



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

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
21/5/17	
DATE	SIGNATURE

Case No: 7658/2008

In the matter between:

**V N DLAMINI**

Plaintiff

and

**ROAD ACCIDENT FUND**  
**E A JADWAT & COMPANY**  
**E A JADWAT**

First Defendant  
Second Defendant  
Third Defendant

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**JUDGMENT**

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**D S FOURIE, J:**

[1] On 14 February 2008 plaintiff instituted action against the defendants for payment of damages arising from a motor vehicle accident in which the plaintiff sustained bodily injuries. The claim against the first defendant is for compensation in terms of the provisions of Act 56 of 1996. The claim against the second and third defendants is formulated in the alternative for damages suffered as a result of alleged professional negligence by failing to institute his

claim against the first defendant timeously as a result of which his claim became prescribed. It is common cause that the second defendant is a firm of attorneys whilst the third defendant is an attorney practising as such under the name and style of the second defendant.

[2] On 19 November 2010 the second and third defendants conceded that the plaintiff's claim against the first defendant had become prescribed. On the same date the plaintiff withdrew his claim against the first defendant and the action against the second and third defendants was postponed *sine die*.

[3] The second and third defendants raised several special pleas. On 11 September 2018 Kubushi J granted an order in terms whereof the first and third special pleas have been separated from all other remaining issues. In the first special plea it is denied that this Court has jurisdiction to entertain the plaintiff's claim against the second and third defendants. The third special plea relates to the plaintiff's failure to submit an affidavit to the police as was required by the regulations promulgated in terms of Act 56 of 1996.

[4] The matter came before me only to adjudicate the first and third special pleas. The parties agreed not to lead any evidence but to argue the matter on the papers only.

### **FIRST SPECIAL PLEA**

[5] It has been pleaded that the second and third defendants were at all material times carrying on business and residing respectively in New Castle, KwaZulu-Natal. It is not alleged by the plaintiff that his cause of action against

the second and third defendants arose within the jurisdiction of this Court. Therefore, so it is alleged, this Court does not have jurisdiction to entertain the plaintiff's claim against the second and third defendants.

[6] Summons was issued on 14 February 2008 and served on the second and third defendants on 25 February 2008 and 1 April 2008 respectively. At that stage the provisions of the Supreme Court Act, No 59 of 1959 were still applicable. The Superior Courts Act, No 10 of 2013 only came into operation on 23 August 2013. In terms of section 52(1) of the Superior Courts Act proceedings pending in any Court at the commencement of this Act must be continued and concluded as if this Act had not been passed.

[7] Section 19(1)(b) of the Supreme Court Act provided as follows:

*"A provincial or local division shall also have jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such provincial or local division has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other provincial or local division."*

[8] It was contended by counsel acting for the second and third defendants that this provision does not assist the plaintiff because the scope thereof is limited to any person *"who is joined as a party to any cause"*. This implies, so it was argued, that a person who has been joined in terms of this section must also be a party to the cause of action between the plaintiff and the other defendant (the Road Accident Fund in this case) over whom the Court has jurisdiction. It was also argued that the plaintiff's cause of action against the first

defendant was a statutory one, whereas his cause of action against the second and third defendants is one for breach of contract. It was submitted that these are clearly two distinct and separate causes of action and therefore the provisions of section 19(1)(b) are not applicable.

[9] It is trite that a plaintiff bears the onus to prove that the Court has jurisdiction over the person of a defendant. The time for determining whether or not a Court has jurisdiction is the time of the commencement of the action, i.e. when the summons has been issued and duly served (Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd 1969 (2) SA 295 (A) at 310D and Prinsloo and Mynhardt v O'Riley 1991 (3) SA 184 (T) at 186A). The object of the sub-section is to avoid a multiplicity of actions and the possibility of conflicting judgments on the same cause of action (Mossqas (Pty) Ltd v Eskom 1995 (3) SA 156 (W) at 157D). The jurisdiction of a High Court is, in terms of this sub-section, extended to include persons outside the jurisdictional area of that Court.

[10] It is a principle of common-law that a Court which had jurisdiction at the commencement of proceedings retains that jurisdiction until the proceedings are completed (Coin Security Group (Pty) Ltd v Smit & Others 1992 (3) SA 333 (A)). It is common cause that when the action was instituted the first defendant (Road Accident Fund) had its head office and principal place of business within the area of jurisdiction of this Court. It is also common cause in terms of the second and third defendants' rejoinder that the incident as alleged by the plaintiff occurred within the area of jurisdiction of this Court. This Court had therefore jurisdiction over the first defendant when the action was instituted. The fact that the plaintiff on 19 November 2010 withdrew his claim against the first defendant

is of no consequence as a Court which had jurisdiction at the commencement of proceedings retains that jurisdiction until the proceedings are completed.

[11] It is correct that the claim against the first defendant is a statutory one whilst that against the second and third defendants lies at common-law. However, the word “cause” as it appeared in section 19(1)(b) did not refer to a cause of action. By “cause” is meant an action or legal proceeding (*Spier Estate v Die Bergkelder* 1988 (1) SA 94 (CPD) at 100B and *Mossgas (Pty) Ltd v Eskom, supra* at 157D). As it was pointed out in the matter of *Mossgas* (157F-G), once a Court has jurisdiction in the action or legal proceeding section 19(1)(b) can be invoked to join to that cause a defendant not resident within the area of jurisdiction of that Court provided, of course, that the other requirements for joinder and the jurisdictional requisites are present.

[12] As far as joinder is concerned, Rule 10 makes provision in Sub-rule (2) for the joinder of several causes of action and in Sub-rule (3) for the joinder of several defendants in the same action. Sub-rule (3) contains a qualification to the effect that whenever a question arising between the defendants or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

[13] Counsel for the plaintiff has pointed out that the common-law claim (against the second and third defendants) is inextricably connected to the statutory one (against the first defendant). I agree with this submission. In this matter the common-law claim is a continuation of the statutory one or, put

differently, the former is dependent on the latter without which the plaintiff would have had no cause of action against the second and third defendants. This is so because it is incumbent upon the plaintiff to prove that his claim against the first defendant was likely to succeed if not for the fact that his claim became prescribed. Not only the injuries which he sustained in the accident, but also that it was caused by or arose out of the negligent driving of another motor vehicle are all essential elements of the plaintiff's claim against the second and third defendants (cf. Mlenzana v Goodrick & Franklin 2012 (2) SA 433 (FB) par 12 and 13). These are all substantially the same questions of law or fact which, if the first, second and third defendants were sued separately, would arise in each separate action. I am therefore satisfied that the second and third defendants were properly joined in terms of section 19(1)(b) of the Supreme Court Act as well as in terms of the provisions of Rule 10(3) and that this Court therefore has jurisdiction to entertain the plaintiff's claim against the second and third defendants.

### **THIRD SPECIAL PLEA**

[14] It has been pleaded that in terms of the Road Accident Fund Act and the Regulations thereto, the plaintiff was obliged to submit a statement to the police relating to the alleged incident within 14 (fourteen) days after being in a position to do so. The plaintiff has failed to comply with this requirement and was therefore debarred from claiming damages from the first defendant in terms of the Act and as a result the plaintiff has no claim against the second and third defendants.

[15] In his replication the plaintiff has admitted that he did not make a statement as envisaged by Regulation 2(1)(c). However, it has also been pleaded that the plaintiff was not obliged to make such a statement as Regulation 2(1)(c) was declared to be unconstitutional by the Constitutional Court on 26 March 2007.

[16] Counsel for the second and third defendants contended that the declaration of unconstitutionality does not assist the plaintiff as this order was granted on 6 March 2007 and was not retrospective. According to him the plaintiff's claim had already prescribed on 20 April 2005, being two years after the date of the incident (21 April 2003) if no claim was lodged. That is long before the Constitutional Court declared that the regulation was unconstitutional.

[17] Counsel for the plaintiff argued that his claim against the first defendant arose on 21 April 2003 being the date of the incident. A claim having been submitted, so it was contended, would only prescribe on 20 April 2008, long after the said regulation was declared unconstitutional.

[18] In the particulars of claim it is alleged that:

*"Prior to the institution of the action, the second and/or third defendants duly and timeously, alternatively substantially, complied with the requirements of section 24 of the Act and with the regulations insofar as the latter are intra vires."*

[19] The second and third defendants pleaded thereto as follows:

*"Save for stating that unbeknown to the second and third defendants ... Msibi had lodged a claim with the first defendant, second and third defendants deny that they personally lodged any claim with the first defendant duly and timeously alternatively which substantially complied with the requirements of section 24 of the Act and with the Regulations therein.*

*Insofar as the plaintiff complied with the requirements of section 24 of the Act and Regulations through ... Msibi, acting in his personal capacity pursuant to his own private arrangement with plaintiff, the second and third defendants note the averments made in this paragraph."*

[20] It was argued by counsel for the plaintiff that the second and third defendants have failed to deny the allegation that there was duly and timeously compliance with section 24 of the Act and the Regulations thereto, albeit by Msibi on behalf of the plaintiff. Insofar as the plaintiff complied with these requirements through Msibi, the second and third defendants only *"note the averments made in this paragraph"*. To *"note"* in a plea averments made in the particulars of claim is, in my view, tantamount to admitting same (Rule 22(3) and Makhuva v Lukhoto Bus Service 1987 (3) SA 376 (V) at 386). I therefore agree with counsel for the plaintiff that, a claim having been duly and timeously lodged in compliance with the Regulations, the plaintiff had in terms of Regulation 2(4) five years within which to issue summons. That period expired on 20 April 2008. Both counsel accepted for purposes of this calculation that the incident took place on 21 April 2003.

[21] In Engelbrecht v Road Accident Fund 2007 (6) SA 96 (CC) Regulation 2(1)(c) of the Regulations made in terms of section 26 of the Road




Accident Fund Act was declared unconstitutional and accordingly invalid. It was specifically ordered that:

*"Such declaration of invalidity will apply to and govern all claims instituted or to be instituted under the Road Accident Fund Act 56 of 1996, which at the date of this order have neither prescribed, nor been finally determined by judgments at first instance or on appeal or by settlement duly concluded."*

[22] The judgment in the case of Engelbrecht was delivered on 6 March 2007. As I have indicated above on that date the plaintiff's claim against the first defendant had neither prescribed, nor been finalised prior to that date. It means that the declaration of invalidity with regard to Regulation 2(1)(c) also applies to the plaintiff's claim which he had against the first defendant. His failure to comply with the said Regulation is therefore of no consequence. In the result I am of the view that both special pleas should be dismissed.

### ORDER

Both the first and third special pleas are dismissed with costs.

  
D S FOURIE  
JUDGE OF THE HIGH COURT  
PRETORIA

Date: 21 May 2019