IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 13438/2017

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

[redacted]

28 MAY 2026

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SIGNATURE **DATE**

In the matter between:

LONDI IMMACULATE BUTHELEZI Plaintiff

and

ROAD ACCIDENT FUND Defendant

JUDGMENT ON STATED CASE

LABUSCHAGNE J:

[1] The plaintiff has instituted proceedings in terms of the Road Accident Fund Act[1] (RAF) against the defendant (the RAF) in this Division. Pleadings have closed and the parties agreed to the separation of a special plea of prescription in terms of Rule 33(4) and that the special plea would be determined by means of a stated case.

CHRONOLOGY

[2] The following chronology emerges from the stated case.

[3] The plaintiff was injured in a motor vehicle collision that took place on 23 December 2011 in which he sustained bodily injuries. A claim was lodged with the RAF, and an action was instituted in the Regional Court, Pretoria on 06 December 2012 under case number 2330/12. In those proceedings the RAF appointed attorneys and a plea was filed.

[4] Without withdrawing the aforesaid action, the plaintiff, upon realising that his claim exceeded the jurisdiction of the Regional Court, proceeded to institute a summons in the High Court of this Division on 23 February 2017. Different attorneys represented the RAF and no plea of **lis pendens** or prescription was initially raised. The parties participated in the process of obtaining certification for trial readiness.

[1] 56 of 1996.

[5] In the course of pretrial discussions, the RAF conceded liability. The matter was certified as trial ready, and the plaintiff then proceeded with an application for interim payment in terms of Rule 34A.

[6] On 28 February 2022 an order was obtained for an interim payment of R1,2 million. This order was obtained by default as the RAF did not oppose the proceedings.

[7] When the applicant proceeded to issue a writ to enforce the interim payment, the RAF responded by applying for a rescission of the order granting the interim payment. The application for rescission failed.

[8] The RAF then, for the first time, contended that the claim had prescribed and filed an amended plea to that effect. The special plea of **lis pendens** was also raised but fall outside the ambit of the stated case. The RAF's contention is that, as the accident had taken place, and the cause of action had arisen, on 23 December 2011, the five-year prescription period envisaged in section 23(2) of the RAF Act had expired by the time the action was instituted.

DISCUSSION

[9] Prescription needs to be specifically raised in the pleadings, and the court cannot **mero motu** enquire into the issue (Section 17(1)-(2) of the Prescription Act[2]). In *Van Den Bergh v Government of the French Republic the following is stated at par [24]*:[3]

[2] 68 of 1969.
[3] *Van Den Bergh v Government of the French Republic* 2026 JDR 1434 (WCC) at para 24.

> "the special plea that was raised in this matter by the appellants, was one of prescription. The full court held that the onus in respect of the special plea rested on the appellants. In doing so, the court relied on *Macleod v Kweyiya* 2013 (6) SA 1 (SCA) at para 10, where the Supreme Court of Appeal held: This court has repeatedly stated that a defendant bears the full evidentiary burden to prove a plea of prescription, including the date on which a plaintiff obtained actual or constructive knowledge of the debt. The burden shifts to the plaintiff only if the defendant has established a prima facie case."

[10] When a claim arises, prescription is interrupted by the service of court proceedings according to section 15(1) and 15(4) of the Prescription Act.[4] In *Rademeyer v Ferreira*,[5] it is stated at par [37] that "section 15(1) of the Prescription Act provides that the running of prescription is interrupted by the service on the debtor of any process whereby the creditor claims payment of a debt."

[11] The Regional Court proceedings that were instituted by the plaintiff had the effect of interrupting prescription. When the plaintiff instituted a second action based on the same cause of action in the High Court in 2017, it did so in circumstances where prescription had been interrupted.

[12] The institution of a second action is *prima facie* vexatious, and it was open to the RAF to raise a plea of lis alibi pendens. In *Eskom Holdings SOC Ltd v Silicon Smelters (Pty) Ltd*,[6] the court confirmed this principle by relying on

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[4] 68 of 1969.
[5] *Rademeyer v Ferreira* 2025 (2) SA 1 (CC) at para 37.
[6] *Eskom Holdings SOC Ltd v Silicon Smelters (Pty) Ltd* [2023] 4 All SA 661 (GP) at para 60.

Richtersveld Community v Alexkor Ltd 2000 (1) SA 337 (LCC). At 340E–343C, where Gildenhuys J held as follows:

> "a defence of lis alibi pendens depends upon the existence of a pending earlier action. The mischief at which the defence is directed is that it is prima facie vexatious to bring two actions in respect of the same subject matter. The requisites for a valid plea of lis alibi pendens are that the actions must be between the same parties, must concern the same thing and must arise from the same cause of action."

[13] Section 24(5) of the RAF Act provides that, upon lodging of a claim against the RAF, and if the Fund does not, within 60 days from lodging object to the validity thereof, "the claim shall be deemed to valid in law in all respects".

[14] This provision has been used in the past by plaintiffs to contend that, unless there is an objection within 60 days from lodging, a plea going to the substance of liability is not competent. This proposition has been rejected by the SCA. Section 24(5) only deals with procedural matters and not matters of substance (which would include prescription). (See *Thugwana v Road Accident Fund* 2006 (2) SA 616 (SCA) at paragraph [8], page 619 C – D).

[15] The RAF did not raise lis pendens and prescription in its original plea in the High Court proceedings. It introduced these defences only after:

15.1 It had conceded liability on the merits;

15.2 The plaintiff had obtained an interim payment sanctioned by the court for R1,2 million; and

15.3 The RAF's rescission of the interim payment had failed.

[16] The plaintiff would have had a right to object to the introduction of a plea of prescription at such a late stage simply because it contyradicts an admission of liability and because it was prejudiced. In *J.M.S v M.M.A.N*,[7] the following is stated**:**

> "it is trite law that a Court hearing an application to permit an amendment has a wide judicial discretion, this is echoed in the wording of Rule 28(10). When exercising such discretion whether to permit an amendment, the court is required to follow the well-established approach set out in *Moolman v Estate Moolman* 1927 CPD 27 at 29 which states that "the practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which is sought to amend was filed."

[17] The plea of prescription strikes at the validity of the interim payment which the plaintiff had obtained, following the concession of liability by the RAF.

[18] Nevertheless, the amended plea was filed raising both defences of **lis pendens** and prescription.

[19] It is trite that the plea has to be assessed as at the time of institution of the High Court proceedings in 2017. (See *Levi Strauss & Co v Coconut Trouser*

[7] *J.M.S v M.M.A.N* [2023] ZAGPPHC 521; 40230/2020 at para 8.

Manufacturers,[8] where the court stated that "amendments are effective retrospectively; therefore, this change of applicant operated retrospectively.")

[20] I conclude that it was however not competent for the RAF to plead prescription, because of the interruption in prescription caused by the Regional Court summons that was served on 06 December 2012. And as the RAF had conceded liability at the time of introduction of the plea, it was effectively withdrawing an admission of liability. It could only do so by means of a substantive application for the withdrawal of the admission of liability, which it failed to bring. The plea of prescription is consequently invalid both substantively and procedurally. It falls to be dismissed.

[21] In the premises I make the following order:

1. In terms of Rule 33(4) the special plea of prescription is separated from the remainder of the pleadings, which remainder is postponed *sine die*.

2. The special plea of prescription is dismissed with costs, such costs to be paid on a party and party scale, Scale B.

[redacted]

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

[8] *Levi Strauss & Co v Coconut Trouser Manufacturers* (Pty) Ltd 2001 BIP 228 (SCA) at para 8.

APPEARANCES:

COUNSEL FOR APPLICANT : ADV GWABENI

COUNSEL FOR RESPONDENT : ADV MADASELE