

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

APPEAL CASE NO:
HIGH COURT CASE NO: 18/24079

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

22 April 2022.

DATE

SIGNATURE

In the matter between:

MDLALOSE MDUDUZI ISHMAEL

Appellant

and

DOCTOR BRENDAN LYNE MEDICAL PRACTICE

First Respondent

DOCTOR NATASHA FAKIER

Second Respondent

DR BRENDAN SEAN BLAIR

Third Respondent

JUDGMENT

CRUTCHFIELD J:

[1] Mdlalose Mduduzi Ishmael, the plaintiff in the action proceedings, applies for leave to appeal against the whole of my judgment including the costs order dated 1 February 2022.

[2] The respondents, namely Doctor Brendan Lyne Medical Practice, Dr Natasha Fakier and Dr Brendan Sean Blair, the first, second and third respondents respectively, jointly referred to as “the respondents”, they being the first to third defendants respectively in the action, opposed the application for leave to appeal.

[3] The parties are referred to herein as they were in the proceedings dealing with the special plea of prescription, being the subject of my judgment.

[4] The application for leave to appeal is referred to herein as the “leave application”.

[5] The plaintiff’s counsel in a most able argument furnished a number of grounds why there are prospects that another court will reach a different conclusion from mine, in this matter. These grounds crystallise into two main arguments, namely:

5.1 Whether an order for joinder constitutes a ‘process’ and a step in the enforcement of a claim in terms of Section 15(1) of the Prescription Act, 68 of 1969 (“the Act”); and

5.2 Whether the various conflicting decisions in this and other divisions comprise a compelling reason for the granting of leave to appeal to the plaintiff in this matter.

[6] The central thrust of my judgment was that in order for the joinder order to interrupt prescription in terms of Section 15 of the Act, the order had to be served on the

defendants together with the amended summons, particulars of claim and such additional process necessary before the expiry of the period of prescription, which did not occur in this matter.

[7] However, having heard the argument of counsel for the plaintiff in this matter, including the differentiation placed by him on the various judgments and their outcomes, I am of the view that there are grounds upon which another court may reach a different conclusion in this matter, meaning that there is a reasonable prospect of success in an appeal of my judgment.

[8] These grounds include the following:

- 8.1 That the order for joinder was granted prior to the expiry of the prescriptive period and not thereafter.
- 8.2 Furthermore, the different conclusions articulated in the various judgments as to whether the service of the order of joinder together with the required documents is merely an informative step as per *Wessels v Coetzee*¹;
- 8.3 Together with and independently of, the fact that the only way that the plaintiff could enforce his debt in this matter was by way of joinder of the defendants, thereby rendering the joinder application a “process” as envisaged by s 15 of the Act and as found in *Wessels (supra)*.

[9] In the circumstances, and in the light of the particular facts of this matter, I grant leave to appeal to the full bench of this division, that the costs of the application for leave

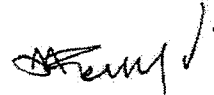
¹ *Wessels v Coetzee* [2013] ZAGPHC 82 (15 March 2013).

to appeal and the application before me in the court *a quo* are costs in the cause of the appeal.

[10] The grounds of appeal are the following:

- 10.1 Whether the joinder application constituted a 'process' and a step in the enforcement of a claim in terms of Section 15(1) of the Prescription Act, 68 of 1969 ("the Act").

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 21 April 2022.

COUNSEL FOR THE APPELLANT:

Mr T Mathopo.

INSTRUCTED BY:

N T Mdlalose Incorporated.

COUNSEL FOR THE RESPONDENTS:

Mr L Choate.

INSTRUCTED BY:

Webber Wentzel Attorneys.

DATE OF THE HEARING:

31 March 2022.

DATE OF JUDGMENT:

21 April 2022.