

REPUBLIC OF NAMIBIA



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

Case no: HC-MD-CIV-ACT-MAT-2017/04086

In the matter between:

CHRISTINA KAPUKA

PLAINTIFF

and

GABRIEL NGHIWANWA HAUFIKU

DEFENDANT

Neutral citation: *Kapuka v Haufiku* (HC-MD-CIV-ACT-CON-2017/04086) [2018]
NAHCMD 178 (14 June 2018)

Coram: USIKU, J

Heard on: 16 April 2018

Delivered: 14 June 2018

ORDER

1. The special plea of prescription raised by the Defendant, is dismissed.
2. The Defendant is ordered to pay the Plaintiff's costs in respect of the special plea.
3. The matter is postponed to 05 September 2018 at 15:15 for a Status Hearing.
4. The parties are directed to file a joint status report on or before 30 August 2018.

REASONS IN TERMS OF PRACTICE DIRECTIONS 61 (9)

USIKU, J:

Introduction

[1] In the main action, the Plaintiff claims damages for personal injuries arising from an attack by dogs allegedly owned by the Defendant. According to the particulars of claim, such attack occurred on 29 October 2014, on a public road, in Tseiblaagte, Keetmanshoop, Namibia.

[2] The Defendant raised a special plea of prescription claiming that the Plaintiff's cause of action arose on the 29 October 2014, and the Plaintiff only served summons on the Defendant on the 30 October 2017, therefore the Plaintiff's claim has prescribed in terms of section 11 (d) of the Prescription Act, 68 of 1969.

[3] In her replication to the special plea, the Plaintiff avers that she only became aware of the identity of the Defendant, as owner of the dogs in question, on the 10 December 2014. The Plaintiff argues that prescription started running only when she acquired knowledge of the identity of the Defendant, as owner of the dogs and of all

facts that gave rise to her claim. The Plaintiff further contends that she could not have acquired knowledge of the identity of the Defendant earlier as she was unable to walk and in pain, as a result of the dog-attack incident.

[4] The Defendant, on the other hand argues that the Plaintiff's cause of action arose on 29 October 2014, when Plaintiff was attacked by the dogs allegedly owned by the Defendant. The Plaintiff served summons on the Defendant on 30 October 2017, three (3) years and one (1) day from the date upon which the cause of action arose and therefore, the Plaintiff's claim has prescribed.

[5] It is trite law that a party who raises prescription must allege and prove the date of the inception of the prescription.¹ As a general rule prescription begins to run as soon as the '*debt*' is due. The debt is not deemed to be due until the Creditor has knowledge of the identity of the Debtor and the facts giving rise to such debt. However, a Creditor who could have acquired knowledge of the Debtor by exercise of reasonable care is deemed to have such knowledge.

[6] Applying the aforesaid legal principles to the present facts, I am of the view that, it is for the Defendant, as the party raising prescription, to prove the date on which the Plaintiff acquired knowledge of the identity of the Defendant, as owner of the dogs, or to prove the date on which the Plaintiff could, with reasonable exercise of care, have acquired knowledge thereof.

[7] In my opinion, the Plaintiff has raised a valid answer to the Plaintiff's allegation of prescription, to the effect that her debt could not have become due on the 29 October 2014 when she was attacked by the dogs, but such debt became due on the 10 December 2014, when she obtained knowledge of the identity of the Defendant as owner of the dogs in question. The Defendant did not allege or argue that the Plaintiff had such knowledge as of the 29 October 2014.

¹ *Gericke v Sack 1978 (1) SA 821 (A)*.

[8] In the circumstances, I hold that prescription started running as from the 10 December 2014, when the Plaintiff acquired knowledge of the identity of the Defendant as owner of the dogs.

[9] For the foregoing reasons, the Defendant's special plea of prescription falls to be dismissed, with costs, and I grant the order is more fully set out at the beginning hereof.

B Usiku
Judge

APPEARANCES:

PLAINTIFF : B Viljoen
of Viljoen & Associates, Windhoek

DEFENDANT: L Karsten
of Louis Karsten Legal Practitioners, Windhoek