



**REPUBLIC OF SOUTH AFRICA**

**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**

**JUDGMENT**

Reportable

Case No: J 1661/12

In the matter between:

**IMATU OBO JF DE LANGE**

**Applicant**

and

**CITY OF MATLOSANA LOCAL MUNICIPALITY**

**First Respondent**

**SOUTH AFRICAN LOCAL GOVN.**

**Second Respondent**

**BARGAINING COUNCIL**

**R DE WET N.O.**

**Third Respondent**

**Heard: 6 August 2014**

**Delivered: 3 October 2014**

**Summary: Prescription- whether review proceedings interrupt prescription of an arbitration award; award to effect specific performance, whether such immune from the Prescription Act**

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**JUDGMENT**

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MOOKI, AJ

- [1] The applicant seeks to make an award an order of this court. The award was made on 23 July 2007. The first respondent launched review proceedings in respect of the award in November 2007, but withdrew the review application on 12 August 2010. The application to make the award an order of court was served on the first respondent on 1 August 2012.
- [2] The first respondent opposes the application. It raised two preliminary points. First, the first respondent contends that the application is late and is not supported by a request for condonation. Second, the first respondent contends that the award prescribed during August 2011.
- [3] The first respondent opposes the application on the merits on the basis that the first respondent complied with the award; alternatively, that the parties settled their dispute.
- [4] The applicant denies that it requires condonation or that the dispute has been settled. The applicant further denies that the award has prescribed in that the first respondent's review application interrupted prescription.
- [5] It was submitted on behalf of the applicant that:

The first respondent withdrew (sic) the review application on 13 August 2010. This constituted an acknowledgement of the debt owed towards (sic) the member of the applicant. This also constitutes an acknowledgement of the lawfulness and validity of the arbitration award. This express withdrawal of the review application constitutes an acknowledgement of the indebtedness owed (sic) by the first applicant towards the member of the applicant. Prescription therefore started running and commenced on 13 August 2010.

[6] It was also submitted on behalf of the applicant that:

IMATU filed its application on 1 August 2010 to make the arbitration award an order of court. This application was launched within the three-year period envisaged in the Prescription Act. It is submitted that IMATU is procedurally and lawfully entitled launch and initiate the present application on behalf of its member.

[7] The first respondent abandoned the point on condonation during argument. I am of the view that the issue of prescription is dispositive. The applicant should succeed if the award has not prescribed. The converse applies if the award has prescribed.

[8] The applicant relies on paragraphs 9 to 11 of the decision of this court in *Aon SA (Pty) Ltd v CCMA and Others*<sup>1</sup> as authority for its contention that the review application interrupted prescription. These passages do not support the claim. It was also submitted on behalf of the applicant that prescription does not, in any event, apply because the particular award is not a “debt” because the award does not oblige the payment of money.

[9] This Court has given a number of conflicting decisions regarding the effect of the Prescription Act on arbitration awards. The court determined in at least two decisions that the Prescription Act does not apply to employment related disputes.<sup>2</sup> The majority of the decisions came to a different conclusion.<sup>3</sup>

[10] I am not persuaded that debts arising from labour disputes are immune from the Prescription Act, Act 68 of 1969 (“the Act”). Nor am I persuaded that

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<sup>1</sup> (2002) ILJ 1124 (LC)

<sup>2</sup> *Cellucity (Pty) Ltd v CWU obo Peters* [2014] 2 BLLR 172 (LC) ; *Coetzee and Others v MEC: Provincial Government of the Western Cape and Others* (2013) 34 ILJ 2865 (LC) .

<sup>3</sup> *Circuit Breakers Industries Ltd v NUMSA obo Hadebe and Others* (JR1958/08)[2013] ZALCJHB 286 (1 November 2013); *POPCRU obo Sifuba v Commissioner: South African Police and Others* (2009) 30 ILJ 1309 (LC); *Magengenene v PPC Cement (Pty) Ltd and Others* (2011) 32 ILJ 2518 (LC); *Sapla Belting SA (Pty) Ltd v CCMA and Others* (2012) 33 ILJ 2465 (LC).

review proceedings interrupt prescription. I agree with the statement of the law as set out by Chetty AJ in the *Circuit Breakers Industries Ltd* decision; save in one respect, which I consider below.

- [11] The decisions in *Cellucity* and *Coetzee* strike me as too radical in taking labour disputes outside the operation of the Prescription Act. The law on prescription is ultimately concerned with ensuring finality to disputes; a principle that underpins the Labour Relations Act.
- [12] The law on prescription is neutral in its reach. There is nothing in principle that suggests that debts that arise from labour disputes should be immune from the operation of the Prescription Act.
- [13] The court in *Cellucity* and *Coetzee* appears to have been swayed by the peculiar facts in those cases; including the hardship as seen by the court that could be visited on some employees. The potential abuse and hardship referred to by the court in *Cellucity* and *Coetzee* do not strike me as so fundamental as to render debts arising from labour disputes immune from the Prescription Act. One can conceive of multiple expedients to draw the attention of the lay public to the requirement to take steps within three years. One such expedient being embossing a watermark in awards by the CCMA, in bold type or some other type that will draw attention to the fact that the award needs to be acted upon within three years; failing which it may not be possible to enforce the award.
- [14] The Prescription Act deals with prescription “in general”.<sup>4</sup> The Constitutional Court confirmed the application of the Prescription Act to all disputes:<sup>5</sup>

‘This Court has repeatedly emphasised the vital role time limits play in bringing certainty and stability to social and legal affairs and maintaining the

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<sup>4</sup> *Road Accident Fund and Another v Mdeyide* 2011 (2) SA 26 (CC) , at para 10.

<sup>5</sup> Para 8 *supra*

quality of adjudication. 'Without prescription periods, legal disputes would have the potential to be drawn out for indefinite periods of time bringing about prolonged uncertainty to the parties to the dispute. The quality of adjudication by courts is likely to suffer as time passes, because evidence may have become lost, witnesses may no longer be available to testify, or their recollection of events may have faded. The quality of adjudication is central to the rule of law. For the law to be respected, decisions of courts must be given as soon as possible after the events giving rise to disputes and must follow from sound reasoning, based on the best available evidence '(internal citations omitted).

- [15] The applicant contends that a review application interrupts prescription *per se*. This does not accord with the law. Assuming that a review application is "process" as contemplated in the Prescription Act, such process must be a step taken by a "judgement creditor" in order to interrupt prescription. Either party to arbitration proceedings may institute review proceedings in the Labour Court. It does not follow, therefore, that the process of review proceedings will always be instituted by a "judgement creditor" within the meaning in the Prescription Act. I therefore, differ with the view expressed by Molahlehi J in *NUMSA and Another v Espach Engineering*<sup>6</sup> that a review application would constitute a "process" as contemplated in the Prescription Act. I am alive that the issue was not determined in that matter.
- [16] It was submitted on behalf of the applicant that the award in this matter is not a "debt" within the meaning of that expression in the Prescription Act; essentially because the award does not require the first respondent to pay a sum of money. This formulation accords with the view of Chetty AJ in *Circuit Breakers*; namely that an award that obliges a party to effect specific performance is not subject to the Prescription Act.<sup>7</sup>

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<sup>6</sup> (2010) 31 ILJ 987 (LC).

<sup>7</sup> *Supra* at para 19, 21

[17] I am not inclined to follow the conclusion by Chetty AJ. That conclusion did not take into account the confirmation by the Constitutional Court that “[...] the term *debt* has been given a broad meaning to refer to an obligation to do something, be it payment or delivery of goods or to abstain from doing something.”<sup>8</sup> It would otherwise be surprising that an award to effect specific performance would remain competent forever and a day; unlike an award to pay a sum of money, which would be subject to the established law that such an award prescribes in three years.

[18] I conclude that the award has prescribed. I make the following order:

- 18.1 The application is dismissed;
- 18.2 There is no order as to costs.

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O Mooki

Judge of the Labour Court (Acting)

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<sup>8</sup> *Road Accident Fund and Another v Mdeyide*, para 11

## APPEARANCES:

For the Applicant: Mr. R. Schmidt (from IMATU)

For the First Respondent: Waks Silent Inc.

LABOUR COURT