



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

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

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SIGNATURE

DATE: 8 September 2026

Case No. 2023-049662

In the matter between:

NICOLAOS RIGA

Plaintiff

and

VOLTEX (PTY) LTD

Defendant

JUDGMENT

WILSON J:

- 1 For almost thirty years, the plaintiff, Mr. Riga, was employed as the Internal Audit Manager for the defendant, Voltex. He was dismissed on 1 June 2022. Mr. Riga says that he was dismissed because, between 2017 and 2020, he uncovered a series of payments and accounting manoeuvres he regarded as suspicious. Mr. Riga's particulars of claim suggest that the payments may have been made in order to corruptly obtain business from the state or to

procure stolen goods. Mr. Riga's particulars also suggest that the value of Voltex's inventory may have been deliberately overstated so as to enhance Voltex's reportable financial position. Mr. Riga says he reported the details of these payments and accounting manoeuvres to Voltex's executives, including its managing director. As a result, he says, he was demoted and ultimately dismissed, solely or predominantly for shedding light on these audit findings.

- 2 On 25 May 2023, Mr Riga instituted a claim against Voltex for breach of contract in the form of wrongful dismissal. Aware of the common law rule that damages for the breach of an employment contract do not generally exceed two weeks' salary, Mr. Riga initially asked that the common law rule be developed under the Constitution, 1996, to allow him to claim what would have been due to him had his employment with Voltex subsisted until retirement.
- 3 On 23 February 2024, however, Mr. Riga abandoned that claim, and substituted it with the claim that his demotion and ultimate dismissal constituted an occupational detriment under the Protected Disclosures Act 26 of 2000. Mr. Riga claimed that he had been subjected to this detriment solely as a result of his reporting of his various audit findings, which constituted protected disclosures under the Act. Because, Mr. Riga claimed, the Act creates a statutory duty not to subject him to an occupational detriment merely for making such disclosures, his demotion and dismissal were wrongful, and he is entitled to be compensated by being placed in the position he would have been in had he not been dismissed. The value of that claim is identical to the claim Mr. Riga initially made for breach of his employment contract.

- 4 Voltex met this amendment with a special plea of prescription. It also pleaded over in the event that the special plea failed. By agreement between the parties, which was endorsed in an order of Manoim J dated 27 February 2025, only the special plea is before me. The special plea was enrolled in my opposed motion court for the week of 24 August 2026.
- 5 Voltex initially objected to the enrolment of the special plea in motion court, but, at the hearing, Mr. Whitcutt, who appeared for Voltex, declined to press that objection. That was wise. It is standard practice in this court for a special plea to be enrolled as an opposed motion if both parties agree that the plea may be determined on the face of the documents filed in the trial action. The practice is meant to save the time that would otherwise be wasted by separating a special plea from the remaining issues in a trial action and placing the special plea on the trial roll, from which a hearing takes much longer to materialise than from the opposed motion roll. The parties were agreed that the special plea could be determined on the face of the pleadings as they presently stand. The opposed motion court is clearly the correct forum to do this.
- 6 Voltex says that Mr. Riga's claim introduced on 23 February 2024 has prescribed because it seeks payment of a debt substantially different from the debt claimed in Mr. Riga's particulars of claim dated 25 May 2023. However Mr. Riga's claim is to be characterised, the debt Mr. Riga says is due had to be claimed by no later than three years from the day he was dismissed. Mr. Riga served his 25 May 2023 particulars of claim well within this period, but service of the 23 February 2024 particulars fell substantially beyond it. It

follows that, if the debt claimed in the 2024 particulars really is different from the debt claimed in the 2023 particulars, Mr. Riga's claim has indeed prescribed, and the special plea must be sustained.

7 Whether the two sets of particulars refer to different debts depends on the construction to be given to the word "debt" in the Prescription Act 68 of 1969. Although the Act itself does not explicitly define the word "debt", our courts have consistently held that a "debt" is something different from a "cause of action". A cause of action "is the entire set of facts which gives rise to an enforceable claim and includes every fact which is material to be proved to entitle a plaintiff to succeed in his claim" (*Abrahamse & Sons v SA Railways and Harbours* 1933 CPD 626, endorsed in *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) ("*Evins*"), 838G-H). To put it another way, a cause of action is "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved" (*McKenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16).

8 The authorities are less admirably clear about what constitutes a "debt". In *Evins* it was said that a "'debt' is necessarily the correlative of a right of action vested in the creditor, which likewise becomes extinguished simultaneously with the debt . . . Where a creditor has two rights, or causes, of action then there are two corresponding debts. When it comes to the judicial interruption of prescription . . . if the process seeks to enforce two debts (or causes of action), it will only interrupt prescription in respect of both if it is effective as a

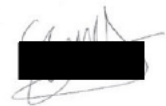
means of commencing legal proceedings in respect of both” (*Evins*, 842E-G). On its face, this dictum ties the idea of a debt very closely to the concept of a “cause of action”. A debt is merely the right to payment that would result if a specific cause of action is made out. On *Evins*, it follows, I think, that if an amendment substitutes one cause of action for another, then it also substitutes one debt for another.

- 9 Other decisions have been more forgiving. In *CGU Insurance v Rumdel Construction (Pty Ltd* 2004 (2) SA 622 (SCA), the court took a looser approach. There, it was said that the word “debt” in the Prescription Act must bear a “wide and general meaning” neither identical to “cause of action” nor tightly correlated with it: “the debt is not the set of material facts. It is that which is begotten by the set of material facts” (*CGU*, 628B-C).
- 10 The use of the word “material” here introduces some confusion, since a material fact is usually only “material” in relation to a particular cause of action. However, it seems to me that the background facts in *CGU* indicate that a “debt” need not be as tightly tied to a “cause of action” as was suggested in *Evins*. In *CGU*, the plaintiff, Rumdel, had initially claimed indemnification for storm damage under a single contract of insurance which did not, on its face, cover some of the damage for which Rumdel claimed. Rumdel later (after the claim would otherwise have prescribed) amended its particulars of claim to introduce a second contract of insurance which covered the damage to which the first contract did not extend. CGU argued that the debt claimed in the amended particulars was different to the debt claimed in the original. The Supreme Court of Appeal held that the debt was substantially the same debt,

since the amount claimed had not changed, and the claim was still one for indemnification under a contract of insurance. All that had changed were the terms of contract under which indemnification was due. That changed Rumdel's cause of action, but it did not alter the nature of the debt.

- 11 I think this case is similar in its essentials. When Mr. Riga amended his particulars of claim, he did not alter the amount he claimed. (The 2023 particulars put a figure on Mr. Riga's claim for loss of remuneration, while the 2024 particulars do not, but this is of no moment, since the loss claimed is identical). Nor did the nature of his claim really change: it was and remains for loss caused by what he says was his wrongful dismissal. The facts underlying the claim have not changed either: they are, in substance, that Mr. Riga was dismissed for bringing to light audit problems over which his superiors would rather have drawn a veil. All that did ultimately change was the basis on which Mr. Riga claimed that his dismissal was wrongful: he initially claimed that it was wrongful because it breached his contract; he now claims that it was wrongful because it was in breach of the Protected Disclosures Act. During argument, I asked Mr. Whitcutt whether Mr. Riga's claim would have prescribed if he had pleaded the relevant provisions of the Protected Disclosures Act as implied terms of his employment contract. Mr. Whitcutt accepted that the special plea could not have been sustained in those circumstances. I agree, but I think it also follows that Mr. Riga's preference for direct reliance on the statute did not fundamentally alter the nature of the debt he claimed in his amended particulars.

- 12 This accords with any sensible conception of the purpose of the Prescription Act itself. The point of allowing claims to prescribe is to ensure that those who may be subject to them have a reasonable opportunity to preserve the evidence necessary to contest them, and to plan for the contingent liability that a lawsuit creates. Absent special circumstances, the Act tells potential defendants that they need not worry about all this if a “debt” has not been pursued for more than three years after it fell due. The Act “is designed to penalise inaction, not legal ineptitude” (*Neon and Cold Cathode Illuminations (Pty) Ltd v Ephron* 1978 (1) SA 463 (A), 473 F-G). Plainly Voltex has not been prejudiced in any way the Prescription Act is meant to prevent. Neither the facts underlying Mr. Riga’s claim nor the liability Voltex must anticipate has changed. If Voltex has lost access to evidence that would have been necessary to defend the claim in its amended form, but not in its earlier form, then it has not said so. Since the essential facts are the same, it is in any event hard to see what that evidence might have been.
- 13 For all these reasons, the special plea is dismissed with costs, including the costs of two counsel, which may be taxed on scale “C”.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. 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 8 September 2026.

HEARD ON: 25 August 2026

DECIDED ON: 8 September 2026

For the Plaintiff: A Bester SC
S Ebrahim
Instructed by Marweshe Attorneys

For the Defendant: C Whitcutt SC
(Heads of argument drawn by A Subel SC)
Instructed by Soldatos Cooper Inc