

CASE NUMBER: 560/99

DATE: 5 SEPTEMBER 2000

PARTIES: T W MPANZAMA v FIDELITY GUARDS

JUDGMENT

PILLAY J

- [1] The applicant was dismissed on the 30th of December 1994. He was reinstated following an arbitration award.
- [2] The arbitration award was issued on 11 December 1995.
- [3] This is an application to make the award an order of Court in terms of section 158 (1)(c) of the Labour Relations Act 66 of 1995.
- [4] The respondent resisted the application on the basis, firstly, of prescription and, secondly, that the cause of action arose before the operation of the Labour Relations Act of 1995.
- [5] The ground of prescription was relied upon as this application was delivered on 9 June 1999, that is more than three years after the award was published.
- [6] Chapter 3 of the Prescription Act 68 of 1969 applies to any debt arising after the commencement of that Act provided that it is not inconsistent with the provisions of any Act of

Parliament which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt. (Section 16 of the Prescription Act.)

[7] Neither section 143 nor section 158 (1)(c) prescribes any time limits for instituting proceedings to make an award an order of Court.

[8] Given that the Labour Relations Act does not expressly exclude the operation of the Prescription Act, it will therefore not be inconsistent to apply the provisions of the Prescription Act to section 143 read with section 158 (1)(c) of the Labour Relations Act.

[9] Whatever the rationale may be for the doctrine of prescription or the limitation of actions, the Labour Relations Act compels the effective resolution of disputes. (Section 1(d)(iv) of the Labour Relations Act.)

[10] This implies that labour disputes must be resolved or finalised expeditiously. For this reason too, it would not be inconsistent to apply the Prescription Act to sections 143 and 158 (1)(c) of the Labour Relations Act.

[11] The Prescription Act has been applied to the Basic Conditions of Employment Act of 1983. (*Uitenhage Municipality v Malloy* 1998 (19) ILJ 757 (SCA).)

[12] It has also been applied in an application to make an award an order of Court in terms of section 31(1) of the Arbitration No Act 42 of 1965. (*Cape Town Municipality v Ally NO* 1981 (2) SALR page 1.)

- [13] It was submitted that as a Court of equity, the Prescription Act should not be applied to oust the jurisdiction of the court and thereby deny the applicant's claim.
- [14] Equity must be applied even-handedly to both employer and employees. The employee had three years in which to prosecute his claim. The Respondent had persistently denied liability for the debt. The respondent did not obstruct the applicant in instituting proceedings.
- [15] In the circumstances, the Court cannot come to the assistance of a sloppy litigant. It would be inequitable to the respondent if the applicant is allowed to profit from his own inaction.
- [16] In finding that the applicant had three years to institute proceedings, I refer to section 10(1) and 11(d) of the Prescription Act. Section 10 (1) reads as follows:
- "Subject to the provisions of this chapter and chapter 4, a debt shall be extinguished by prescription after the lapse of a period which in terms of the relevant law applies in respect of the prescription of such debt."
- [17] Section 11(d) provides:
- "The periods of prescription of debt shall be the following:
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- (d) Save where an Act of Parliament provides otherwise, three years in respect of any other debt."
- [18] It was not disputed in these proceedings that the award was a debt within the meaning of the

Prescription Act. The debt arose when the award was published and not before. (*Cape Town Municipality v Ally NO* above.)

[19] In the circumstances, the debt has become prescribed.

[20] The applicant's contention that the cause of action was the dismissal and not the arbitration award is incorrect.

[21] The dismissal was a cause of action in the arbitration.

[22] In this application the award of that arbitration is the cause of action.

[23] Further, as the date of dismissal preceded the arbitration and the application of the Labour Relations Act, the submission does not help the applicant's cause.

[24] In the circumstances the application is dismissed with no order as to costs.

JUDGE D. PILLAY

Judge - Labour Court of South Africa

04 September 2000

05 September 2000

Mr. S. R. Khanyile

Mathe & Zondo

t Mr. S. Snyman

Snyman Van der Heever Heyns

REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA

SITTING IN DURBAN

CASE NO D 560/99

DATE 2000/09/05

In the matter between:

T W MPANZAMA

Applicant

and

FIDELITY GUARDS HOLDINGS (Pty) Ltd

Respondent

JUDGMENT DELIVERED BY THE HONOURABLE **MS JUSTICE PILLAY**

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