

ROMUS GUMISAI CHIHOTA
versus
MINISTER OF HOME AFFAIRS
and
COMMISSIONER GENERAL – ZIMBABWE REPUBLIC POLICE
and
OFFICER IN CHARGE ZRP CHIREDDZI

HIGH COURT OF ZIMBABWE
MATHONSIJ
HARARE, 28 JANUARY 2015 & 4 FEBRUARY 2015

Exception

Plaintiff in default
P. Kapusura, for the defendants

MATHONSI J: The plaintiff was, at the material time, an attested member of the Zimbabwe Republic Police stationed at Chiredzi Police Station. Following a conviction under the Police Act [*Cap 11:10*] on 31 January 2012 he was sentenced to 7 days imprisonment at Fairbridge Police Detention Barracks in Bulawayo.

He was being ferried to the detention centre in a police defender vehicle registration number ZRP 1544D on 1 February 2012 when the vehicle in question was involved in a collision with a Greyhound Omnibus registration number YRR 321 GP near the 89 km peg along the Masvingo – Beitbridge road. As a result, the plaintiff sustained injuries for which he now sues the defendants for a total of \$750 000-00 damages.

The plaintiff did not cite the driver of the police defender vehicle. He did not make an averment as to the cause of the accident. Neither did he allude to any legal basis upon which the defendants are liable. In fact, the summons and declaration put together do not even begin to disclose any cause of action.

The defendants have excepted to the summons on the basis, firstly that the plaintiff's claim is prescribed and secondly that the summons and declaration are bad at law to the extent that they do not disclose a cause of action.

The plaintiff was served with the notice of set down of the exception on 14 January

2015 but chose not to appear. Mr. *Kapusura* for the defendants has applied for the dismissal of the plaintiff's claim on the basis that it is prescribed. He conceded that the second leg of the exception would not entitle the defendants to a dismissal. The remedy available to an excipient on the basis that a summons does not disclose a cause of action is not an outright dismissal of the claim but an order directing the plaintiff to amend the pleadings within a fixed period of time: *Auridium Zimbabwe (Pvt) Ltd v Modus Publications (Pvt) Ltd* 1993 (2) ZLR 359 (H) 373 C-D; *Adler v Elliot* 1988 (2) ZLR 283 (S) 292 B.

It is the aspect of prescription which really brings the action to its knees. The cause of action in this matter arose on 1 February 2012 when the plaintiff was injured in an accident. He only gave notice of intention to sue on 11 December 2013, well over a year after the cause of action arose and only issued summons on 4 April 2014 which was served on 7 April 2014.

In terms of s 70 of the Police Act [*Cap 11:10*]:

“Any civil proceedings instituted against the state or member in respect of anything done or omitted to be done under this Act shall be commenced within eight (8) months after the cause of action has arisen, and notice in writing of any such civil proceedings the grounds thereof shall be given in terms of the State Liabilities Act Chapter 8:14.”

The plaintiff was required to give 60 days notice of the intended suite in terms of s 6 of the State Liabilities Act. He was required to also bring the suit within the prescribed period of eight months. He did not. A failure to comply with those provisions renders the action a nullity. While a failure to comply may be condoned in appropriate circumstances, there has been no attempt to seek condonation: *Masenga v Minister of Home Affairs* 1998 (2) ZLR 183 (H).

There can be no doubt therefore that the clear intention of the legislature in the provisions I have cited was to extinguish the claim; *Coutts & Co v Ford & Anor* 1997 (1) ZLR 440 (H) 443 B.

In the circumstances, there can be no doubt that the plaintiff must suffer grief.

Accordingly the plaintiff's claim is hereby dismissed with costs.

Civil Division of the Attorney General's Office, defendants' legal practitioners