

JUSTICE GUMBOCHUMA  
versus  
ZIMBABWE ELECTRICITY TRANSMISSION & DISTRIBUTION COMPANY

HIGH COURT OF ZIMBABWE  
MAFUSIRE J  
MASVINGO, 23 July 2019

Date of written judgment 8 November 2019

**Civil trial**

Mr L. Muvengeranwa, for the plaintiff  
Mr J. Zviuya, for the defendant

MAFUSIRE J

- [1] This was an action matter. On the date of trial, it was postponed *sine die* by consent. The defence had raised a special plea of prescription. The plaintiff was not conceding it. In terms of a timetable agreed upon, the parties would file their written submissions. Judgment on prescription would be delivered on the papers. This now is that judgment.
- [2] The facts were common cause. The parties filed a statement of agreed facts. They were these. The defendant is a private company. It is responsible for, among other things, the distribution of electricity nationwide. In this regard it runs and maintains, among others, electricity transmission conductors. The plaintiff sued it for damages arising out of injuries sustained by him when he had come into contact with live conductors.
- [3] The plaintiff's case was this. On 11 March 2009 he was herding cattle in Mashava. He came into contact with naked electricity conductors. They were live and concealed by grass in the grazing field. He was electrocuted. He suffered severe burns from the chest to the knees. He stayed in hospital for six months. His right hand had to be

amputated. The degree of his disability as a result of those burns was estimated at 40%.

[4] The plaintiff alleged the defendant had been negligent in the following respects:

- it had failed to inspect and detect that its conductors had fallen onto the ground;
- it had failed to secure the conductors so that they would not fall to the ground;
- it had failed to clear the grass along its transmission lines so that fallen conductors could easily be detectable.

[5] The plaintiff assessed his damages at \$60 334 for pain and suffering, medical expenses and the loss of amenities of life.

[6] The plaintiff's summons was issued and served in March 2018. That was exactly nine years after the incident. The defendant raised the special plea of prescription. Generally, in terms of the Prescription Act, *Cap 8:11*, an ordinary debt becomes prescribed after the lapse of three years from the date when the cause of action arose. The defendant alleged the plaintiff's cause of action arose on the date of the incident.

[7] On the merits, the defendant completely denied the plaintiff's allegations. It said he had been the author of his misfortune. He had wanted to steal the electricity conductors. The defendant denied they had fallen onto the ground. It claimed the plaintiff had tried to pull them down with his axe from a height of about 2.5 metres above the ground. That was when he had been electrocuted. The defendant had actually reported the plaintiff to the police for theft. He had been arrested. But in September 2016 the police had let him go for lack of evidence. That was seven years later.

[8] In his answer to the defence of prescription, the plaintiff maintained that the cause of action had arisen in September 2016 when he had been cleared by police. He said prescription had not begun to run when the incident had occurred. Relying on cases

such as *Dube v Banana* 1998 (2) ZLR 92 (H), *Mukahlera v Clerk of Parliament & Ors* HH 107/07 and *Local Authorities Pension Fund v Nyakwawa & Ors* 2015 (1) ZLR 103 (H) which defined “cause of action” as the combination or entire set of facts that are material for the plaintiff to prove in order to succeed in his action, the plaintiff argues that until the police had dropped the criminal charges against him, he would not have been able to discharge the burden upon him that it had been the defendant’s negligence that had caused him the injury and consequent loss to him.

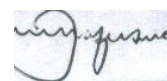
- [9] The plaintiff further relies on the cases of *Thompson v Minister of Police* 1971 (1) SA 371 (E) and *Manjoro v Minister of Home Affairs & Ors* 2015 (1) ZLR 872 (H) for the argument that no action lies until the criminal proceedings have terminated in favour of a plaintiff.
- [10] Plainly, the plaintiff’s argument on prescription is ill-conceived. His cause of action is manifestly prescribed. Both parties are agreed that the plaintiff’s cause of action is a ‘debt’ within the meaning of s 2 of the Prescription Act, namely being a “*debt*” that may be sued for or claimed by reason of an obligation arising from statute, contract, delict or otherwise. The plaintiff’s claim arises from delict. It is an ordinary debt. The period of prescription is three years.
- [11] The plaintiff’s cause of action arose when the incident happened. In terms of s 16 of the Prescription Act, prescription begins to run as soon as a debt is due. A debt is due when the plaintiff has gathered all the entire set of facts about the cause of action as are material to prove his or her claim. In this case, the plaintiff’s cause of action was complete when he had gathered all the information as to, among other things, whose electricity conductors they were; allegedly that they had been in a state of neglect; allegedly that they had been lying naked on the ground whilst concealed; the sort of injuries that he had sustained; the monetary loss that he had incurred, or would incur, and so on. Those are the kind of material facts as are contemplated by cases such as *Banana* above. If three years elapsed before the plaintiff had taken action or interrupted prescription, then his cause of action would be extinguished. The lapsing

of a debt by prescription is absolute, unless one can show that prescription does not apply or that the running of it was delayed or interrupted.

- [12] Section 17 of the Act provides for situations where the completion of the period of prescription is delayed. None of them applies to the plaintiff's case. Sections 18 and 19 of the Act provide for situations where the running of prescription is interrupted. These are when the debtor acknowledges liability and when the creditor serves process on the debtor claiming the debt. The plaintiff expressly concedes that none of these applies to him either. That should mark the end of his case. But his counsel has crafted the argument that prescription should not be raised against the plaintiff because his cause of action only arose in September 2016 when the police abandoned the criminal case against him.
- [13] That the plaintiff had been arrested by the police for the alleged theft of the conductors and or that it had taken the police seven years to clear him is not one of the factors that interrupts or delays the running of prescription. Whilst a single incident may give rise to multiple types of proceedings including criminal and civil, the outcome of one does not bind the other or others. The police and the prosecution could well have been pursuing a criminal case. The plaintiff was not precluded from pursuing his civil claim timeously after he had become satisfied that his injury and loss had arisen by reason of the defendant's negligent conduct.
- [14] The plaintiff's arguments that until the police had exonerated him of the theft allegations, it was not known whether it was him or the defendant who had been to blame for his electrocution or that without having been so exonerated he would not have been able to prove his cause of action, are thoroughly ill-informed. He himself knew and had concluded that he had been electrocuted by reason of the defendant's negligence. He did not need the police or anyone to tell him that. Furthermore, and at any rate, even after being exonerated, he would still need to prove liability on the merits as the defendant was contesting it.

- [15] Cases like *Thompson v Minister of Police* and *Manjoro v Minister of Home Affairs* above, are completely inapposite and the plaintiff's argument misconceived. These cases were concerned with situations where one sues the police and its parent ministry in respect of wrongful conduct, such as wrongful arrest or malicious prosecution. In such situations, until the criminal proceedings terminate in favour of the plaintiff, he or she would be hard pressed to prove wrongfulness or malice on the part of the police. That is why he or she has to wait for the proceedings to end, and to end in his or her favour. *In casu*, the plaintiff's situation is different and incomparable.
- [16] It is the finding of this court that the plaintiff's claim has prescribed. Therefore, it is hereby dismissed with costs

8 November 2019



*Legal Aid Directorate*, plaintiff's legal practitioners  
*Bere Brothers*, defendant's legal practitioners