




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO. A469/17

RC CASE NO. 641/2014

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
<div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p><u>22/10/2021</u></p> <p>DATE</p> </div> <div style="text-align: center;"> <p></p> <p>SIGNATURE</p> </div> </div>	

In the matter between:

CHRISTINA GRACE NTSIMANE

APPELLANT

and

ROAD ACCIDENT FUND

DEFENDANT

JUDGMENT

L I VORSTER, AJ:-

1. This is an appeal against a decision of the Regional Court upholding a special plea of prescription of the Respondent which resulted in the Appellant's claim be dismissed. The surrounding facts which gave rise to this appeal can conveniently be summarized as follows:-

- 1.1. The Appellant was injured in a motor vehicle collision which took place on the 5th of March 2009 and in due course submitted a claim to the Respondent.
- 1.2. The collision occurred whilst the Appellant was a passenger in a vehicle with unidentified registration number and driven by a driver. The collision occurred between the vehicle in which the Appellant was a passenger and another vehicle with unknown registration number and driven by an unknown driver.
- 1.3. The Respondent disputed the claim which resulted in the Appellant issuing and serving a summons on the Respondent. It is necessary to have regard to the following allegations in the particulars of claim:-

“4.

*On the 5th of March 2009 at approximately 08h45 long Rustenburg North West Province an accident occurred involving a private car bearing registration number **UNKNOWN** driven at the time by one Mr Moanyisi (hereinafter referred to as the “DRIVER”) and a motor vehicle with*

registration number **UNKNOWN** driven at the time by one **UNKNOWN** driver (hereinafter referred to as "INSURED DRIVER".

5.

At the time the plaintiff was a passenger in the private car bearing registration number **UNKNOWN** driven at the time by Mr Moanyisi.

6.

The collision was caused by the sole negligence of the insured driver who was negligent in one or more or all of the following aspects:".

- 1.4. The Respondent disputed the claim which resulted in the Plaintiff (Appellant) issuing and serving a summons on the Respondent on the 27th of May 2011. That is two years and two months after the alleged date of the accident, which was alleged to be the 5th of March 2009 and which can be said to be the date when the Appellant's cause of action arose.
2. The Respondent filed a special plea of prescription based on the fact that more than two years had elapsed between the date when the cause of action arose and the date when the summons was served. The relevance of this plea of prescription was that the plea was founded on the allegation that the collision relied upon by the Appellant was an unidentified driver, allegedly causing the

damage claimed for and consequently the claim was not lodged within the two years applicable to unidentified claims.

3. The Appellant sought to counter the special plea of prescription with an application to amend the particulars of claim by replacing the name of the driver of the vehicle in which the Appellant was a passenger by another name which in pronunciation sounds similar although spelled slightly different. The Court decided to deal with the special plea of prescription first. The Appellant applied for an amendment of the particulars of claim by amending the name of the driver of the vehicle in which the Appellant was a passenger. In upholding the plea of prescription, the adjudication of the application for amendment of the particulars of claim became redundant.
4. Regulation 2(1)(b) promulgated under Section 26 of the Act provides that if the driver or owner of the negligent vehicle is unidentified, the claim is to be lodged with a Defendant within two years from the date of the accident or resultant death. It must be noted that the identity of the owner or driver of the vehicle which caused the injury or damage to the Appellant determines the question whether it was an identified or unidentified accident. That is clear from the wording of Regulation 2(1)(b). In this case the identity of the driver of the vehicle which collided with the vehicle in which Appellant was a passenger was never identified. That unidentified driver is also described in paragraph 4 of the particulars of claim as the "*insured driver*". It follows that the insured driver or owner of the vehicle driven by the insured driver was never identified and it inevitably follows that the claim of the Appellant became prescribed in terms of

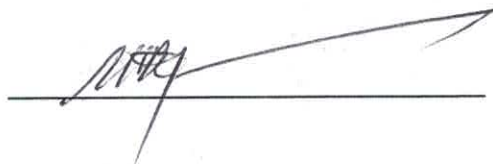
Regulation 2(1)(b). The attempt to eliminate the problem by an application for amendment of the particulars of claim to properly identify the driver of the vehicle in which Appellant was a passenger, is of no consequence and cannot have any effect on the conclusion that the Appellant's claim became prescribed.

5. In the result of the foregoing, I am of the view that the appeal cannot succeed. In my view the appeal should be dismissed.



VORSTER AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree. It is so ordered.



M. MBONGWE J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

On behalf of the Appellant: Adv ZS Rasekgale

On behalf of the Respondent : No appearance.

Date of hearing: 1 June 2021

**JUDGMENT ELECTRONICALLY TRANSMITTED TO THE PARTIES ON 22
OCTOBER 2021**