

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case No: HC-MD-CIV-ACT-CON-2019/03916

In the matter between:

**ARTHUR GEORGE PICKERING**

**PLAINTIFF**

and

**MINISTER OF VETERANS AFFAIRS  
CHAIRPERSON OF VETERANS BOARD**

**FIRST DEFENDANT  
SECOND DEFENDANT**

**Neutral citation:** *Pickering v Minister of Veterans Affairs* (HC-MD-CIV- ACT-  
CON-2019/03916) [2020] NAHCMD 573 (30 November 2020)

**CORAM:** **NDAUENDAPO J**

**Heard:** 26 October 2020

**Delivered:** **30 November 2020**

**Summary:** The plaintiff sued the defendants for an amount of N\$144 400 being N\$2 200 per month for 51 months for loss of income as a result of the failure of the defendants' to register him as a veteran within a period of 60 days after he submitted

his application for registration as required by the Veterans Act 2 of 2008. The application for registration was submitted in January 2013 and it should have been processed in March 2013. He was only registered in July 2017. His claim for loss of income is for the period between March 2013 and July 2017. He only issued summons in September 2019. His cause of action arose in March 2013.

*Held* that his claim, if any, has prescribed as the summons was issued after a period of more than three years from the date the cause of action arose or after he had knowledge about his cause of action.

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### ORDER

1. The special plea of prescription is upheld and the plaintiff's claim is dismissed.
2. There is no order as to costs.

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### JUDGMENT

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NDAUENDAPO, J

#### Introduction and background facts

[1] The defendants raised a special plea of prescription, failure to exhaust internal remedy as provided by s 40 the Veterans Act 2 of 2008 (the Act), unreasonable delay, the claim is overridden and limitation of liability under s 6 of the Act to the particulars of claim of the plaintiff.

[2] The plaintiff sued the defendants for an amount of N\$144 400 being N\$2 200 per month for 51 months for loss of income as a result of the failure of the defendants to register him as a veteran within a period of 60 days after he submitted his application for registration.

[3] In his particulars of claim, the plaintiff alleges that on or about 15 January 2013, he applied to be registered as a veteran in terms of the Veterans Act 2 of 2008.

The second defendant failed to consider his application within 60 days as per the regulation.

[4] The plaintiff further alleges that after pressure from his lawyers, he was eventually registered as a veteran and received a once off payment of N\$50 000 and thereafter the amount of N\$2 200 per month since July 2017 to date.

[5] The plaintiff further alleges that 'when the second defendant considered the plaintiff's application, the plaintiff's veteran status was confirmed and registered as a result of the application submitted in January 2013.'

[6] Plaintiff further states that 'if the application had been processed during 2013, and within 60 days of submitting same, the plaintiff would have been entitled to and would have received the amount of N\$2 200 as from March 2015 and not July 2017. The plaintiff in the result has suffered a loss of income in the amount of N\$ 144 400 being N\$ 2 200 per month for 51 months that the application as (sic) pending and as a direct result of the second defendant's unlawful conduct.'

#### Prescription

[7] The defendants argued that the plaintiff's application for registration was submitted on 15 January 2013. The application for registration was not approved within 60 days as provided for by the Act and therefore his cause of action arose from 15 March 2013. The claim was instituted on 2 September 2019 that is more than 6 years from the date the cause of action arose therefore his claim has prescribed. The plaintiff knew that in terms of the Act, read together with the regulations, the application must have been considered within 60 days from the date of submission. The plaintiff, on the other hand, contends that his claim has not prescribed because he submitted his application for registration on 15 January 2013,

but he was only registered during July 2017 and he instituted his action on 2 September 2019 and therefore it has not prescribed.

[8] The plaintiff's claim relates to the period between 15 March 2013 and July 2017, the argument being that had he been registered on 15 March 2013 he would have received his benefits from 15 March 2017. In terms of the prescription Act 68 of 1969 the claim should have been instituted within a period of three years from the date the cause of action arose or from the date he had knowledge of the cause of action. The plaintiff should have been aware that from the date he submitted his application, the application should have been processed within 60 days and if not done, then his cause of action, if any, would have arisen from that date.

[9] After the 60 days had elapsed since submitting his application, the applicant should have approached the court to enforce his right, he only issued summons in September 2019 and that is more than six years from the 15 March 2013. He has no claim from the date he was registered onwards as he received and continues to receive his benefits. In my respectful view the claim has prescribed as it was instituted more than three years from the date the cause of action arose or from the date he had knowledge of his cause of action, being March 2013.

[10] In light of the conclusion I have reached that the claim has prescribed, there is no need to consider the other points raised by the defendants. Due to the failure of the defendants to process the plaintiff's application within 60 days from date of submission, there shall be no order of costs in their favor.

Order:

1. The special plea of prescription is upheld and the plaintiff's claim is dismissed.
2. There is no order as to costs.

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**G N NDAUENDAPO**



APPEARANCES:

FOR THE PLAINTIFF:

B Khoa  
Legal Assistance Centre  
Windhoek

FOR THE DEFENDANTS:

M Kashindi  
Government Attorneys  
Windhoek