



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: 13011/2010

In the matter between:

DEAN RAMBALLI

PLAINTIFF

and

RK NATHALLAL AND COMPANY

DEFENDANT

Delivered electronically: This judgment is deemed to be handed down electronically on 18 August 2026 at 11h30 by circulation to the parties' representatives via email.

ORDER

The following order is issued:

1. The defendant's special plea of prescription is dismissed.
 2. The defendant is liable to compensate the plaintiff all his proven damages. The issue of quantum is held over for later determination.
 3. The defendant is ordered to pay the plaintiff's costs on scale B.
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JUDGMENT

HLATSHWAYO J

Introduction

[1] The plaintiff instituted an action against the defendant seeking damages arising out of the alleged professional negligence. The defendant is a firm of attorneys with its practice situated around Verulam, Kwa Zulu-Natal. The plaintiff was a passenger in a motor vehicle that was involved in a collision on 18 March 1995 and as a result sustained injuries. He was accordingly entitled to pursue a claim for compensation against the then Multilateral Motor Vehicle Accidents Fund (MVA) which was later replaced by the Road Accident Fund (RAF).

[2] The plaintiff was a minor at the time of the accident and was at all times represented by his father, Mr Harrinarain Ramballi (Mr Ramballi). During May 1996 Mr Ramballi gave a mandate to the defendant to pursue a claim against the RAF on behalf of the plaintiff. The defendant collated the necessary information and proceeded to lodge the claim with the RAF on 3 March 1997. The plaintiff alleges that the defendant allowed his claim against the RAF to be extinguished by the effluxion of time in terms the Prescription Act 68 of 1969 (the Prescription Act).

[3] It is also common cause that the plaintiff reached the age of maturity on 18 March 2003 and he subsequently issued summons in his name against the defendant in this matter on 4 November 2010. The defendant denied any liability and amongst the defences raised by the defendant is that the plaintiff's action against it has prescribed in terms of Chapter III of the Prescription Act. At the commencement of the trial, both parties agreed that the court should deal with the issues of prescription and liability only, with quantum to stand over for later determination. As part of this agreement, I was asked to consider paragraphs 9 to 12 of the particulars of claim, paragraph 10 to 11 of the plea and paragraphs 4 to 14 of the replication dealing with the issue of liability. In addition, I was called upon to focus on paragraphs 1 to 5 of the plea and the plaintiff's replication on pages 22 to 26 when considering the special plea of prescription.

[4] During the trial the plaintiff led the evidence of his father, Mr Ramballi and the defendant closed its case without calling any witnesses.

Summary of evidence

[5] Mr Ramballi testified that he is a retired plumber who was employed by the eThekweni municipality. Around March 1995 he was travelling with his son, Dean Ramballi (the plaintiff) in Ottawa, Verulam. The traffic light was green in his favour; however,

another motor vehicle collided with his van. As a result of the collision, the plaintiff was flung out of the car and fell with his head on the tarmac. Both were immediately rushed to City Hospital in Durban and the medical staff informed him that the left side of the plaintiff's brain had slight damage.

[6] He thereafter approached an attorney, Mr RK Nathallal around May 1996 in order to assist him with the claim against the RAF. He was attended to by another attorney at the firm, Mr Raghavjee who assured him that he will attend to the claim. Mr Ramballi duly paid a deposit of R1 500. The claim was subsequently lodged with the RAF sometime in March 1997. There were various communications between him and his legal representatives regarding this matter. Some of those interactions are captured in letters written to the plaintiff requesting further information¹ and some were as a result of physical interactions with his lawyer. Due to his work as a plumber who was based in Verulam, Mr Ramballi frequently visited the offices of the defendant to deliver the requested documents and to make inquiries regarding the status of the claim. As a result of the defendant's letter dated 18 December 2000² detailing queries from the RAF, he together with the plaintiff visited Addington Hospital for an examination to assess the damage to the plaintiff's head. He received a report which he handed over to his attorney.³

[7] Mr Ramballi continued with regular visits to his attorney making inquiries. As a lay person he knew nothing about prescription. Whilst he knew the claim amount sought from the Fund was the sum of R400 000 he did not know if it was a good or bad claim amount. Mr Ramballi was dissatisfied with the delays in the plaintiff's matter. He penned a letter dated 12 March 2008 to the defendant expressing his dissatisfaction and demanded his attorney provide what he referred to as a "seriatim report" on the RAF claim.⁴ At the same time, he delivered a letter to the RAF requesting information about this matter and the RAF response was that they could not locate his claim.

[8] On 12 June 2008, Mr Ramballi sought the assistance of the KwaZulu-Natal Law Society (the Law Society) in order to get a response from the defendant and to expediate the claim. Following its interaction with the defendant, the Law Society informed him that Mr Raghavjee of the defendant still wished to continue with the matter and Mr Ramballi

¹ Exhibit "A" at 1-8.

² Ibid at 6.

³ Ibid at 39

⁴ Ibid at 9.

agreed that the defendant must continue in order to settle the claim. Subsequently thereafter Mr Ramballi filed another complaint with the Law Society. As part of the allegations against the defendant was that from inception the defendant had used evasive techniques to keep him uninformed of the matter and has delayed the matter for 15 years. He had expected that the matter would take one year to be finalised. The defendant's response to the Law Society was that the matter was still pending, summons were issued and the matter is dealt with by a stated case.⁵ At this juncture, Mr Ramballi had approached another attorney, Mr Gowans to assist him. As a result of the advice received, the plaintiff issued summons against the defendant alleging inter alia that the defendant allowed his claim to prescribe.

[9] Under cross-examination Mr Ramballi conceded that his interaction with the defendant occurred around 30 years ago and there are certain things he does not remember. However, the defendant informed him sometime in December 2000 that there was an issue of outstanding medical evidence in support of the claim but denied having been told of prescription. He also conceded that the last report received by him from the defendant was towards the end of 2001.

[10] He further testified that in April 2004, the plaintiff was involved in another accident where he suffered what is commonly referred to as whiplash injuries. A RAF claim was subsequently lodged and that claim only took one year to be finalised. The plaintiff thereafter closed his case and as alluded to above there were no witnesses called by the defendant.

Submissions

[11] The plaintiff submitted that the defendant bears the onus to establish that the plaintiff's action has prescribed but the plaintiff bears the evidential burden regarding the allegations that the defendant wilfully prevented the plaintiff from gaining knowledge of the existence of the debt. On the question of liability, the plaintiff bears the onus.

[12] It was submitted that the undisputed evidence of Mr. Ramballi demonstrated that a mandate had been given to the defendant which mandate the defendant was duty bound to exercise with skill, knowledge and diligence expected of a reasonable attorney.

⁵ Exhibit "A" at 43.

Despite the plaintiff sustaining a fractured skull and severe brain injury, the defendant failed to obtain the necessary expert medical legal reports. The defendant also issued summons against the RAF on 16 March 2001 in the Inanda Magistrates' Court but failed to take any further steps to pursue that action. In addition, he caused the plaintiff's claim to lapse.

[13] Dissatisfied with how the matter was being dealt with, the plaintiff filed a complaint with the Law Society. The defendant's response to the Law Society on 17 June 2008 was that the matter was still proceeding and was still willing to finalise the claim. Further, the communications between the defendant and the Law Society as late as 22 September 2010 represented that the matter is dealt with by a stated case at Inanda Magistrates' Court held at Verulam. It was contended that if one accepts that the claim had prescribed on dates as alleged by the defendant,⁶ the defendant's communications in particular in September 2010 to the Law Society is decisive in determining the issue of liability and prescription. As at this date, the defendant represented that the claim was still alive and being dealt with by a stated case.

[14] It was argued that Mr. Ramballi is a lay person who had no knowledge about prescription law and the quantum of the claim. The only time he became aware of prescription, and the nature and extent of the claim against the defendant was when he consulted with another law firm, Gowans and Paton in 2010. It is at this stage that he acquired a complete cause of action and the entire set of facts which he needed to prove. Consequently, the plaintiff knew or reasonably ought to have known that the RAF claim was unsuccessful when he became aware of the facts of a matter when he consulted Gowan's and Paton.

[15] It was submitted that the interaction with the Law Society reaffirms the fact that the plaintiff did not have actual constructive knowledge that the claim had prescribed. Mr. Naidoo, for the plaintiff was critical of the defendant's failure to call witnesses to deal with when the plaintiff gained knowledge of facts. He argued that the court has not been favoured with the defendant's version regarding when the debt became due and when the plaintiff had actual knowledge of the relevant facts. Accordingly, an adverse inference must be drawn from the defendant's failure to lead evidence.

⁶ Rule 37 minute paragraph 16.

[16] The defendant on the other hand submitted that in line with its plea the claim has been extinguished by prescription in terms of Chapter III of the Prescription Act. Reliance was placed on the plaintiff's reply to its plea of prescription to the effect that the defendant did not keep the plaintiff informed or provide progress reports. In that reply the plaintiff stated that the defendant is estopped from raising prescription in terms of ss 12(1) and 12(3) of the Prescription Act because the defendant willfully prevented the plaintiff from becoming aware of the existence of the debt.

[17] The defendant drew my attention to the evidence of Mr. Ramballi that he consulted Mr. Raghavjee of the defendant towards the end of 2001 and was advised that the RAF contended that medical reports which had been submitted did not establish a nexus and no further information about the claim was received after that. Mr. Goddard, for the defendant, argued that objectively, Mr. Ramballi knew all the facts which gave rise to the complaint that the defendant did not keep him informed or provide progress reports when the defendant failed to provide further information about the claim after the end of 2001. Mr. Ramballi's evidence was that he visited the defendant's office on a monthly basis making inquiries about the claim. The failure to respond to the inquiries or provide information complained of reasonably or objectively means that he knew or could by the exercise of reasonable care have known that *something was wrong occurred*⁷. Reliance was placed on *Gunase v Anirudh*⁸ where the court held that A creditor is not allowed to postpone the commencement of the running of prescription by his failure to take necessary steps. Section 12(3) imposes a duty to exercise reasonable care to obtain knowledge of the identity of the debtor and facts from which the debt arises.

[18] Furthermore the plaintiff subjectively knew around 2004 that the plaintiff's second RAF claim had taken a year to be finalised. The plaintiff attained the age of majority on 18 March 2003. It was argued that a reasonable person with the above knowledge would definitely have known that something was wrong in this matter and as per Mr. Ramballi's evidence, the defendant's failure to provide information lasted for a decade and three years. Accordingly, the identity of the debtor and facts from which the debt claimed arises

⁷ *Le Roux and Another v Johannes G Coetzee and Seuns and Another* 2023] ZACC 46; 2024 (4) SA 1 (CC) para 50.

⁸ *Gunase v Anirudh* [2011] ZASCA 231; 2012 (2) SA 398 (SCA).

were thus objectively known or could have been acquired by exercising reasonable care more than three years before the action was instituted.

Discussion

[19] Although the parties agreed at a Rule 37 conference that liability and prescription were to be defined and adjudicated upon by the court in accordance with the specified paragraphs in the pleadings, the focus of the parties in this matter was largely on the question of whether the claim had prescribed and there was limited evidence, if any, on the question of liability. The main issue that must be determined is whether the plaintiff's claim had prescribed three years prior to the institution of legal proceedings. According to the defendant, the plaintiff's claim prescribed either in December 2004, alternatively March 2007, alternatively on or before 3 November 2007⁹. It is common cause that summons in this matter were served on the defendant on 4 November 2010.

[20] There is also no dispute that the defendant bears the overall onus in respect of prescription. The defendant must show that prescription began to run three years before at least 4 November 2010. However, the plaintiff bears an evidential burden when it comes to allegations that the defendant willfully prevented him from knowing the existence of the debt. When it comes to the issue of liability, the onus of proof lies with the plaintiff.

Prescription

[21] The applicable law relevant to the defendant's plea of prescription is ss 12(1), (2) and (3) of the Prescription Act which read:

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

(2) If the debtor willfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) 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.' (My emphasis.)

⁹ Rule 37 minute paragraph 16

[22] The purpose of s 12 of the Prescription Act was aptly explained by Zondo J in *Links v Department of Health, Northern Province*¹⁰ as follows:

'The provisions of s 12 seek to strike a fair balance between, on the one hand, the need for a cutoff point beyond which a person who has a claim to pursue against another may not do so after the lapse of a certain period of time if he or she has failed to act diligently, and, on the other, the need to ensure fairness in those cases in which a rigid application of prescription legislation would result in injustice. As already stated, in interpreting s 12(3) the injunction in s 39(2) of the Constitution must be borne in mind. In this matter the focus is on the right entrenched in s 34 of the Constitution.'

[23] On the question of when does the debt become due, the answer is when a party acquires knowledge of the complete cause of action. In *Truter and Another v Deyssel*¹¹ the Supreme Court of Appeal (the SCA) defined the term 'debt due' as follows:

'...For the purposes of the Act, the term "debt due" means a debt, including a delictual debt, which is owing and payable. A debt is due in this sense when the creditor acquires a complete cause of action for the recovery of the debt, that is, when the entire set of facts which the creditor must prove in order to succeed with his or her claim against the debtor is in place or, in other words, when everything has happened which would entitle the creditor to institute action and to pursue his or her claim.' (My emphasis.) (Footnote omitted.)

[24] I intend to briefly deal with whether the defendant willfully prevented the plaintiff from coming to know of the existence of the debt and thus estopped from raising prescription. I agree with the defendant that the plaintiff failed to set out particulars of the alleged prevention or material facts upon which he relies on order to sustain this submission. It is impermissible for the plaintiff to simply restate the law without setting out material facts to support it. Accordingly, the plaintiff's submission in this regard is unsustainable.

[25] When it comes to s 12(3) of the Prescription Act it is clear that it envisages actual and deemed knowledge of the facts giving rise to the cause of action. Actual knowledge relates to the subjective knowledge of facts by the creditor and deemed knowledge is when by exercising reasonable care, the creditor could have gained knowledge of facts. It is the latter requirement relied upon in the main by the defendant in this matter.

¹⁰ *Links v Department of Health, Northern Province* [2016] ZACC 10; 2016 (4) SA 414 (CC) (*Links*) para 26.

¹¹ *Truter and Another v Deyssel* [2006] ZASCA 16; 2006 (4) SA 168 (SCA) (*Truter*) para 16.

Generally this poses a significant challenge in determining when does a creditor have the necessary knowledge of facts from which the debt arises particularly when it comes to claims against professionals for negligence. The position in our law was extensively discussed by the Constitutional Court in *Le Roux and Another v Johannes G Coetzee and Seuns and Another*¹² where the following was said:

'In instances involving claims against professionals based on negligence, a creditor may have knowledge of facts but may, due to a lack of expert knowledge, be unable to discern from those facts that something wrong has occurred. Those facts may well objectively constitute the necessary facts to institute an action seen from the perspective of someone knowledgeable in the field (for example, medicine, engineering or auditing). However, to a creditor who lacks such expertise, they may not say the same thing. It would be harsh in those situations to say that the creditor has knowledge of the facts from which the debt arises.'

The Constitutional Court went on to endorse its earlier decision in *Links* which dealt with medical negligence where the following was said:¹³

'It seems to me that it would be unrealistic for the law to expect a litigant who has no knowledge of medicine to have knowledge of what caused his condition without having first had an opportunity of consulting a relevant medical professional or specialist for advice. That in turn requires that the litigant is in possession of sufficient facts to cause a reasonable person to suspect that something has gone wrong and to seek advice.' (Footnote omitted.)

[26] When it comes to the allegations of professional negligence by a legal practitioner, the Constitutional Court in *Le Roux* recognised that the situation is complicated by the distinction between primary facts and legal conclusions. Legal conclusions are the consequences assigned to events and by their nature are generally not facts upon which the cause of action arises. A 'general rule has emerged that legal conclusions do not constitute facts', and 'knowledge of such legal conclusions is not required by a creditor for purposes of s 12(3)'.¹⁴ The Constitutional Court, however, concluded that:¹⁵

'...if a legal conclusion is the only way a creditor can obtain knowledge that incorrect legal advice was given or a mandate not professionally discharged, does this constitute knowledge of a fact that s 12(3) contemplates or knowledge of a legal conclusion? That legal conclusion may be essential to completing the spectrum of the minimum facts from which the debt arises and of which the creditor is required to have knowledge. Put differently, it may be that, but for the legal conclusion, a creditor would not have knowledge of the "facts" from which the debt arises. ...'

¹² *Le Roux and Another v Johannes G Coetzee and Seuns and Another* 2023] ZACC 46; 2024 (4) SA 1 (CC) (*Le Roux*) para 50.

¹³ *Ibid* para 51.

¹⁴ *Ibid* para 43.

¹⁵ *Ibid* para 66.

[27] Mr. Goddard argued that the plaintiff's pleaded case in this matter is that the defendant did not keep the plaintiff 'informed' or 'provide progress' reports resulting in Mr. Ramballi lodging a complaint with the Law Society in order to obtain a feedback on the matter. Consequently, based on the plaintiff's plea it was the defendant's failure to answer inquiries or provide information which led him to find out that 'something wrong had occurred' as contemplated in *Le Roux*. It was submitted that the plaintiff found out something wrong occurred at the end of 2021 when the defendant failed to provide further information.

[28] Whilst the plaintiff pleaded the defendant's failure to provide Mr. Ramballi with progress reports as one of his complaints, this is not the only basis of the plaintiff's case. As part of the plaintiff's plea is his averments that he became aware of the identity and the nature and the quantum of his claim when he consulted with his former attorneys of record Gowans and Paton shortly before summons was issued. He also alleged that the defendant did not inform him that it failed to properly quantify his RAF claim or to prosecute it timelessly, allowed it to lapse and failed to institute an action in a court having jurisdiction to satisfy the plaintiff's claim.

[29] It must be borne in mind that a creditor in the position of the plaintiff is required to possess knowledge of necessary primary facts, if proved, would sustain his cause of action. Other ancillary facts not forming part of the cause of action and not necessary to prove the plaintiff's claim or supporting a right to judgment, are not facts from which a debt is due for purposes of s 12. In *Truter* the SCA having explained the meaning of 'debt due' quoted with approval the following definition of a cause of action:¹⁶

"A cause of action means the combination of *facts* that are material for the plaintiff to prove in order to succeed with his action. Such facts must enable a court to arrive at certain *legal conclusions regarding unlawfulness and fault, the constituent elements of a delictual cause of action being a combination of factual and legal conclusions*, namely a causative act, harm, unlawfulness and culpability or fault. (Emphasis added.)."

[30] The plaintiff's cause of action includes the averments that the defendant failed to prosecute the plaintiff's RAF claimed timelessly, allowed it to lapse, failed to properly

¹⁶ *Truter* para 17.

quantify the claim and failed to inform the plaintiff of the above failures. If these allegations are established, they would entitle the plaintiff to judgment.

[31] Nonetheless there is no substance to the defendant's submission that the plaintiff ought to have known that something wrong occurred in 2001 when the defendant failed to provide progress reports. The events that subsequently took place militate against such a conclusion. I shall below touch on these events that undoubtedly show that the plaintiff, and strangely the defendant for that matter, believed that his claim was still pending.

[32] The defendant relied on *Gunase v Anirudh*¹⁷ to contend that by exercise of reasonable care Mr. Ramballi ought to have known that something was wrong in the plaintiff's case. Reference was made to another accident involving the plaintiff that was settled by RAF within one year. The facts in *Gunase* are distinguishable to this matter. In *Gunase* the attorney who represented the plaintiff had closed his office and this fact was central to the court's finding that the plaintiff therein, by exercise of reasonable care, ought to have known that his claim was not lodged. In this matter there could be no question of anything wrong occurring in the mind of the plaintiff by 2001 in relation to the cause of action. Summons had been issued by the defendant on this date and reference to another claim that was settled quickly fails to recognise that each claim has its own dynamics and that the unique facts of a particular matter may lead to long delays.

[33] It is apposite to mention that Mr. Ramballi was 74 years old when he testified and the events he testified about occurred some 30 years ago. He thus could not remember some of the events. In this matter there were unexplained events for the periods between 2001 to 2008. The validity of the summons issued by the defendant is itself questionable in light of the former Rule 10 of the Magistrate's Court Rules which deems the summons to have lapsed if no further step is taken after a year. A definite finding on this issue is complicated by, on one hand the defendant's admission that no further steps were taken after the said summons were issued in 2021 and on the other, its own conflicting version that the matter was pending and was due to be set down for hearing a stated case in 2010. However, the defendant bears the onus to show when the plaintiff gained or ought to have gained knowledge of the facts. I am inclined to agree with the plaintiff that the defendant's failure to call any witnesses must attract an adverse inference regarding the

¹⁷ Ibid

issue of when the plaintiff gained knowledge of the facts. This is particularly so because the defendant is the party that possesses all the evidence in its file regarding its dealings with Mr. Ramballi.

[34] Nevertheless in this matter Mr. Ramballi testified that he wrote a letter to the defendant on 12 March 2008 demanding a report about the status of the plaintiff's claim. When he received no joy from the defendant's office, he approached the Law Society. Importantly in this letter he recorded an earlier interaction with the defendant where the defendant revealed to him that the case was still pending. Consistent with the pending status of the matter, the defendant's reply to the Law Society suggested that the defendant was still willing to assist the plaintiff in dealing with the matter. The defendant's affidavit to the Law Society maintains the same theme that the plaintiff's claim was still alive, and summons were issued against the RAF. The plaintiff's letter to the Law Society dated 17 June 2008 unequivocally demonstrates that he believed the defendant's allegations that summons had been issued, and the matter was still pending. As late as 22 September 2010, the defendant was still advising the plaintiff that his case was pending before court and was being dealt with by way of a stated case. As pointed out above, these events militate against a finding that the plaintiff ought to have known the facts giving rise to the cause of action after the last progress report in 2001.

[35] Mr Ramballi testified that he approached his former lawyers, Gowans and Paton, who subsequently issued summons in this matter in November 2010 against the defendant. The plaintiff case is that he became aware of the identity and the nature of the claim when he consulted with his lawyers Gowans and Paton. It is clear that plaintiff would have gained knowledge of facts necessary to sustain his course of action when he was informed accordingly by his lawyers that the defendant allowed his claim against RAF to lapse, did not properly quantify the damages, did not proceed to the court with jurisdiction to satisfy his claim and that he did not inform the plaintiff his failure to execute the mandate. Whilst these facts received from his lawyer which culminated in this action may also be regarded as legal conclusions, I am of the view that this is such a case where a limited exception to the rule as espoused in *Le Roux* applies. The said exception was stated as follows:¹⁸

¹⁸ *Le Roux* para 79.

'In such instances, a limited exception to the rule is necessary and appropriate. The exception being: for the purposes of section 12(3) of the Prescription Act, in professional negligence claims against legal practitioners, the facts from which the debt arises may include a legal conclusion, where that legal conclusion forms part of the cause of action or minimum facts in order to pursue the claim. This view is advanced on three grounds: (a) the application of the general rule may result in an injustice; (b) an exception for negligence claims against legal practitioners would accord with our jurisprudence relating to other professions; and (c) the exception is limited in scope.'

[36] It would be unrealistic and unjust to expect a lay person in the position of Mr. Ramballi who sought the services of the defendant as a legal practitioner and relied on the correctness of his advice that summons were issued against the RAF and the claim was still pending to independently test the correctness of that advice or determine whether the mandate was properly performed. As late as September 2010 the defendant was still advising the plaintiff through the Law Society that his claim was still proceeding. On the facts before me the only way the plaintiff could reasonably find out, as he did, that his claim was allowed to lapse and also that he was not informed that his mandate was not carried out properly is when he consulted with his lawyer, Mr. Gowans before summons were issued in this matter.

[37] I am satisfied that the defendant failed to discharge the onus resting upon it to show that plaintiff's claim against it has prescribed as contemplated by the Prescription Act and the special plea of prescription must be dismissed.

Liability

[38] As regards the question of liability, it must be stated that both parties placed before the court the issue of prescription and liability and persisted with the hearing on both issues at the commencement of the trial. When the trial commenced, there was little, if any evidence led to the issue of liability. This approach by both parties is somewhat puzzling particularly in light of their eagerness to place both issues before court. That being so, the plaintiff asked the court to consider the evidence of Mr. Ramballi, and the documents filed on record in order to conclude that a case has been made out on liability. The defendant argued that there is no evidence justifying a finding on liability.

[39] The evidence and documents filed on record show that Mr. Ramballi requested the defendant to assist him with the RAF claim in 1996 and made payment of the requested deposit. The defendant subsequently proceeded to lodge the claim and went on to issue summons against the RAF in the Inanda Magistrates' Court. I am satisfied that a mandate had been given and accepted by the defendant to prosecute the plaintiff's claim to its finality including issuing summons and prosecuting the action against the RAF where necessary.

[40] Amongst the averments made by the plaintiff is that the defendant breached the mandate and was negligent in allowing the plaintiff's claim against the RAF to prescribe, failed to properly quantify the plaintiff's claim, and issued summons out of a court with limited jurisdiction when the defendant should have obtained relevant medical reports in order to pursue action in the appropriate court that would satisfy the plaintiff's claim. Despite these specific allegations, the plaintiff failed to lead evidence to support them.

[41] Regardless of the above, it is clear from the evidence that the defendant did not act with due diligence, skill and knowledge expected of an ordinary attorney. Having issued summons in 2021 the defendant failed to prosecute this action to its finality. Furthermore, regard being heard to the defendant's own version that no further steps were taken after summons were issued in 2001 and that the plaintiff's claim prescribed the very least in November 2007, a finding that the defendant was negligent by allowing the plaintiff's claim to prescribe is inescapable. The defendant failed to give evidence to explain the obvious failure to prosecute the action diligently and allowed the plaintiff's claim to prescribe. Whilst an adverse inference for this failure is warranted, but based on the evidence a finding must be made against the defendant that it acted negligently, and in breach of its mandate.

[42] The duties of an attorney in executing a mandate of his client are trite. I can do no better than to refer to the following passage that was quoted in *Ramonyai v L P Molohe Attorneys*:¹⁹

"Professional negligence is the failure by an attorney to act with the competence reasonably expected of ordinary members of the attorney's profession. An attorney must be meticulous, accountable, ... He or she must serve his client faithfully and diligently and must not be guilty of any unnecessary delay. He or she must once he or she has undertaken the client's case, not

¹⁹ *Ramonyai v L P Molohe Attorneys* [2014] ZAGPJHC 65 para 16.

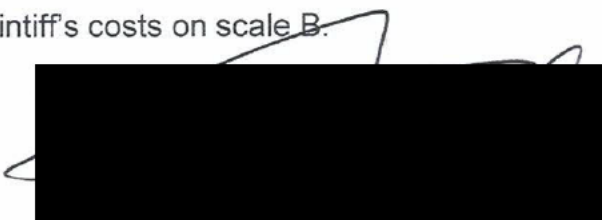
abandon it without lawful reason or excuse. An attorney who fails to explain his or her precise instructions and lays possum invites an adverse inference against him or herself. Where a client's claim prescribes under his or her watch, he or she is guilty of a breach of his or her mandate and duty to his or her client by his or her failure to present countervailing evidence that his or her mandate and instructions were circumscribed and not open ended."

[43] When the defendant accepted the mandate, it held itself out as possessing the necessary skills to discharge the mandate diligently. I am satisfied that the plaintiff has established, on the balance of probabilities, that the defendant acted negligently in discharging the mandate and is liable to the plaintiff for damages he may so prove.

Order

[44] In the circumstances the following order is made:

1. The defendant's special plea of prescription is dismissed.
2. The defendant is liable to compensate the plaintiff all his proven damages. The issue of quantum is held over for later determination.
3. The defendant is ordered to pay the plaintiff's costs on scale B.



HLATSHWAYO J

Appearances

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Date of Hearing: 17 February 2026

Date Judgment Delivered: 18 August 2026