could be exercised at any time within a "reasonable period", and that a delay of approximately thirteen years is not unreasonable, having regard to administrative processes within a local authority. I do not agree.

[40] Once it is accepted that the claim constitutes a debt, the time limits for its enforcement are governed by the Prescription Act. The Act provides a comprehensive and exhaustive regime for the extinction of debts. It does not allow for a parallel enquiry based on general notions of reasonableness. The Prescription Act is specific in catering for different prescription period.

[41] Permitting a creditor to avoid the consequences of prescription on the basis that its delay was "reasonable" would undermine the certainty and finality which the Act is designed to achieve. Moreover, the Municipality's approach would render prescription contingent upon a creditor's internal administrative efficiency, a consideration that finds no support in the Act or in the authorities.

[42] In the circumstances, the Municipality's claim became due on 15 April 2009 and was extinguished by prescription on 15 April 2012. It follows that, by the time the summons was issued in December 2020, the claim had already prescribed. Mr. Binazir special plea must, therefore, succeed.

[43] In conclusion, it need to be mentioned that this matter is on all-fours with an identical same matter involving the very same parties, that were pronounced upon by this Court and eventually even the Constitutional Court, albeit on a different point but the result is the same. Based on the principle of s*tare decisiis,* this Court is bound to follow the precedent matter.

Order

[44] Consequently, the following order is made:

(i) The Defendant's special plea of extinctive prescription in terms of section 11(d) of the Prescription Act, No 69 of 1969, to the plaintiff's claim, is upheld.

(ii) The plaintiff is ordered to pay the costs of this application on a party-and-party basis on Scale B, in terms of Rule 67 A of the Uniform Rules of Court, to be taxed.

[redacted]

R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

Appearances

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