

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
RULING: SPECIAL PLEA OF UNREASONABLE DELAY**

Case no: HC-MD-CIV-ACT-MAT-2016/03949

In the matter between:

MAGRIETHA JOHANNA LOUW

PLAINTIFF

and

ANNA HENDRINA STRAUSS

DEFENDANT

Neutral citation: *Louw v Strauss* (HC-MD-CIV-ACT-CON-2016/03949) [2018]
NAHCMD 177 (14 June 2018)

Coram: USIKU, J

Heard on: 03 April 2018

Delivered: 14 June 2018

ORDER

1. The Defendant's 'special plea' of unreasonable delay in prosecuting the action, is dismissed.
2. The Defendant is to pay the costs occasioned thereby.
3. The matter is postponed to 12 September 2018 at 15:15 for a Case Management Conference hearing.
4. The parties are directed to file a joint case management report on or before 06 September 2018.

REASONS IN TERMS OF PRACTICE DIRECTIONS 61 (9)

USIKU, J:

Introduction

[1] The court is presently called upon to determine a "special plea" of unreasonable delay in prosecuting action, raised by the Defendant.

[2] In the main action, the Plaintiff issued summons on 30 November 2016, against the Defendant, *inter alia*, praying for an order directing the Defendant to take steps necessary, to transfer ownership of Erf No. 750, Block B, Rehoboth, in favour of the Plaintiff.

[3] In the particulars of claim, the Plaintiff alleges that the late Jacobus Louw and the Defendant entered into a written agreement of sale of the aforesaid immovable property, on the 22 January 1996. The purchase price was N\$ 6000.00 which was paid

on 1 February 1996. The Plaintiff, who is the surviving spouse of the late Jacobus Louw, and who is also the administrator of his estate, took possession and occupation of the property, in terms of the aforesaid agreement. The Defendant refuses to sign the documents necessary to effect the transfer of the property into the name of the Plaintiff.

[4] Initially, the Defendant raised a special plea of prescription. This court, on 09 August 2017, dismissed the special plea of prescription, holding that the relief sought by the Plaintiff, namely: an order to compel the Defendant to sign documents for the transfer of the property in question, does not fall within the meaning of the word '*debt*' used in the Prescription Act, 68 of 1969. The court further held that the consequences of extending the meaning of '*debt*' to cases of this nature, may have unjust consequences namely: that the Defendant would be entitled to retain the purchase price for the property, which the Plaintiff allegedly paid, and the Defendant would at the same time be entitled to retain ownership of the property.

[5] On the 17 November 2017, the Defendant amended her plea, and raised the present '*special plea*', to the effect that: The Plaintiff instituted its claim in November 2016, in respect of a cause of action which arose on the 01 February 1996; which is more than 20 years ago, therefore the Plaintiff's claim must be dismissed on account that she had unreasonably delayed in prosecuting her action.

[6] This court heard the Defendant's special plea on 03 April 2018. Counsel for the Plaintiff failed to file heads of argument, and arrived at court only after counsel for the Defendant had completed his arguments. The court declined to entertain an application by Plaintiff's counsel from the bar, to postpone the matter. Counsel for the Plaintiff therefore, did not make submissions on behalf of the Plaintiff in this matter for reasons aforesaid.

[7] As stated before, the Defendant argues that the Plaintiff's delay in the prosecution of the matter was unreasonable and is prejudicial to the Defendant, in that the person who entered into the agreement with the Defendant is since deceased. The

Defendant further argued that she may not remember full facts in the matter due to the passage of time.

[8] The Defendant cited a couple of authorities in support of her case. I must add here that most of the cases cited are cases dealing with administrative review matters, which in my opinion, do not find application to the present matter.

[9] This court has already held that the Plaintiff's claim has not prescribed. I know of no legal authority, and none was cited to me, supporting a proposition that a claim that has not prescribed may successfully be assailed on the ground of "*unreasonable*" delay in the initiation or prosecution thereof.

[10] I am of the opinion that there is no legal impediment against the Plaintiff instituting an action that has not prescribed, 20 years after the cause of action arose.

[11] For the foregoing reasons, the Defendant's special plea of unreasonable delay stands to be dismissed, and is hereby dismissed with costs, as more fully set out in the order stated at the beginning hereof.

B Usiku,
Judge

APPEARENCES:

PLAINTIFF : K Amoono
of Kadhila Amoomo Legal Practitioners, Windhoek

DEFENDANT: P Muluti
of Muluti & Partners, Windhoek