

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
RULING
PRACTICE DIRECTION 61



MAIN DIVISION, WINDHOEK

Case Title: LONGINUS PLAINTIFF and FIRST NATIONAL BANK UNIT TRUST DEFENDANT	Case No: HC-MD-CIV-ACT-OTH- 2022/03019
	Division of Court: HIGH COURT (MAIN DIVISION)
Heard before: HONOURABLE MR JUSTICE PARKER, ACTING	Date of hearing: 16 MAY 2024
	Delivered on: 5 JUNE 2024
Neutral citation: <i>lidhogela v First National Bank Unit Trust</i> (HC-MD-CIV-ACT-OTH-2022/03019) [2024] NAHCMD 284 (5 June 2024)	
IT IS ORDERED THAT: 1. The special plea of prescription is upheld. 2. The plaintiff's action is dismissed. 3. The plaintiff shall pay the defendant's costs, capped in terms of rule 32(11) of the rules of court. 4. The matter is regarded as finalised and removed from the roll.	

Following below are the reasons for the above order:

PARKER AJ:

[1] The action, instituted by the plaintiff on 14 July 2022 and served on the defendant on 21 July 2022, has been dragging on without an end to it for two reasons. The first reason is that upon a successful exception having been raised against the particulars of claim, the plaintiff was allowed to amend the particulars, resulting in the plaintiff filing amended particulars of claim on 12 February 2024. The second reason is that the plaintiff applied to the court to allow him to obtain legal representation from the Legal Aid Directorate of the Ministry of Justice. The legal practitioners, who were approached by the Directorate to represent the plaintiff, declined to represent the plaintiff and returned the brief to the Directorate, after they had studied the brief.

[2] The reasons for the delay in concluding the case are put at the door of the plaintiff only. In the end the plaintiff decided to represent himself. He filed an 'Answering affidavit to the defendant's special plea'. I accepted the affidavit for its substance in his attempt to reject the special plea. Ms Karamata represents the defendant, and she filed heads of argument.

[3] The determination of the special plea turns solely on the interpretation of s 12(1) of the Prescription Act 68 of 1969 ('the Act'), because the facts relevant to the determination of the special plea are met in dispute.

[4] The following factual findings are not in dispute; they are common cause between the parties. The plaintiff's claim arose on 1 June 2009. Therefore, prescription commenced to run, within the meaning of s 12(1) of the Act, from that date, for 'prescription will commence to run once the debt is due'.¹ Doubtless, the plaintiff's claim amounted to 'debt' as contemplated in the Act, because it gave a right of action for money.²

[5] As Ms Karamata submitted, the plaintiff has not established that the running of prescription was interrupted. In that regard, it is important to make the following crucial point: Any alleged

¹ *Makate v Vodacom Ltd* 2016 (4) SA 121 (CC), approved by the Supreme Court in *Council of the Itireleng Village Community Another v Madi and Others* 2017 (4) NR 1127 (SC) para 65.

² Loc cit.

meetings between the plaintiff and the officials of the defendant in an attempt to amicably resolve the claim, during which the defendant denied any liability and which led to the plaintiff to institute the instant action, were not capable of interrupting the running of prescription.

[6] Based on these reasons, I find that the defendant has made out a case for the relief sought.

Judge's signature:	Note to the parties:
	Not applicable.
Counsel:	
PLAINTIFF	DEFENDANT (RESPONDENT)
L Iidhogela – In Person	P Karamata of Katjaerua Incorporated, Windhoek