

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 811/2018

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST TO THE JUDGES: <u>YES/NO</u>
(3)	REVISED.
DATE: <u>21/11/19</u> SIGNATURE: <u>[Signature]</u>	

In the matter between:

MATHEBULA PATRICK SPRINGER

APPLICANT

AND

**DEPARTMENT OF EDUCATION,
LIMPOPO PROVINCE**

FIRST RESPONDENT

GOVERNMENT EMPLOYEES PENSION FUND

SECOND RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant has brought an application seeking an order that it be declared that he is entitled to the sum of R183 092-00 as his pension contribution benefits from the date of his appointment being the 1st January 1979 to the 30th May 1989, and that the first respondent be directed to pay him. In the alternative he is seeking an order that the first respondent take all necessary steps or measures to ensure that his pension contribution benefits from 1st January 1979 to 30th May 1989, if the first respondent has paid the said pension contribution benefits to another pension institution other than the second respondent, be paid to him.
- [2] The background facts are that the applicant alleges that he was employed on the 1st January 1979 by the old the Republic of South Africa in the Department of Education as an educator. From 8th January 1980 he worked under the homeland of Gazankulu still as an educator. During 1989 the school in which he was an educator was incorporated to the former Republic of Venda. After the new dispensation in 1994 the school he was working at was incorporated to Northern Province now Limpopo Province. He continued working at that school until he went into retirement during February 2016.
- [3] Before he went into retirement, on the 30th May 2012 he enquired about his pension benefits from the second respondent. He was told that his pension benefit will be calculated from 1st June 1989 up to date of his retirement and not from January 1979. He followed up the matter to rectify the situation up to the date of his retirement. However, his pension payment was calculated from the 1st June 1989 to date of his retirement being the 29th February 2016 despite having contributed to the pension fund from 1st January 1979. Even after the

pension pay-out he tried to resolve this matter amicably with the respondents to no avail, hence the launching of the present application.

- [4] Both respondents are opposing the applicant's application. The first respondent has raised two points *in limine*, that of prescription and that of failing to first refer the dispute to the Pension Fund Adjudicator. However, on the day of the hearing of the matter, the first respondent abandoned the second point *in limine*, and proceeded only with that of prescription.
- [5] According to the first respondent's point *in limine* of prescription, the applicant became aware of his pension shortfall during 2012 when he visited the second respondent. It is the first respondent's contention that the applicant's claim has prescribed as he has waited for seven years to bring an application to seek a declaratory order for the 10 years pension shortfall. The applicant's submission is that prescription started to run when he went into retirement and the date of retirement is the date he became aware of the debt.
- [6] In terms of Section 12(1) of the Prescription Act ¹(the Act), prescription shall commence to run as soon as the debt becomes due. Section 12(3) of the Act provides that the debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises, provided a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.
- [7] In **Kruger v National Director of Public Prosecutions**² Zondo DCJ said:

¹ Act 68 Of 1969

² [2019]ZACC 13; 2016(6) BCLR 703 (CC)

"In Truter the Supreme Court of Appeal dealt with the meaning of the phrase "debt". It said:

'For the purpose of the Act, the term 'debt due' means a debt, including a delictual debt, which is owing and payable. A debt is due in this sense when a creditor acquires a complete cause of action for the recovery of the debt, that is, when the entire set of facts which a creditor must prove in order to succeed with his or her claim against the debtor is in place or, in other words, when everything has happened which would entitle the creditor to institute action and pursue his or her claim'.

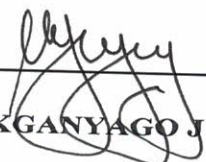
- [8] In the case at hand, the applicant became aware that he will be short paid of his pension benefits on the 30th May 2012. After discovery of that, he took initiatives to resolve the matter amicably with the respondents. The Principal of Djunani Primary School where the applicant used to work, on the 7th August 2014 also wrote a letter to the first respondent informing it that the applicant has started teaching on 1st January 1979. On the 5th August 2016 the first respondent wrote a letter to the applicant informing him that his Z125 forms for the amendment date of entry to the department has been forwarded to the second respondent for their attention. On the 14th November 2016 the first respondent wrote a letter to the applicant requesting him to submit copies of salary advices from 1979 to 1987 to their offices for them to process the matter further in order for them to speed up the process with the second respondent.
- [9] On the 5th May 2017 the first respondent wrote to the applicant informing him that it has received copies of his salary advices from SITA and that they only cover for the period 1994 to 1997 and that they will not serve any purpose. All these efforts were an attempt to resolve the matter amicably. However, in my view, the applicant has acquired complete knowledge of his cause of action when payment of his pension benefit was done. He was now certain that there

was a short-payment of his pension benefit. It would have been premature for the applicant to launch his application before he was certain as to what figure has he been paid and how much was the shortfall, and for which period. Even though he was informed during 2012, it was not yet certain that the respondents will not reconsider their positions taking into consideration the attempts that was made in trying to resolve this matter.

[10] Before payment of his pension benefit, the applicant would not have known whether the respondents have calculated his pension pay correctly or not. It will only be after payment that it will be certain for him that that there was shortfall. His pension payment was paid during 2016. In my view prescription for the applicant's claim started to run in 2016 after the actual payment of his pension. Negotiations with the respondents after payment was made did not interrupt prescription. He has launched his application on the 7th February 2018 within the three years period. It follows that the first respondents point *in limine* has no merit and stand to fail.

[11] In the result the following order is made:

11.1 The first respondent's point *in limine* of prescription is dismissed with costs on party and party scale.



MF KGANYAGO J
JUDGE OF HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION, POLOKWANE

APPEARANCE:

COUNSEL FOR THE APPLICANT : ADV TD SIBIYA
INSTRUCTED BY : MG MABUNDA ATTORNEYS

COUNSEL FOR 1ST RESPONDENT : ADV M KHANYEZA
INSTRUCTED BY : STATE ATTORNEY POLOKWANE

COUNSEL FOR 2ND RESPONDENT : ADV LF MOLETE
INSTRUCTED BY : DM5 INC

DATE OF HEARING : 21 OCTOBER 2019

DATE OF JUDGEMENT : 21 NOVEMBER 2019