IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

_____ _____

DATE SIGNATURE

CASE NUMBER: 33505/08

DATE: 27 September 2021

L BRINK Plaintiff

V

THE ROAD ACCIDENT FUND Defendant

JUDGMENT

MABUSE J

[1] The Plaintiff claims payment of money from the Defendant arising from the injuries she sustained in a motor vehicle accident.

[2] According to the particulars of claim ("POC"), the motor vehicle accident in which the Plaintiff was involved took place when motor vehicle [….] (hereinafter referred to as the insured motor vehicle) and which at that material time was owned by a certain Elsia Carstens of [….], and driven, at that material time, by someone unknown to the Plaintiff. The said motor vehicle was involved in a collision with motor vehicle [….], which was driven at that material time by the Plaintiff.

[3] The motor vehicle accident was attributed to the complete negligence of the unknown and unidentified driver of the insured motor vehicle. Because of the said motor vehicle accident, the Plaintiff sustained certain bodily injuries.

[4] It is of paramount importance to point out that, firstly, that as at the time the Plaintiff launched its action against the Defendant on an unknown date (for the summons does not, as it is required, show the stamp of the Registrar of this Court, nor has the copy on Caselines, page 002-2 been signed by the Registrar) but signed on 14 July 2008, the identity of the driver of the insured motor vehicle was still unknown. Secondly, the date of the motor vehicle accident collision was not disclosed in the POC.

[5] A copy of the combined summons, just as it was issued on an unknown date was served on the Defendant on 22 July 2008. On 12 August 2008 the Defendant, at that material time represented by attorneys Geldenhuys Lesing Malatji Inc, delivered the Defendant's notice of intention to defend. On 7 October 2008, the Defendant's attorneys delivered the Defendant's plea on the Plaintiff's attorneys. The Defendant's plea consisted of a special plea and the main plea.

[6] In the special plea, the Defendant had pleaded as follows:

"1.

The Plaintiff claims damages in terms of the Road Accident Fund Act 56 of 1996 for bodily injuries allegedly sustained by her in a motor collision, which allegedly occurred on 27 January 2005.

2.

2.1 The Plaintiff's claim was lodged on the Defendant on 23 July 2008.

2.2 The Plaintiff has failed to establish the identity of the owner and/or driver of the insured vehicle.

2.3 The Defendant pleads that a period of more than 2 years has elapsed from the date on which the claim arose as prescribed by regulation 2(3).

2.4 In the premises the Defendant pleads that its liability in respect of the Plaintiff's claim has been extinguished and that his claim has become prescribed in terms of the provisions of Regulation 2(3) promulgated in terms of s 26 of the Road Accident Fund Act 56 of 1996."

[7] On 4 November 2008, following the Defendant's special plea of prescription against the Plaintiff's claim, the Plaintiff delivered its notice of intention to amend her POC as follows:

"Deur die vervanging van paragraaf 3.1 met die volgende:

"Is motorvoertuig met registrasie letters en nommers DNR297NW (hierna die versekerde voertuig genoem) en waarvan die eienaar op daardie stadium een TR Thabane was met identiteitsnommer 650609 5662 086 van adres Sangirolaan 207 Elandspark, Johannesburg, en bestuur deur 'n person onbekend aan die eisers (waarna die versekerde bestuurder genoem)"."

This was followed by the warning that unless an objection is raised, within 10 days after service of the notice of intention to amend by the Defendant the summons shall be deemed to amended accordingly. There are three crucial issues standing out in or arising from the notice of intention to amend. These are:

7.1 the way the notice of intention to amend was phrased;

7.2 the fact that, notwithstanding her knowledge of the owner of motor vehicle DNR 297 NW, the Plaintiff still has not mentioned the name of the driver of the said motor vehicle;

7.3 the Defendant raised no objection to the contemplated amendment, despite being invited to do so and despite being warned that “die dagvaarding aldus gewysig sal word”.

[8]

8.1 The way the notice of intention to amend was phrased

8.1.1 the notice of intention to amend was phrased as in paragraph [7] *supra*. This notice was supposed to be phrased in terms of Rule 28(2) of the Uniform Rules of Court (“the rules”) and the said Rule reads as follows:

“The notice referred to in sub-rule (1) shall state that unless a written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected” and not *“die dagvaarding as aldus gewysig beskou sal word”.* The Rule uses the word “shall”, which means that it was imperative for the Plaintiff to use or to state the words so stated in Rule 28(2). Failure to do so, even if the Defendant suffered no prejudice, is fatal. The duty of this Court is to make sure that the Rules of this Court are applied correctly. It is not the duty of this Court to sit back idly while the Rules are flouted.

8.1.2 It is this Court that the Plaintiff must satisfy that it has complied with the Rules and not the Defendant.

Because the Defendant has not suffered any prejudice nor has it complained about the phraseology of the notice of intention to amend and because, furthermore, the Plaintiff has complied with Rule 28(2), the Plaintiff’s failure to use the proper phraseology will therefore be condoned.

8.2 Regulation 3(1) of the Road Accident Fund provides that:

"The liability of the Road Accident Fund in respect of claims for bodily injuries or death arising from the driving of a motor vehicle of which the identity of neither the owner nor the driver can be established."

Accordingly, if the Plaintiff cannot establish the name of the driver, it is sufficient if he has established the name and address of the owner of the motor vehicle from the driving of which the claim arises. In my view, the Plaintiff has satisfied this requirement.

8.3 The Defendant raised no objection against the contemplated amendment:

8.3.1 In terms of the provisions of Rule 28(5) if no objection is delivered as contemplated in sub-rule (4), every party who received the notice of the proposed amendment shall be deemed to have consented to the amendment. There is no problem with the amendment. The amended page was delivered during March 2016.

[9] On 9 February 2011 the Defendant delivered its consequential amended plea. In its plea, it first raised an amended special plea in which it pleaded that:

"2 The Plaintiff claims damages in terms of the Road Accident Fund Act 56 of 1996 for bodily injuries allegedly sustained by her in a motor vehicle collision which occurred on 27 January 2005;

2.1 The Plaintiff's claim was lodged with the Defendant on 4 September 2007;

2.2 The Plaintiff's claim form stated that the particulars of the motor vehicle from which the claim arose was registration letters and numbers DNR297NW, type of body, "vragmotor", current name and address of owner at the time of the accident "onbekend"."

2.3 It transpired that the registration letters and numbers provided by the Plaintiff were incorrect. The Plaintiff has accordingly failed to establish the identity of the owner and/or of the driver of the insured motor vehicle and the Plaintiff's claim against the Defendant should accordingly be dealt with under the provisions of s 17(1)(b) of

Act 56 of 1996 together with Regulation 2(3), namely on the basis of a claim for compensation arising from the diving of a motor vehicle where the identity of neither the owner nor the driver has been established.

4.

The Plaintiff's claim against the Defendant in terms of the provisions of s 17(1)(b) together with Regulation 2(3) was not sent or delivered to the Defendant in accordance with the provisions of s 24 of the Act. The Plaintiff's claim was delivered to the Defendant on 4 September 2007 whereas the two-year period expired on 24 January 2007.

5. The Plaintiff's claim against the Defendant has accordingly become prescribed."

In this regard, the Defendant contends that the Plaintiff's claims arose in terms of s17(1)(b). The driver and the owner of the motor vehicle concerned are unknown. Such claims prescribe after the expiry of 2 years if prescription is not interrupted. The Plaintiff should therefore have lodged her claim within two years of 27 January 2005, which means on or before 27 January 2007. As the claim form was lodged only on 7 September 2007, the claim has become prescribed. The Defendant proceeds as follows:

"In the alternative, if the above and if the Honourable Court finds that the Plaintiff's claim against the Defendant is governed by the provisions of s 17(1)(a), namely, that the claim arose from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established, then the Defendant pleads as follows:

"6.1 the provisions of s 23(1) provides that the right to claim compensation from the Defendant in respect of damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of 3 years from the date upon which the cause of action arose;

6.2 The Plaintiff's claim under this section would accordingly have prescribed on 28 January 2008.

6.3 The Plaintiff furnished the identity of the owner to the Defendant by means of a notice of amendment dated 15 March 2010 which falls outside the 3-year period and accordingly the Plaintiff's claim in terms of s 23 of the Act has become prescribed."

[10] The special pleas of prescription are the only issues that this Court was called upon to adjudicate at that stage.

[11] The Plaintiff, for its defence against the two special pleas of prescription relied on an offer of settlement made by the Defendant, and in particular, on the order of Judge van der Merwe (DJP) (May His Soul Rest in Peace), made on 8 March 2011 in which he granted an order as follows:

"1. That the Plaintiff's application to use information regarding an offer of settlement made by the Defendant during litigation is hereby granted."

[12] **THE CLAIM FORM**

In terms of the provisions of s 24(1) of the Act:

"A claim for compensation and accompanying medical report under s 17(1) shall –

(a) be set out in the prescribed form which shall be completed in all its particulars;

(b) be sent by registered post or delivered by hand to the Fund at its principal office, branch or regional office, or to the agent who in terms of s 8 must handle the claim, at the agent's registered office or local branch office, and the Fund or such agent shall at the time of delivery by hand acknowledge receipt thereof and the date of such receipt in writing."

The Plaintiff's attorneys sent the claim form undercover of their registered letter dated 28 August 2007 to the Defendant's Cape Town office, PO Box 244, Cape Town, 8000. This claim form was sent with other documents.

[13] With reference to the special pleas, what is of paramount importance regarding the completion of the claim form is what information did it provide about the driver and the owner of the motor vehicle. Paragraph 2 of the claim form required:

Of motor vehicle from the driving of which this claim arises;

In 2(b) and 2(c) required the following information:

"2(b) name and address of owner at time of accident. Answer was "onbekend" (unknown to the Respondent).

2(c) name and address of driver at time of accident. The answer was "onbekend"."

In paragraph 2(d) the question was:

"2(d) if the identity of neither the owner nor the driver has been established state –

(i) any additional information about the motor vehicle", this information was not completed.

*(ii) what steps were taken to establish the identity of the owner or driver of the motor vehicle": N*othing was completed in this regard.

[14] The Plaintiff's affidavit about the motor collision in which she was involved was also sent with the claim form. Although in the claim form the information about the motor vehicle that was involved in the collision was "onbekend" for unknown reasons, the particulars of the said motor vehicle were set out in paragraph 3 of the affidavit. The relevant motor vehicle which was a truck with registration numbers and letters DNR 297 NW. The furnishing of these particulars in the affidavit was sufficient. It was as good as having been furnished in the claim form. There was therefore complete compliance by the Plaintiff with what was required. What was required was either the identity of the driver

or the owner of the motor vehicle DNR 297 NW. The affidavit still did not indicate who the driver or owner of the motor vehicle was.

[15] On 25 November 2008 the Plaintiff's attorneys delivered the amended pages of the relevant amendment. In terms of paragraph 3.1 of the amended POC, the owner of motor vehicle DNR297NW was a certain TR Thabane of 207 Sangiro Avenue, Elandspark, Johannesburg. But still the Plaintiff was unable to furnish the name of the driver. Let me rush to say that these details, that is the amendment, the Plaintiff partly complied with the requirements of Regulation 2(3) of the Regulations.

[16] Then for unknown reasons, in March 2010, the Plaintiff's attorneys again amended paragraphs 3.1 of the Plaintiff's POC to read as follows:

"3.

3.1 As motorvoertuig met registrasie letters en- nommer DNR297N (hierna "die versekerde voertuig" genoem) en waarvan die eienaar op daardie stadium Elzia Carstens was met geboortedatum 1982/03/18 en van adres te Erasmus Straat 22, Flora Park, Pietersburg, en bestuur deur 'n persoon onbekend aan die eiser (hierna "die versekerde bestuurder" genoem)."

According to this last amendment the registration letters and numbers of the insured motor vehicle are DNR 297 N, at the time of the motor vehicle accident it belonged to Elzia Carstens of 22 Erasmus Street, Flora Park, Pietersburg. The driver of the insured motor vehicle was still unknown.

[17] The Defendant's case regarding its first special plea is as follows:

17.1 the Plaintiff's claim is in terms of s17(1)(b) of the Act;

17.2 in terms of Regulation 2(3) of the Regulations a claim referred to in s 17(1)(b) of the Act shall be sent or delivered to the Fund in terms of the provisions of s 24 of

the Act within 2 years from the date upon which the claim arose, notwithstanding anything to the contrary in any law;

17.3 the Plaintiff's cause of action arose on 27 January 2005;

17.4 the Plaintiff lodged her claim with the Defendant on 4 September 2007. This is common cause between the parties;

17.5 neither the identity of the driver nor of the owner of the truck was known to the Plaintiff at the time she lodged or submitted her claim to the Defendant. In fact, the Plaintiff has conceded these facts, according to the heads of argument of counsel for the Plaintiff. Even reference to the claim form shows that at the time the Plaintiff's claim was submitted to the Defendant, the material information regarding the identity of the owner of the driver of the insured motor vehicle was still outstanding. In support of this point Adv Netshiozwi, for the Defendant, referred the Court to the judgment of Meso v Road Accident Fund (11400/12) {2014] ZAGPPC 31 (17 February 2014), paragraphs 16-19 where Khumalo J stated as follows:

"[16] It is if cardinal importance to note that in case of an unidentified driver and owner 0f the negligent motor vehicle, it is the lack of establishment or proof of identity of the driver or owner of the negligent motor vehicle that determines the prescription period applicable, notwithstanding any legal disability to which the third party concerned may be subject as provided in regulation 2(2).

[17] Also, strictly speaking, it is not the vehicle that is unidentified but the driver and owner thereof; see HB Klopper, Law of Third-Party Compensation, 3rd ed, accordingly a person will not be regarded as prima facie identified:

[17.1] if only a registration number and the description of the vehicle is submitted;

[17.2] if only a registration number is submitted;

[17.3] if only a name is given.

[18] The identity f the negligent driver or owner of the negligent vehicle is established if his name and residential, postal or work address, are furnished at the time of lodging

the claim, even without the vehicle registration number, however if known they should be furnished together with the identity number. The address can also be a telephone number, or a description of where the person may be found the investigations necessary so as to safeguard its resources against fraud. See Road Accident Fund v Thugwana 2004 (3) SA 169 (SCA) and Moskovitz v Commercial Union Assurance Co of SA Ltd 1992 (4) SA 192 (W)."

[18] Secondly, regarding the second special plea the Defendant's case is that the Plaintiff's claim had become extinguished by prescription as much as the Plaintiff was only able to furnish the Defendant with material details after a period of three years.

[19] The Plaintiff opposes these special pleas on two grounds, that:

"1. The Defendant made an offer of settlement without prejudice and without admitting liability on 7 May 2008. The Plaintiff's case is that the said offer of settlement was made after the claim with supporting documents had been submitted to the Defendant but before the Plaintiff's summons was issued. Furthermore, the offer of settlement was made after a period of 2 years from the date on which the accident, which it is alleged by the Defendant to be the time period in which the Plaintiff's claim had become prescribed in terms of the Defendant's first special plea. Secondly, the summons was issued within 5 years of the cause of action."

Because the Plaintiff's claim did not arise under circumstances set out in s 17(1)(a) of the Act, at the time the claim form was lodged, it will not serve any useful purpose to consider whether the Plaintiff did later comply with the provisions of s17(1)(a) of the Act. This is because even if the Court accepts that subsequently the Plaintiff complied, the

time that is material in determining whether he has complied is the date on which she lodged her claim and whether that was done within the period of 2 years as set out in Regulation 2(3) of the Regulations. The parties are ad idem that the passing of the period of 2 years referred to in Regulation 2(3) of the Regulations is called prescription. I will therefore use the word “prescription” when I refer to the passing of the period of 2 years referred to in the said regulation.

[20] Section 17(1)(a) and (b) deal with the circumstances under which the Defendant is bound constitutionally and statutory to compensate victims who sustained injuries arising from the driving of motor vehicles.

20.1 The first class is of people who sustained such injuries from the driving of motor vehicles where (a) the identity of the owner, or (b) of the driver has been established. Prescription of claims arising from these circumstances is 5 years from the date on which the cause of action arose provided the claim was lodged with the Defendant properly as set out in s 24 of the Act, within a period of 3 years from the date on which the claim arose.

20.2 The second class of victims whose duty it is for the Defendant to compensate are people who claim compensation for injuries arising from the driving of motor vehicles where the identity of neither the owner nor the driver of the relevant insured motor vehicle has been established, such as the present claim. A claim form in respect of such injuries must be lodged within a period of 2 years from the date on which the cause of action arose. Failure to do so will result, as the Defendant has pleaded, in the victim’s claim becoming prescribed.

[21] In Court, Adv de Jager argued that the Plaintiff did not lodge her claim under s 17(1)(b) of the Act but under s 17(1)(a) of the Act. No merit exists in this argument for, it is not the intention with which the claim form is lodged that determines whether the claim falls under s 17(1)(a) or 17(1)(b) of the Act. But it is the information or particulars in the claim

form that the claimant furnishes the Defendant with that determine the sub-section under which the claim falls. Once that determination has been made, the period of prescription kicks in.

[22] In the present matter, the Defendant has correctly characterised the Plaintiff's claim as one falling into s 17(1)(b) of the Act and that it must therefore be dealt with in terms of Regulation 2(3) of the Regulations. Besides the characterisation by the Defendant that the Plaintiff's claim falls under s 17(1)(b) of the Act, the claim form also evidently shows that at the time the Plaintiff's claim was lodged it did not contain the identity of the owner of the motor vehicle nor the identity of the driver. These details had not been established. The claim was therefore a typical 'hit-and-run' case. The Defendant's approach is that as the Plaintiff's cause of action arose on 27 January 2005 when she was reportedly involved in the collision, as the period of 2 years expired on 24 January 2007; and as the Plaintiff's claim was lodged more than 2 years after the date on which her cause of action had arisen, the Plaintiff's claim had become prescribed. I agree with the Defendant's characterisation of the Plaintiff's claim; its interpretation of the provisions of s 17(1)(b) of the Act, and finally its approach for the Plaintiff's claim. By the time the Plaintiff's claim was lodged with the Defendant on 4 September 2007, a period of 2 years referred to in Regulation 2(3) of the Regulations had passed. According to the provisions of the said Regulation 2(3) the Plaintiff's claim has become prescribed.

[23] Against these special pleas the Plaintiff has raised two important aspects; firstly, that the Defendant notwithstanding made an offer of settlement without prejudice and without admitting liability on 7 May 2008; the second point that the Plaintiff raised against these special pleas was that despite the fact that the Plaintiff's action was lodged with the Defendant on 4 September 2007 at no stage did he Defendant repudiate the Plaintiff's claim for lack of information in the claim or claim documentation and never objected to the claim pursuant to the provisions of s 24(5) of the Act. Ms Netshiozwi contended that

after the Defendant had raised the special pleas the Plaintiff amended her POC and furnished the name of the driver. The claim was investigated, and it was discovered that the person whose names the Plaintiff had furnished did not even own a truck, whereupon the Defendant disputed the Plaintiff's claim. The biggest problem that the Plaintiff had was that even with the amendment of the POC, she could not revive prescription. The claim remained a claim which should have been lodged within 2 years of the cause of action having arisen. Once that period had passed, the claim became extinguished by prescription, even if the Plaintiff subsequently provided the outstanding details, that would not resuscitate a dead claim.

[24] The Plaintiff's claim did not prescribe under the Prescription Act 68 of 1969. This Prescription Act did not apply to the Plaintiff's claim. The Plaintiffs claim became prescribed in terms of Regulation 2(3) of the Regulations. The Regulation has its own period within which a debt becomes extinguished by prescription. It is of paramount importance to point out that this Regulation 2(3) excludes the application of the Prescription Act. That it is so, is clear from:

24.1 firstly, the use of the words "and notwithstanding anything to the contrary at any law"; and

24.2 Regulation 2(7) of the Regulations which provides that:

"The liability of the Fund in case of any claim for compensation referred to in s17(1)(b) of the Act shall be subject to the provisions of the Act only to the extent that those provisions are consistent with this Regulation and capable of being applied in the circumstances mentioned in the said s 17(1)(b)."

24.3 The Act itself, and to the exclusion of the Prescription Act, determines the circumstances in s 23(1) under which prescription of a claim for compensation referred to in 23(1) shall not run.

24.4 Section 23(1) provides that:

"Notwithstanding anything contrary in any law contained …."

This, in my view, clearly signifies the intention of the legislature to preclude the application of the principles of Prescription Act from applying to the debt that arises from the injuries sustained from the driving of motor vehicles.

[25] Unlike the Prescription Act, the Act does not cater for the interruption of the running of prescription by any express or tacit acknowledgements of liability by the debtor or the Fund or the Defendant. This brings into direct focus the acknowledgements of debt that the Plaintiff relies on. Furthermore, a claimant or Plaintiff whose claim falls into s 17(1)(b) of the Act, may not, if he or she fails, to lodge such claim with the Fund within 2 years of the cause of action having arisen, even apply for condonation for failure to comply or for the late lodgements of the claim. This is so because the Act does not have any such provision in terms of which an application for such condonation can be made. The intention of the legislature thereby was to completely shut out all the claims which had become prescribed in terms of Regulation 2(3) of the Regulations. The argument by Adv de Jager that the Defendant made an offer or settlement without prejudice and without admitting liability did not validate the Plaintiff's prescribed claim. The offer was late. The argument does not assist the Plaintiff's cause.

[26] Revival of the Plaintiff's prescribed claim in circumstances where the Defendant has not been imbued with any powers by the Act or any other Act of Parliament to do so, is a violation of s 2 of the Constitution. It will amount to irregular, irrational, and unconstitutional conduct.

[27] Adv de Jager referred the Court to a few authorities in support of his argument that, in general, it should be observed that it is trite law that the objectives of the act are to provide where there is possible protection to injured parties.

27.1 He relied on paragraph 18 of **Pithey v Road Accident Fund (319/13) [2014] ZASCA 55 (16 April 2014)** where the Court stated that:

"18. I pause to say something about the primary purpose and objectives of the Act. It has long been recognised in judgments on these and other courts that the Act and its predecessors represent "social legislation aimed at the widest possible protection and compensation against loss and damages for the negligent driving of a motor vehicle". Accordingly, in interpreting the provisions of the Act, Courts are enjoined to bare this factor uppermost in their minds and to give effect to the laudable objectives of the Act."

27.2 The issues involved in the Pithey matter were quite different from the current matter. In the Pithey matter, the issue involved therein was whether a claim for compensation lodged with the Road Accident Fund was rendered invalid because the claim form apparently conveyed that it was a claim under s 17(1)(a) of the Act whereas it was evident from the accompanying documents that such claim was in terms of s 17(1)(b) of the Act. In the current matter the issue is whether the Plaintiff's claim was lodged within the required period of 2 years. This was not the issue in the Pithey matter. So, the principle of the Pithey matter is not applicable in this matter. **Aetma Insurance Co v Minister of Justice 1960 (3) SA 273 (A)**. In this judgment:

"Die vraag wat in hierdie appel onstaan, gaan oor die uitleg van Artikel F(iii) van die Motorvoertuig Assuransie Wet, 1942."

27.3 At paragraph 277 F-G the Court set out clearly that:

"Wat besluit moet word is of the uitdrukking "in of op daardie motorvoertuig vervolg geword het" ("… was being conveyed … in or upon that motor vehicle") in die samehang waarin dit in die Wet voorkom, die gestelde geval insluit."

27.4 The judgment dealt with the meaning that should be given to the word "conveyed" and the expression "was being conveyed".

27.4.1 In **Bezuidenhout v RAF 2003 (6) SA 61 SCA** the issue was whether Regulation 2(1)(d) of the Regulations promulgated in terms of s 26 of the Road

Accident Fund Act 56 of 1996 was ultra vires the empowering provisions of the Act.

27.4.2 The Court held further that the present Act was the latest in the line of enactments dating back to 1942 designed to compensate persons injured or dependants of persons killed, through the negligent driving of motor vehicles. The intention throughout had been to give such persons the greatest possible protection.

27.4.3 This judgment is no authority for the proposition that it is proper where a claim falls under s 17(1)(b) of the Act for the Plaintiff's claim to be lodged more than 2 years after the cause of action has arisen. If that was the authority for that proposition it will make regulation 2(3) of the Regulations nugatory.

27.4.4 Counsel for the Plaintiff argued that it has been held in a long line of cases that the requirement relating to the submission of the claim form is peremptory. He developed his argument and stated that the prescribed requirements concerning the completeness of the form are however directory, meaning that substantial compliance with such requirement suffices.

27.4.5 This is not the point in the present matter. This is not the special plea raised by the Defendant. A special plea does not concern itself with the completeness or incompleteness of the claim form. It is concerned with the lateness with which the Plaintiff's claim was lodged.

[28] I have not been referred to any authority in which s 17(1)(b) read with Regulation 2(3) of the Regulation were interpreted to mean that a claim falling under s 17(1)(b) may be lodged any time after the expiry of a period of 2 years from the date on which the cause of action arose.

[29] I do not intend dealing with the second plea in the light of my findings regarding the first special plea. It will be recalled that the Court was only expected to deal with the second

special plea if found that the Plaintiff's claim was classified as a claim in terms of s 17(1)(a) of the Act.

[30] The order that I consequently make is as follows:

1. **The Defendant's first special plea of prescription of the Plaintiff's claim is hereby upheld.**

2. **The Plaintiff's claim has become extinguished by prescription.**

3. **The Plaintiff's claim against the Defendant is accordingly dismissed with costs.**

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PM MABUSE
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Plaintiff:	Adv NF de Jager
Instructed by:	Van Zyl Le Roux & Hurter Inc
Counsel for the Defendant:	Adv TE Netshiozwi
Instructed by:	Gildenhuys Lessing Malatji Inc
Dates heard:	18 June 2021
Date of Judgment:	27 September 2021