

PATRICK MATIMBA
versus
ZIMBABWE PLATINUM MINES (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 12 July 2022

Special Plea

Mr *T P Jonasi*, for the plaintiff
Mr *D Peneti*, for the defendant

MHURI J: On 12 July 2022, after hearing submissions by the parties on the special plea in bar in respect of plaintiff's summons and declaration, I issued an *ex tempore* ruling upholding the special plea.

The plaintiff has requested written reasons. These are they;

On 13 May 2022 plaintiff issued summons against the defendant claiming ZWL \$60 000 000-00 being damages for pain and suffering which arose out of an accident suffered by plaintiff while he was barring down a rock during the scope of his duties.

Plaintiff suffered injuries in his lumbar lordosis, central intervertebral disc, protrusion at LA, mild to moderate lateral stenosis.

Plaintiff also claimed interest at the prescribed rate calculated from date of summons to date of full payment and costs of suit.

Plaintiff's declaration was to the effect that he was in defendant's employ as a Shift Boss and sometimes in 2018 he was involved in an accident while barring. A rock fell on him and he sustained injuries as stated in the summons.

On the same day he was ferried to the mine medical centre where the X-ray taken did not reveal anything. After two days, because of the excruciating pain he was referred to a specialist neuro surgeon and an M R I scan was done which revealed that plaintiff suffered lumbar

lordosis, central intervertebral disc, protrusion at LA causing mild to moderate lateral stenosis and even lost one of his discs. Plaintiff has been on treatment for the injuries till to date.

On 31 May 2022 defendant filed a special plea in bar to the effect that the plaintiff's claim has prescribed. Plaintiff suffered damages in 2018 and only served the summons and declaration on 18 May 2022 which is more than three years after the claim arose. In terms of section 15 (d) of the Prescription Act [*Chapter 8:11*] the claim is prescribed.

Plaintiff's argument was that the cause of action arose in September 2021 when he came to know about the permanent disability through an M R I scan. The pain and suffering is continuing and he is still being treated for the injuries to-date. He also argued that defendant prevented the plaintiff from approaching the court by denying that the accident had occurred and by not availing a report it had compiled.

Section 15 (d) of the Prescription Act provides

“the period of prescription of a debt shall be -

- a)
- b)
- c)
- d) except where any enactment provides otherwise, three years, in the case of any other debt.”

Section 16 provides when prescription begins to run. Subsection (1) provides:

“subject to subsections
(2) and (3), prescription shall commence to run as soon as a debt is due.”

In *casu*, plaintiff's debt falls under subsection (d) of section 15. He was therefore entitled to claim within three years from the date the cause of action arose. The question to be answered is, when did the cause of action of arise.

Paragraphs, 3, 4 and 5 of plaintiff's declaration tells it all.

Paragraph 3 plaintiff says it was sometime in 2018 when the accident happened.

Paragraph 4 plaintiff says on the same day he was taken to a medical centre where the X-ray did not reveal anything and he was discharged the next day.

Two days later he was referred to a specialist neuro surgeon where an M R I scan was done and revealed the extent of the injuries.

Paragraph 5 states the effect of the injuries sustained. It says plaintiff sustained serious, extensive and apparent injuries through massive disfigurement, permanent scarring, permanent disability and real risk of permanent back and spine injury.

These injuries according to paragraph 4 were revealed by the M R I scan which was conducted two days later, ie after plaintiff's discharge from the local medical centre. This is the only M R I scan that was done. It therefore goes without saying that plaintiff was aware of these facts within a few days of the accident in 2018.

See *Gumbochuma v Zimbabwe Electricity Transmission & Distribution Company*
HMA 53/19
and
Tommy v Gunn HB 35/20 aptly cited by defendant.

I am therefore not persuaded that it was in 2021 that plaintiff became aware of the facts that gave rise to his claim. I am still not persuaded that prescription was interrupted by Practice Directions. Plaintiff did not prove this to be the case.

Having found that plaintiff became aware of the facts in 2018, it is my finding that the cause of action arose in 2018. Prescription therefore started to run as from 2018 and by May 2022 when plaintiff issued the summons, the three years within which he was obliged to claim had expired.

Consequently, the special plea in bar by defendant is upheld. The prayer by defendant that plaintiff's claim be dismissed with costs on a higher scale is granted. Costs on a higher scale are granted as in my view plaintiff ought to have been jolted to withdraw his claim after the prescription issue was raised. He instead persisted with his claim.

It was, in the result, ordered that plaintiff's claim be dismissed as it had prescribed. Plaintiff to bear defendant's costs on the legal practitioner and client scale.

Hamunakwadi & Nyandoro Law Chambers, plaintiff legal practitioners
Maguchu & Muchada Business Attorneys, defendant's legal practitioners