

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA  
RULING  
PRACTICE DIRECTION 61



MAIN DIVISION, WINDHOEK

<b>Case Title:</b>  JOSEPH GERSON GARISEB PLAINTIFF  and  MINISTRY OF SAFETY AND SECURITY ALBERT KAWANA FIRST DEFENDANT C/GENERAL RAPHAEL HAMUNYELA SECOND DEFENDANT IKOSA LEONARD MAHUNDU THIRD DEFENDANT G ASHIMBANGA FOURTH DEFENDANT HAFENI KASHINDUKA FIFTH DEFENDANT CS NUUYOMA SIXTH DEFENDANT	<b>Case No:</b> HC-MD-CIV-ACT-OTH- 2022/04053
	<b>Division of Court:</b> HIGH COURT (MAIN DIVISION)
<b>Heard before:</b> HONOURABLE MR JUSTICE PARKER, ACTING	<b>Date of hearing:</b> 24 APRIL 2024
	<b>Delivered on:</b> 15 MAY 2024
<b>Neutral citation:</b> <i>Gariseb v Ministry of Safety and Security Albert Kawana</i> (HC-MD-CIV-ACT-OTH-2022/04053) [2024] NAHCMD 226 (15 May 2024)	
<b>IT IS ORDERED THAT:</b>	

1. The special plea of prescription is upheld.
2. The plaintiff's claim is dismissed.
3. There is no order as to costs.
4. The matter is finalised and removed from the roll.

**Following below are the reasons for the above order:**

PARKER AJ:

[1] The plaintiff, who appeared in person, is an inmate at the Evaristus Correctional Facility. He instituted action against the defendants by summons filed and issued on 15 September 2020. Thus, the civil action was entered into against the State for the acts in question (to use the language of the Correctional Service Act 9 of 2012) on 15 September 2020.

[2] The respondents, represented by Ms Fenyeho, have raised a special plea of prescription in terms of s 133 (3) of the Correctional Service Act 9 of 2012 ('the Act'). The respondents aver that the time limit within which the plaintiff was entitled to enter into the action has expired, and so the plaintiff's claim has prescribed.

[3] It is undisputed and indisputable that the cause of action, according to the particulars of claim, arose on 7 May 2021, 7 September 2021 and 6 October 2021. Therefore, as respects the claim based on the cause of action that arose on-

- (a) 7 May 2021, the claim prescribed on 6 November 2021;
- (b) 7 September 2021, the claim prescribed on 6 March 2022;
- (c) 6 October 2021, the claim prescribed on 5 April 2022.

[4] I find and hold that there is nothing that a person (a plaintiff) can do to be allowed to sue after the expiry of the time limit. He or she was time barred. Even if the plaintiff gave one-month notice to institute the action in terms of s 133(4) of the Act, that will not lift the bar.<sup>1</sup> The width of

the wording of s 133(3), whose provisions are peremptory, compels the conclusion that there is no provision in the Act that would entitle the court to condone the late entering into the action by the plaintiff after the expiry of the six months' time limitation.<sup>2</sup> Any contrary view would undoubtedly defeat the purpose of the limitation provision and undermine the intention of the Legislature thereon. In sum, failure to institute action for acts or omissions complained of within the time limit disentitled the plaintiff to seek relief in the court.

[5] The giving of the said notice and the s 133(3) limitation provision as are contained in s 133(3) and (4) of the Act serve a legitimate and reasonable governmental purpose and are justified by reference to the public interest.<sup>3</sup> Indeed, the time limitation provisions in the Act merely restricts the institution of action 'by imposing a time limit within which the matter must be brought to court.'<sup>4</sup> They do not prevent an aggrieved person from vindicating his or her right in the court.

[6] The preponderance of the foregoing findings and conclusions are unaffected by the plaintiff's unproved assertion in his submission that the authorities at the said correctional facility frustrated his effort to enter into the action within the statutory time limit. Considering the nature and circumstances of the case, I make no order as to costs.

[7] Based on these reasons, I conclude that the respondents have made out a case for the relief sought.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
	Not applicable.
<b>Counsel:</b>	
<b>PLAINTIFF</b>	<b>DEFENDANT</b>
Mr Gariseb – In Person	Ms Fenyeho of Office of the Government Attorney, Windhoek

<sup>1</sup> *Kruger v Ministry of Safety and Security* [2020] NAHCMD 334 (6 August 2020) para 6.

<sup>2</sup> *Elia v Minister of Safety and Security* NAHCMD 477 (13 September 2022).

<sup>3</sup> See Lawrence Baxter *Administrative Law* (1984) at 734 – 735.

<sup>4</sup> *Ibid* at 733.