

**REPUBLIC OF SOUTH AFRICA**



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

CASE NO: **36553/11**

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

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**SIGNATURE**

.....  
**DATE**

In the matter between:

COLLIN RUELE

Plaintiff

And

ITUMELENG GARETH MATLHOLE

Defendant

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**J U D G M E N T**

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**MABASA AJ:**

- [1] This is an action for damages arising out of a claim for medical negligence. The cause of action arose on 10 July 2007. The Defendant raised a special plea of prescription as a point *in limine*.
- [2] The Defendant is a dental therapist who, in terms of an oral agreement performed a surgical tooth extraction on the plaintiff on 10 July 2007.
- [3] The Plaintiff, an adult male issued summons against the Defendant, on 26 September 2011, alleging that the Defendant was negligent in the performance of his professional duties. Both the merits and quantum are still in dispute.
- [4] Counsel for the defendant submitted that by the time the summons was issued the three-year period prescribed by the Prescription Act 68 of 1968 had run its course and the matter had become prescribed.
- [5] In the Plaintiff's replication to the Defendant's special plea the Plaintiff disputes that his claim has prescribed and avers that in terms of section 12(3) of the Prescription Act he only acquired knowledge of the material facts necessary to support his claim for damages on 27 July 2009 when the defendant expressly and/or tacitly acknowledged liability when he pleaded guilty to medical negligence before the Health Professions Council of South Africa. This acknowledgement of liability interrupted the running of prescription in terms of section 14 (1) and the running of prescription commenced afresh from 27 July 2009 in terms of s 14 (2).

- [6] The Defendant appeared before a professional conduct committee of the Health Professions Council of South Africa on 10 July 2009. A Mr T Baloyi is noted as ‘the Pro Forma complainant’. Counsel for the Defendant submitted that since this is not the name of the Plaintiff, the proceedings relates to another person altogether.
- [7] This was argument was rejected by the Plaintiff’s Counsel who submitted that it is simply the representative of the Health Professions Council of South Africa that was cited in this manner. I accept that explanation.
- [8] It is not clear exactly what the charges are that were put to the Defendant by the disciplinary hearing committee. However on 27 July 2009 the defendant pleaded guilty to the charge against him. He states in paragraph 7 that “I admit that I practiced out of the scope of my profession in that I cemented a bridge on my patient’s mouth.” A fine of R3000.00 was imposed and the Defendant was ordered to attend a course in professional ethics.
- [9] Counsel for the Defendant submitted that the fact that the Defendant admitted to practising outside the scope of his profession, does not amount to an admission that he was negligent nor an acknowledgement of liability as required in terms of Act 68.

[10] This is not an enquiry into negligence or the merits of this case. The simple issue for this court to determine is whether the Defendant's Special Plea of prescription is a valid defence to the Plaintiff's claim.

[11] Section 14 (1) of the Prescription Act 68 of 1968 states that;

“(1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor;

(2) If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.”

[12] I am of the view that the Defendant's admission before the Health Professions Council of South Africa that he practised outside the scope of his profession satisfies the requirements of Section 14.

I make the following order:

1. The Defendant's special plea is dismissed.
2. Costs to be costs in the cause.

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**NAME OF JUDGE AJ  
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION,  
JOHANNESBURG**

Counsel for the Plaintiff: Adv M A Maholo

Instructed by: Mudenda Attorneys

Counsel for the Defendant: Adv S S Senosi

Instructed by: Mkhathswa M. Attorneys

Date of Hearing: 05 June 2014

Date of Judgment: 06 June 2014