



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable / Not Reportable

Case no: 8808/2023

In the matter between:

ANDISWE CORNELIA MATHISO

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

Coram: SLINGERS J

Heard: 20 August 2026

Delivered: 8 September 2026

Summary: Special plea of prescription — Breach of contract, alternatively breach of duty of care— Prescription in terms of the Road Accident Fund Act versus the Prescription Act

ORDER

The defendant's special plea of prescription is dismissed with costs, which costs shall be on scale C.

JUDGMENT

Slingers J:

- [1] On or about 20 February 2017 the plaintiff, who was a pedestrian at the time, was involved in a collision with a motorcycle (**'the accident'**). The plaintiff sustained various injuries as a result of the collision which resulted in her sustaining monetary damages.
- [2] During May 2023, the plaintiff issued summons against the defendant wherein she claimed *inter alia* the payment of the amount of R855 000.
- [3] The plaintiff pleads that the defendant is a statutory body tasked with the investigation and settlement of claims pursuant to the Road Accident Fund Act 56 of 1996, as amended (**'the Act'**) which arises from the loss of damages caused by injuries occasioned by the negligent driving of vehicles.
- [4] In her particulars of claim the plaintiff pleaded that she had entered into an oral agreement with the defendant to represent and/or assist and/or advise her in respect of her claim for compensation under the Act.
- [5] During the conclusion of the oral agreement, the plaintiff acted in person and the defendant was represented by an employee acting within the course and scope of their employment with the defendant.
- [6] Furthermore, the plaintiff pleaded that the defendant was authorised to represent and/or assist and/or advise unrepresented claimants with the compilation and lodgement of claims in compliance with all relevant statutory, regulatory and/or other requirements.
- [7] Similarly, the plaintiff pleaded that the defendant was authorised to represent and/or assist and/or advise unrepresented claimants, in the preparation, issuing and service of relevant court processes to prevent prescription of claims.

[8] The plaintiff pleaded that the defendant expressly, alternatively tacitly, alternatively impliedly agreed to:

- (i) represent and/or assist and advise her with the compilation, lodgement and settlement of her claim and to advise and assist her to comply with all statutory, regulatory and/or other requirements of her claim;
- (ii) represent and/or assist and advise her in drafting, issuing and serving the relevant court process to prevent her claim from prescribing;
- (iii) give her reasonable notice if the defendant could not draft, issue and serve the relevant court process in order to prevent prescription of her claim in terms of the act, alternatively, to assist her to do so timeously or at all;
- (iv) advise her of her rights and obligations with regard to her claim and with regard to the value of her damages; and
- (v) exercise reasonable skill, diligence and care in the execution of the aforesaid duties.

[9] In the alternative to the plaintiff concluding an oral agreement with the defendant, the plaintiff pleaded that the defendant held itself out to the public, including the plaintiff that:

- (i) it possessed special skill, competence and knowledge in regard to the lodgement, investigation, evaluation, litigation and settlement of claims and in regard to all relevant statutory, regulatory and/or other requirements applicable to such claims;
- (ii) it was authorised to represent and/or assist and advise unrepresented claimants in the compilation and submission of claims under the Act, in compliance with all relevant statutory, regulatory and other requirements;
- (iii) it was authorised to represent and/or assist and advise unrepresented claimants in the preparation, issuing and service of relevant court process to prevent prescription of claims; and
- (iv) it was authorised and qualified to represent and/or assist and advise unrepresented claimants about the aforesaid lodgement, investigation, evaluation, litigation and settlement of claims.

[10] Furthermore, that the defendant had a duty of care to the plaintiff to perform the obligations set out above.

- [11] In terms of the Act, the plaintiff had to issue and serve summons on the defendant before 19 February 2022 to avoid prescription of the claim in terms of the Act.
- [12] The plaintiff avers that the failure to issue and serve the requisite summons occurred as a result of the defendant's breach of their oral agreement, alternatively, as a breach of the defendant's duty of care in that it failed to:
- (i) assist the plaintiff to ensure that a summons was timeously issued and served, despite having obtained the plaintiff's authorisation and/or instruction to do so; and/or
 - (ii) in failing to timeously apprise the plaintiff of the five-year deadline for issuing and serving the summons, had the defendant apprised the plaintiff hereof, she could and would have taken the steps necessary to issue and serve summons.
- [13] Consequently, the plaintiff issued summons against the defendant for the damages she suffered as a result of its breach of their agreement, alternatively as a result of its breach of the duty of care it owed the plaintiff.
- [14] In pleading to the plaintiff's claim, the defendant denied that it concluded an oral agreement with the plaintiff and that it owed her a duty of care. Furthermore, the defendant raised a special plea of prescription. The defendant's special plea of prescription was based on section 23 of the Act.
- [15] The special plea was heard on 20 August 2026.
- [16] It is clear from the presentation of both the oral and written argument that the defendant misconstrues the nature of the plaintiff's claim. Although it is a claim which has its origins in a motor vehicle accident, it is not a claim in terms of the Act.
- [17] It is evident from the plaintiff's pleading, which is set out extensively above, that her claim is not based on the provisions of the Act, but rather that it is based on the alleged breach of contract by the defendant, alternatively on the defendant's breach of a duty of care.
- [18] Therefore, prescription of the plaintiff's claim against the defendant is not regulated by the provisions of the Act, but by the provisions of the Prescription Act. Therefore, the defendant's reliance on the provisions of the Act to sustain its special plea of prescription is unsound as it does not advance the

defendant's case and is irrelevant to the plaintiff's cause of action, as set out in her particulars of claim.

- [19] The defendant has failed to show that the plaintiff's claim based on breach of contract, alternatively on a breach of a duty of care has prescribed and its special plea of prescription stands to be dismissed.
- [20] There is no reason why costs should not follow the result. The plaintiff has asked for punitive costs on the basis that the plaintiff's cause of action is clear from her pleadings and that the reliance on the special plea of prescription was either spurious and/or vexatious and/or mala fide.
- [21] The lack of merit in taking the special plea does not *per se* establish that it was either spurious and/or vexatious and/or mala fide and I have not been convinced to exercise my discretion in the granting of a punitive costs' order.
- [22] In the circumstances, I make the following order:
- (i) the defendant's special plea of prescription is dismissed with costs, which costs shall be on scale C.

HM SLINGERS
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff: Adv. HG McLachlan
Instructed by: Kruger & Co Attorneys

For the Defendant: Mr. Success Mushwana (Assistant State Attorney)