

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING ON SPECIAL PLEA OF PRESCRIPTION

PRACTICE DIRECTION 61

<b>Case Title:</b> Tjamburo Muvari  and  The Government of the Republic of Namibia The Minister of Defence The Minister of Safety and Security	Plaintiff   First Defendant Second Defendant Third Defendant	<b>Case No:</b> HC-MD-CIV-ACT-DEL-2021/02916  <b>Division of Court:</b> High Court, Main Division
<b>Coram:</b> Honourable Justice Coleman		<b>Heard:</b> 21 July 2023  <b>Reasons:</b> 10 August 2023
<b>Neutral citation:</b>	<i>Muvari v The Government of the Republic of Namibia and others</i> (HC-MD-CIV-ACT-DEL-2021/02916) [2023] NAHCMD 495 (10 August 2023)	
<b>Order:</b>	<ol style="list-style-type: none"><li>1. The special plea is dismissed with costs to be capped in terms of rule 32(11) of the rules of court.</li><li>2. The parties must file a joint case management conference report on or before <b>7 September</b></li></ol>	

**2023.**

3. The matter is postponed to **14 September 2023 at 15:00** for case management conference.

**Reasons:**

COLEMAN J:

Introduction

[1] This is a special plea asserting that the plaintiff's claim for damages had prescribed in terms of s 73 of the Defence Act 1 of 2002 ('the Act').

Relevant facts

[2] The plaintiff claims N\$1 million from the first and second defendants for his alleged arrest on 31 May 2019 and subsequent detention until 3 June 2019. The second defendant is the Minister of Defence, and consequently s 73(1)(a) of the Act is applicable. It essentially provides that no civil action shall be instituted after two years of the date on which the cause of action arose.

[3] Summons was issued on 2 August 2021 and served on the defendants on 13 August 2021. On 18 March 2020<sup>1</sup>, the state of emergency, because of Covid-19, was declared. The first period of lockdown was from 28 March 2020 to 17 April 2020.<sup>2</sup> This lockdown was subsequently extended from 17 April 2020 to 4 May 2020,<sup>3</sup> 4 May 2020 to 1 June 2020,<sup>4</sup> 9 June 2020 to 22 June 2020<sup>5</sup> and 23 June 2020 to 6 July 2020<sup>6</sup> (now called a 'specified period'), as far as being relevant for present purposes.

<sup>1</sup> Proclamation 7 of 2020 published in Government Gazette No. 7148 of 18 March 2020.

<sup>2</sup> Proclamation 9 of 2020 published in Government Gazette No. 7159 of 28 March 2020.

<sup>3</sup> Proclamation 13 of 2020 published in Government Gazette No. 7180 of 17 April 2020.

<sup>4</sup> Proclamation 17 of 2020 published in Government Gazette No. 7203 of 4 May 2020.

<sup>5</sup> Proclamation 24 of 2020 published in Government Gazette No. 7234 of 8 June 2020.

<sup>6</sup> Proclamation 26 of 2020 published in Government Gazette No. 7250 of 22 June 2020.

[4] The parties differ on whether the lockdowns sufficiently suspended the running of prescription in this matter to prevent the plaintiff's claim from having prescribed.

### Conclusion

[5] In my view, prescription should be taken to run from the date on which the alleged delict was completed. The plaintiff alleges that he was arrested on 31 May 2019 and detained until 3 June 2019. Therefore, prescription starts running on 4 June 2019 and the plaintiff's claim would have prescribed on 3 June 2021. The summons was served on the defendants on 13 August 2021, one month and ten days late, according to my calculations. Under normal circumstances the claim would have prescribed.

[6] However, as mentioned above the emergency was declared and lockdowns commenced on 28 March 2020. Regulation 24(1) of the Regulations promulgated under Proclamation 16 of 2020 published in Government Gazette No. 7194 of 28 March 2020 provides as follows:

'24(1) Where any law provides for a time period or time limit within which –

- (a) legal proceedings must be initiated or commenced against any public entity; and
- (b) a notice of intention to bring legal proceedings referred to in paragraph (a), if required, must be given,

the running of that time period or time limit is suspended for the duration of lockdown.'

[7] Therefore, in my view, the simple question here is whether there was a period of lockdown of at least one month and ten days during the period in question. As indicated above the lockdowns commenced on 28 March 2020 and was extended a number of times. According to my calculations, the extension of lockdown until 1 June 2020 would have adequately suspended the running of prescription, in this matter, to prevent the prescription of the plaintiff's claim.

<p>[8] In the result, I make the following order:</p> <ol style="list-style-type: none"> <li>1. The special plea is dismissed with costs to be capped in terms of rule 32(11) of the rules of court.</li> <li>2. The parties must file a joint case management conference report on or before <b>7 September 2023</b>.</li> <li>3. The matter is postponed to <b>14 September 2023</b> at <b>15:00</b> for case management conference.</li> </ol>	
<b>Judge:</b>	<b>Note to the parties:</b>
<b>Counsel:</b>	
<b>Plaintiff</b>	<b>Defendants</b>
<p>L Haufiku Of Haufiku &amp; Associates, Windhoek</p>	<p>N Ilovu Of Office of the Government Attorney, Windhoek</p>