

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

04/11/2014

CASE NO: A254/2014

In the appeal between:

MOLEMOLE LOCAL MUNICIPALITY

Appellant

and

MS K T R LETSHEDI

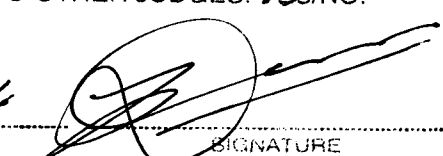
Respondent

JUDGMENT

DAVIS, AJ

[1] In the Magistrate's Court for the district of Polokwane held at Polokwane (the "*court a quo*"), the Plaintiff, a local authority established in terms of the provisions of the Local Government: Municipal Structures Act, No. 117 of 1998, instituted action based on the *condictio indebiti* for the recovery of R80 660,80 which has been paid by the Appellant as Plaintiff to the Respondent as Defendant as a performance bonus to which the Respondent was allegedly not entitled to.

[2] The payment was made "... on or about March 2006 ...", the action was instituted on 5 July 2011 and the summons was served on the Respondent on 26 July 2011.

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	<input checked="" type="checkbox"/> YES
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	<input checked="" type="checkbox"/> YES
(3) REVISED.	<input checked="" type="checkbox"/> YES
5/11/2014	
DATE	SIGNATURE

- [3] Not surprisingly, the Respondent raised the issue of extinctive prescription in a special plea, pleading that the relative prescription period was 3 years, which had clearly expired prior to the institution of the Appellant's action.
- [4] At the hearing of the separated issue of the Respondent's special plea, it was, according to the judgment of the learned magistrate in the court *a quo*, argued on behalf of the Appellant that the applicable prescription period should be that of 15 years.
- [5] For purposes of the aforementioned submission, the Appellant relied on the provisions of Section 11(b) of the Prescription Act, No. 68 of 1996, which provides as follows:

"Section 11

The periods of prescription of debts shall be the following: ...

- (b) 15 years in respect of any debt owed to the State and arising out of an advance or loan of money or sale or lease of land by the State to the debtor, unless a longer period applied in respect of the debt in question in terms of paragraph (a)." (my emphasis)*

- [6] The learned magistrate succinctly found as follows and upheld the special plea of prescription:

"[9] The court cannot interpret the above cause of action to mean that Plaintiff loaned and/or advanced the Defendant the above sum of monies.

[10] In the premises Section 11(b) of the Prescription Act cannot be said to be applicable in this case."

[7] In the Heads of Argument before us the Appellant made much of the fact that, in applying the principles of the Prescription Act, one should not have regard to the cause of action but rather to the "*debt*" itself. Whilst this submission is correct and irrespective of the wording used by the learned magistrate, this submission does not assist the Appellant: It had been held by the Supreme Court of Appeal in **Farocean Marine (Pty) Ltd v Minister of Trade and Industry** 2007(2) SA 334 (SCA) at 339H-340B as follows:

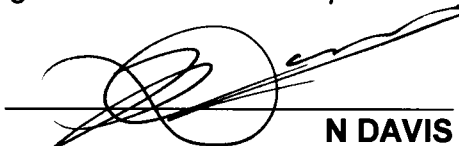
"The verb 'advanced' means to 'pay (money) before it is due' or to 'lend (money)' [with reference to the Concise Oxford English Dictionary 8th Edition]. When the word is considered in the context of Section 11(b), it must be noted that it is used together with word 'loan' and followed by the words 'sale' or 'lease' which, like loans, are commercial contracts."

[8] In the **Farocean Marine**-case, the unsuccessful Respondent therein sought to recover benefits paid to the Appellant therein under the General Export Incentive Scheme (GEIS) to which it alleged the

Appellant had not been entitled to. Pursuant further to the aforesaid *dictum* of Malan AJA (as he then was) the court found that such payment could not have been described as “*a loan of any kind*” (the special plea in the Farocean Marine-case was ultimately upheld but due to other reasons and facts established with reliance on Section 12(1) of the Prescription Act, which is not the case in the present appeal).

[9] Assuming for argument’s sake that the Appellant is an organ of State, being an “*administration in the ... local sphere of government ...*” as provided for in Section 239 of the Constitution of the Republic of South Africa, 1996 (as *inter alia* discussed in Holeni v Land and Agricultural Development Bank of South Africa 2009(4) SA 437 (SCA)), an issue which need not be considered for purposes of this judgment, then it is clear that the “*debt*” which the Appellant sought to recover is not one of the kind for which Section 11(b) of the Prescription Act caters.

[10] Accordingly I find that the special plea of prescription was good and was correctly upheld by the learned magistrate in the court *a quo*.


N DAVIS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

I agree. The appeal is dismissed with costs.



N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA