



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 29 April 2026

Case No. 2017/30322

In the matter between:

MRM

Plaintiff

and

LENMED HEALTH GROUP LIMITED

First Defendant

MARIUS JANSE VAN RENSBURG

Second Defendant

BAREND HERMANUS PIETERSE

Third Defendant

RIAAN JOUBERT

Fourth Defendant

MABUDE AND BESTER INC

Fifth Defendant

WATU SAMY LUNDA

Sixth Defendant

JAKOBUS RAUBENHEIMER MARAIS

Seventh Defendant

JUDGMENT

WILSON J:

- 1 On 10 April 2016, the Plaintiff, MRM, was admitted to the Lenmed Private Hospital in Randfontein. She complained of pain in her left knee. Although no-one knew it at the time, MRM turned out to have had an aneurysm in her popliteal artery. The aneurysm had ruptured, resulting in limited blood flow to her lower left leg. The rupture went untreated for a critical period, during which the condition of MRM's left leg deteriorated to the extent that it eventually had to be amputated above the knee on 19 April 2016.

- 2 On 14 August 2017, MRM instituted an action for the recovery of losses she claims resulted from the negligent treatment she received at the hospital, and which led to the need to amputate her leg. The suit was initially brought against the first to fourth defendants, being the hospital itself and three of MRM's treating physicians. It became apparent from these defendants' pleas and responses to MRM's requests for further particulars that none of them took direct responsibility for the treatment MRM received in the hospital's accident and emergency department. That department, they said, was run by the fifth defendant, Mabude and Bester Inc.

- 3 On 21 June 2018, MRM instituted an action against Mabude and Bester Inc, in which she alleged that negligent treatment she had received from its physicians had caused or contributed to her injury. On 5 December 2018, Mabude and Bester Inc pleaded to MRM's claim. In its plea, Mabude and Bester Inc made two relevant allegations. It first alleged that MRM had initially been treated by the seventh defendant, Dr. Marais, who it described as its employee, and who treated MRM "in the course and scope of his duties" (fifth

defendant's plea, paragraph 2.1). Mabude and Bester Inc also alleged that, once Dr. Marais went off-duty, MRM was entrusted to the care of the sixth defendant, Dr. Lunda, who was another of its physicians at the time. Mabude and Bester Inc described Dr. Lunda as "a locum not in [its] employ".

4 MRM's legal representatives then made what Mr. Prinsloo, who appeared for MRM before me, described as a strategic decision. They decided that Dr. Marais need not be sued in his personal capacity, since Mabude and Bester Inc could be held vicariously liable for any negligence proved against him. They apparently accepted that Dr. Lunda had to be sued in her personal capacity, since she was not in Mabude and Bester Inc's employ.

5 Accordingly, on 31 August 2020, MRM instituted an action against Dr. Lunda, in which she said that the allegedly negligent treatment she had received from Dr. Lunda had caused or contributed to her injury. At around the same time, Mabude and Bester Inc amended its plea to withdraw the admission that Dr. Marais was one of its employees. It instead pleaded that both Dr. Marais and Dr. Lunda were independent contractors, over whom it had no control. The plea was obviously meant to resist any claim that Mabude and Bester Inc is vicariously liable for any negligence that may be proved against either Dr. Marais or Dr. Lunda.

6 That amendment notwithstanding, it was not until June 2022 that MRM's legal representatives woke up to the need, in the event that Mabude and Bester Inc was not vicariously liable for any negligence Dr. Marais may have committed, to sue Dr. Marais in his personal capacity. It was not until 22 June 2022 that the summons commencing MRM's action against Dr. Marais was served on

Dr. Marais himself. Dr. Marais raised a special plea of prescription, alleging, in substance, that MRM must have become aware, or should be deemed to have become aware, of Dr. Marais' identity at some point between 14 August 2017 and 8 June 2019. The debt MRM claims therefore fell due no later than 8 June 2019, and it prescribed no later than 9 June 2022.

7 The four separate actions launched against all seven defendants have now been consolidated. Dr. Marais' special plea was enrolled in my civil trial court on 14 April 2026. The parties were agreed that the special plea should be dealt with as a separated issue, and it appeared to me convenient to do so. I made an order separating the special plea from the rest of the issues in the action at the outset of the hearing.

8 An ordinary debt prescribes three years after it falls due (section 11 (d) of the Prescription Act 68 of 1969). A debt falls due when "the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises" (section 12 (3) of the Prescription Act). MRM plainly became aware of Dr. Marais' identity and his role in the chain of events leading to her injury when Mabude and Bester Inc named Dr. Marais in its plea dated 5 December 2018. The plea was served on MRM's legal representatives on 11 December 2018. It follows that MRM's claim against Dr. Marais prescribed on 12 December 2021.

9 Mr. Prinsloo submitted that, by initially pleading that Dr. Marais was its employee, Mabude and Bester Inc wilfully prevented MRM from discovering her cause of action against Dr. Marais. Under section 12 (2) of the Prescription Act, Mr. Prinsloo argued, this meant that the debt MRM claims against Dr.

Marais did not fall due until Mabude and Bester Inc amended its plea to aver that Dr. Marais was an independent contractor.

10 MRM did not place any reliance on section 12 (2) of the Act in her replication to Dr. Marais' special plea, but the argument is in any event misguided. The mere fact that MRM's representatives initially decided not to sue Dr. Marais in his personal capacity because they thought they could hold Mabude and Bester Inc vicariously liable does not mean that MRM was prevented, wilfully or otherwise, from suing Dr. Marais in his own right. The decision to pursue Mabude and Bester Inc on the basis of its alleged vicarious liability in fact entails the proposition that MRM's representatives already knew about Dr. Marais and his potential role in causing MRM's injury. In any event, the mere fact that Mabude and Bester Inc now claims that Dr. Marais was an independent contractor does not exclude the possibility that it may nevertheless be vicariously liable for any negligence proved against him (see *Mohun and Another v Phillips NO obo S* [2022] ZASCA 186 (22 December 2022), paragraphs 38 to 45).

11 The special plea must be upheld. However, I am not inclined to award costs against MRM. This was a straightforward case. Once Mabude and Bester Inc named Dr. Marais, MRM had three years in which to sue him. This case turns upon two facts, and two facts alone: first that MRM became aware of Dr. Marais' role in her treatment on 11 December 2018, and, second, that MRM did not institute proceedings against Dr. Marais until 22 June 2022, some four and a half years later.

- 12 These facts were common cause, but Dr. Marais' legal representatives overcomplicated the issue by pressing the pointless, and in my view dubious, case that MRM should be deemed to have been aware of Dr. Marais' identity as early as August 2017, when her hospital records were discovered. Those records included a form signed by Dr. Marais. Dr. Marais' signature is illegible, and the form does not otherwise identify him. It was nevertheless suggested that a reasonable litigant in MRM's position could have found out about Dr. Marais' role in her treatment shortly after the delivery of the medical records. Mr. Botha, who appeared for Dr. Marais, argued that it was unreasonable of MRM to wait until Mabude and Bester Inc identified Dr. Marais in its plea.
- 13 I need not assess that claim, but I am in some doubt about it. MRM was investigating a complex chain of medical causation leading to her injury. The hospital at which she suffered the injury sought to shift any liability for her loss on to its separately incorporated constituent practices, which in turn have now sought to shift any liability onto the physicians working for them, apparently as independent contractors. In these circumstances, I do not think MRM can be criticised for seeking relief against the hospital rather than a treating physician – who was, at the time she received her medical records, identified by no more than his scrawled signature on a single sheet of paper.
- 14 Whatever merit it might have had, the more ambitious argument pursued on Dr. Marais' behalf meant that the trial bundle contained around 500 more pages than required. It need only have contained Mabude and Bester Inc's pleas in their original and amended forms, together with the pleadings in the action between MRM and Dr. Marais. This could have been no more than 100

pages. The trial bundle handed up ran to over 650 pages. The case as presented also entailed Dr. Marais giving several hours of largely irrelevant evidence about the course of MRM's treatment and the authenticity of the record he signed. All of that could have been avoided on a simple analysis of a few of the pleadings.

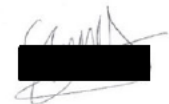
15 The shortest distance between two points is generally a straight line. The circuitous route chosen on Dr. Marais' behalf was unnecessary. MRM ought not to pay the costs of Dr. Marais' election to pursue it.

16 Accordingly –

16.1 The seventh defendant's special plea of prescription is upheld.

16.2 The plaintiff's claim against the seventh defendant is dismissed.

16.3 Each party will pay their own costs.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson, with whom Judges Mia and Smit agree. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 29 April 2026.

HEARD ON: 14 April 2026

DECIDED ON: 29 April 2026

For the Plaintiff: JC Prinsloo
Instructed by Renier van Rensburg Inc

For the Seventh Defendant: E Botha SC
Instructed by MacRobert Inc