REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING ON SPECIAL PLEAS

Case no: HC-MD-CIV-ACT-OTH-2022/02129

In the matter between:

IMMANUEL TJIKUNGA SAMUKUTA **PLAINTIFF**

and

THE MINISTRY OF SAFETY AND SECURITY:
HON. FRANS KAPOFI **FIRST DEFENDANT**

THE COMMISSIONER GENERAL RAPHAEL HAMUNYELA OF THE NAMIBIA CORRECTIONAL SERVICE **SECOND DEFENDANT**

THE SUPERITENDENT H. N. UUSIKU OF THE NAMIBIA CORRECTIONAL SERVICE **THIRD DEFENDANT**

Neutral citation: *Samukuta v The Ministry of Safety and Security: Hon. Frans Kapofi* (HC-MD-CIV-ACT-OTH-2022/02129) NAHCMD 785 (4 December 2023)

Coram: SCHIMMING-CHASE J
Heard: **18 September 2023**
Delivered: **4 December 2023**

Flynote: Prescription – Correctional Service Act, 9 of 2012 – Section 133(3) and (4) – Special pleas of prescription dismissed.

Statute – Interpretation – Interpretation of s 133(4) of the Correctional Service Act – Object and purpose of provision must be considered – Act to be interpreted so as not to reach an absurd result.

Summary: The plaintiff, an incarcerated inmate sued the defendants for defamation arising from a statement authored by the third defendant in a Behavioural Change Report on 25 September 2020. The plaintiff alleged that he only came to know of the alleged defamation on 10 February 2022, and served the statutory notice on 25 April 2022. The defendants argued that the plaintiff failed to comply with s 133(3) and (4) of the Correctional Service Act 9 of 2012 ('the Act'), in that the plaintiff's claim not only prescribed in terms of s 133(4), but also that action was instituted prior to the lapsing of the 30-day prescriptive period.

Held that, the statutory notice was served 25 days as opposed to 30 days before action was instituted. The defendants were not prejudiced as the time period had not expired. There was substantial compliance with s 133(4) of the Act.

Held further that, insofar as the plaintiff only came to know of the defamation, and in particular the identity of the maker of the statement on 10 February 2022, s 133(3) of the Act could not be interpreted as to require inmates or offenders in particular to institute action whilst not aware of, or whilst the cause of action is not complete.

Special pleas dismissed.

ORDER

1. The defendants' two special pleas are dismissed.

2. The parties must make discovery in terms of rule 28 and exchange their bundles of discovered documents on or before **24 January 2024**.

3. The matter is postponed to **5 February 2024** at **15h30** for a case management conference.

4. The parties must file a joint case management conference report on or before **31 January 2024** at **15h00**.

JUDGMENT

SCHIMMING-CHASE J:

[1] Up for determination is whether the defendants' special pleas of prescription and non-compliance with s 133(3) and (4) of the Correctional Service Act 9 of 2012 ('the Act') should be upheld.

[2] The plaintiff is Immanuel Samukuta, an adult male presently incarcerated at the Windhoek Correctional Facility, Windhoek, who instituted action against the defendants on 20 May 2022 for damages in the amount of N$500 000 for alleged defamatory statements made by the third defendant on 25 September 2020. The defendants defended the matter on 31 May 2022.

[3] The first and second defendants are the Minister of Safety and Security and Commissioner of the Namibian Correctional Service, who are sued in their

official capacities as the Head and Director General, respectively, of the Namibian Correctional Service. The third defendant is Superintendent HN Uusiku, who is sued in her official capacity as the Superintendent of the Namibian Correctional Service. She is the alleged author and publisher of the purported defamatory statements being the subject-matter of the present action before court.

[4] The plaintiff's case as summarised in the amended particulars of claim is that on or about 25 September 2020, and at the Windhoek Correctional Facility, the third defendant authored a 'Behavioural / Change Progress Report' of and concerning the plaintiff, to the effect that there was an allegation made on 23 April 2020 that the plaintiff sodomised another incarcerated inmate. Further that the plaintiff warned the said inmate not to tell anyone about the alleged incident/s.

[5] The defendants pleaded to the plaintiff's claim denying the defamation, and raised two special pleas. Firstly, the defendants plead that the plaintiff contravened s 133(4) of the Correctional Service Act No 9 of 2012 ('the Act') by failing to provide statutory notice one month prior to instituting these proceedings. Secondly, they plead that the plaintiff failed to comply with s 133(3) of the Act, having instituted these proceedings outside the six-month period prescribed by the section, as the cause of action apparently arose on 23 April 2020. In the event that the cause of action arose on 25 September 2020, the plaintiff remains out of time for purposes of the six-month period, as action was instituted on 20 May 2022.

[6] A number of recognised defences are raised in the plea on the merits, including but not limited to pleading that the inmate in question reported that the plaintiff sodomised him in exchange for toiletries and other items to one Superintendent Maboga, who in turn authored 'case notes' which narrated the complainant's version of events on 23 April 2020. The report was then published by the third defendant on or about 25 September 2020 in a 'Behavioural Change Report'.

[7] In his amended replication, and as regards the 30-day notice period alleged not to have been complied with, the plaintiff maintains that he personally served the prescribed notice on 25 April 2022 (five days before expiry of the 30-day period prescribed by the section) with the assistance of officials at the Correctional Service, and that a copy of the notice was uploaded onto the eJustice system when action was instituted on 20 May 2022. The plaintiff pleaded that he has achieved substantial compliance with s 133(4) of the Act.

[8] As regards the special plea of prescription, the plaintiff replicated that the purported offending statement was authored and published on 25 September 2020 as opposed to 23 April 2020 as alleged by the defendants, and that he only came to know of the identity of the 'maker' of the alleged defamatory statements, the third defendant, on 10 February 2022 when his new case management officer provided him with the Behavioural Report where the alleged statements were published by the third defendant. He further replicated that he had no knowledge of the person who had made the apparent defamatory statements, prior to 10 February 2022. In the result, the plaintiff's case is that his cause of action only became complete from that date, being 10 February 2022.

[9] As regards the prescriptive period, the plaintiff pleaded that in any event, in terms of s133(3), 12 months is the maximum period prescribed within which to institute the action, whether or not an inmate is released. The plaintiff remains incarcerated.

[10] Mr Ncube appeared for the defendants and Mr Quickfall appeared *amicus curiae*. The court expresses its indebtedness to Mr Quickfall for his assistance herein.

[11] I deal firstly with the special plea relating to the 30-day notice period. Mr Ncube advanced argument on the mandatory effect of s 133(3) and 133(4) of the Act.

[12] A full bench of this court considered the constitutionality of s 133(3) and

(4) of the Act in *Amadhila v Government of the Republic of Namibia*[1] and confirmed the finding of the Supreme Court in *Minister of Home Affairs v Majiedt and Others*[2] relating to s 39(1) of the Police Act 9 of 1990 which contains similar provisions. The court considered that the purpose of the enactment of a statutory notice period was 'connected to a legitimate government purpose of regulating claims against the State in a way that promotes speed, prompt investigation of surrounding circumstances, and settlement if justified.'[3]

[13] Mr Ncube submitted that s 133(4) of the Act is peremptory in nature and 'must be followed before instituting any legal proceedings.' It was Mr Ncube's submission that the plaintiff instituted these proceedings prior to the lapsing of the 30-day period as envisaged in s 133(4) of the Act and that the legislature did not intend to allow parties to institute legal proceedings without complying fully with aforementioned provision.

[14] Mr Quickfall submitted that the statutory notice was served on 25 April 2022. It was not late, but served five days prior to the 30-day period envisioned by the section. The notice contained all the relevant information, and created no prejudice to the defendants. Action was instituted on 20 May 2022, and the defendants defended the action on 31 May 2022. Mr Quickfall further submitted that the object of the statutory notice is to inform the defendants 'sufficiently of the proposed claim so as to enable them to investigate the matter.' The notice contained all particulars and information to enable proper investigation of the claim. Reference was made to *Simon v Administrator-General, South West Africa*[4] where it was held *inter alia* that –

'If there is in such a notice sufficient information to allow the defendant to investigate the claim that is sufficient.'[5]

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[1] *Amadhila v Government of the Republic of Namibia* (HC-MD-CIV-ACT-DEL-2019/00602) [2021] NAHCMD 428 (24 September 2021) para 32.

[2] *Minister of Home Affairs v Majiedt and Others* 2007 (2) NR 475 (SC) para 45.

[3] Ibid para 32

[4] *Simon v Administrator-General, South West Africa* 1991 NR 151.

[5] Ibid at 155A.

[15] Although the above remarks were made in the context of the sufficiency of the information contained in the notice, I am in agreement with the principle that the defendants must be provided sufficient opportunity to consider the claim, based on the principles elucidated in *Minister of Home Affairs v Majiedt* cited above.

[16] Mr Quickfall also referred to the decision in *JEM Motors Ltd v Boutle and Another*[6] which was endorsed by the Supreme Court in *Torbitt and Others v International University of Management*[7] where it was held that merely because peremptory provisions are peremptory, such peremptory provisions will not by implication be held to require exact compliance where substantial compliance with them will achieve the object of the legislature. The modern approach manifests a tendency to incline towards flexibility.[8]

[17] In all the cases relied on by Mr Ncube[9] in support of his argument, notices had been served outside the prescribed 30-day period or not at all. In this matter, the notice was served a mere five days earlier. There is no prejudice to the defendants, and the claim was fully set out. In light of the foregoing, I find that there was substantial compliance with s 133(4), and the first special plea falls to be dismissed.

[18] I now deal with the second special plea, related to the issue of prescription in terms of s 133(3) of the Act. It provides that no civil action against the State or any person for anything done or omitted in pursuance of any provision of the Act may be entered into after the expiration of six months immediately succeeding the act or omission in question, or in the case of an offender, after the expiration of six months immediately succeeding the date of

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[6] *JEM Motors Ltd v Boutle and Another* 1961 (2) SA 320 (N).

[7] *Torbitt and Others v International University of Management* 2017 (2) NR 323 (SC).

[8] Ibid paras 30-36.

[9] *Legal Aid Board v Singh* 2009 (1) SA 184 (N); *Van Wyk v Namibia Correctional Service Commissioner General: Hamunyela* (HC-MD-CIV-MOT-GEN-2019/00024) [2020] NAHCMD 368 (21 August 2020).

his or her release from correctional facility, but in no case may any such action be entered into after the expiration of one year from the date of the act or omission in question.' (Emphasis supplied.)

[19] Mr Ncube conceded that his reliance on the six-month period contained in the section was misplaced, and that in all cases the prescription period is one year. Dealing with the plaintiff's non-compliance with s 133(3) of the Act, Mr Ncube submitted that the cause of action arose either on 23 April 2020 or 25 September 2020, which would mean that the one year would have lapsed either in April or September 2021. The plaintiff's action was instituted in May 2022. Mr Ncube argued that s 133(3) is couched in peremptory terms and that prescription is calculated from the time that the cause of action arose, and not from the date that the plaintiff obtained knowledge of the identity of the matter of the alleged defamatory statement. Reference was made to the words 'act or omission in question' contained in the section.

[20] Reliance was placed on the case of *Gregory v Minister of Safety and Security*[10] where this court held that 'the computation of the time within which the proceedings could be brought should be calculated from the last action which instigated the proceedings'. In the *Gregory* case, the plaintiff, an inmate, accused the defendants of stealing his craft items after he was informed of a transfer to another correctional facility on 14 January 2019. After he enquired about his missing craft items, he was informed on 10 April 2019 via a letter from the defendants that his allegations that he never received his craft items were false. When the initial summons was withdrawn (to enable the plaintiff to comply with s 133(4) of the Act) and reinstituted on 9 April 2021, the defendants raised a special plea of prescription and argued that the cause of action arose on 14 January 2019 when the plaintiff was informed of his transfer. The court found that the last action which instigated the proceedings was when the plaintiff received the letter of 10 April 2019 and as such, prescription began to run as of

[10] *Gregory v Minister of Safety and Security* (HC-MD-CIV-ACT-OTH-2021/01397) [2022] NAHCMD 228 (9 May 2022) para 13 in citing with approval *Kahimise v Commissioner-General of Correctional Services* (HC-MD-CIV-MOT-REV-2020/00054) [2021] NAHCMD 24 (4 February 2021).

10 April 2019 – this is when the last act completed the cause of action. This case is distinguishable on the present set of facts.

[21] In the *Kahimise* case cited in the *Gregory* case, the applicant was demoted in rank from Assistant Commissioner to Senior Superintendent after pleading guilty to disciplinary charges. The Commissioner-General later reduced the applicant's salary, in line with the rank to which he was demoted. He then approached this court for an order reviewing and setting aside the Commissioner-General's decision. The defendants raised a point that the applicant did not bring the application within the six-month period prescribed by s 133(3). The court held, applying the principle that the computation of time within which the proceedings could be brought should be calculated from the last action which instigated the proceedings held that the applicable time period was to be calculated from the date of the Commissioner-General's refusal to uphold the grievance related to the salary reduction, which placed the applicant's case within the six-month period provided for in s 133(3).[11] The facts of this case are also distinguishable from the facts of the present case before me.

[22] In the present instance, Mr Quickfall submitted that it should be borne in mind that this is a delictual claim, and that the Act should not be interpreted as to prevent inmates or offenders from having the opportunity in law to complete a cause of action for purposes of calculating the prescription period called for by the Act. This would lead to absurd results because the effect would be that prescription runs against an inmate or offender for this type of claim whether or not he or she knows of the cause of action. Therefore, the relevant last date to constitute the plaintiff's cause of action only occurred 10 February 2022 when the plaintiff gained knowledge of the author of the alleged defamatory statements, despite these purported statements being made as far back as 2020.

[23] It was further submitted that before 10 February 2022, no enforceable delictual act existed or could be said to have existed. In this regard, reference

[11] *Kahimise* supra paras 13-21.

was made to *Abrahamse & Sons v SA Railways and Harbours*[12] where the meaning of 'cause of action' was examined–

'The proper legal meaning of the expression of "cause of action" is the entire set of facts which gives rise to an enforceable claim and includes every fact which is material to be proved to entitle a plaintiff to succeed in his claim. It includes all that a plaintiff must set out in his declaration in order to disclose a cause of action. Such cause of action does not "arise" or "accrue" until the occurrence of the last of such facts and consequently the last of such facts is sometimes loosely spoken of as the cause of action.' (Emphasis supplied.)

[24] Ueitele J in *Singh v Figura* [13] held that 'a cause of action accrues, when there is in existence a person who can sue and another who can be sued, and when all facts have occurred which are material to be proved to entitle the applicant to succeed.' In reference to *McKenzie v Farmers' Co-operative Meat Industries Ltd* [14] Ueitele J endorsed the dictum in definition of 'cause of action' to be –

'Every fact which it would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.'

[25] The defendants join issue on the allegation in the plaintiff's replication to the effect that he only came to know of the identity of the maker of the statement on 10 February 2022. This is an issue that would have to be resolved by evidence in any event.

[26] Mr Ncube submitted that the plaintiff's contention is self-serving and

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[12] *Abrahamse & Sons v SA Railways and Harbours* 1993 CPD 626 cited with approval in *Namibia Breweries Ltd v Seelenbinder, Henning & Partners* Case No (P) I 1606/1999 delivered on 12 February 2002.

[13] *Singh v Figura* (HC-MD-CIV-ACT-CON-2020/01882) [2020] NAHCMD 464 (29 September 2020) para 23.

[14] *McKenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16 para 23.

relied on *Khariseb v Minister of Safety and Security*[15] in respect of this submission on the basis that the court at paragraph 45 held that the applicant's cause of action, in the *Khariseb* matter, arose when the decision was made and not when it was communicated to the applicant.

[27] I find the *Khariseb* matter distinguishable. In the *Khariseb* matter, the applicant – a career police officer – was absent without leave (AWOL) for the period of 18 January to 3 March 2016, and he was discharged from service and received a letter dated 3 March 2016 from the Inspector General stating the aforesaid. He then sought to be reinstated and the Inspector General declined such request. An internal appeal was lodged on 25 April 2016 and was dismissed on 5 December 2016. Proceedings were then instituted in court by the applicant on 5 December 2017. The respondents raised non-compliance with s 39 of the Police Act 19 of 1990 ('the Police Act') as a point in *limine*. In the end, the court held as follows –

'[15] It would appear to me from the notice of motion that the applicant considers the date when his cause of action arose to be the date he received the letter of discharge being 3 March 2016. His request to the Inspector General for reinstatement was refused on 4 April 2016. This conclusion is reinforced by the fact that despite his contention that his cause of action arose on 5 December 2016 when his appeal was refused by the Minister, he does not seek an order to declare the Minister's decision null and void.

[16] In any event, given the provisions of section 9 of the Act, it would appear that an incompetent relief is sought, namely to declare the notice of discharge null and void, which merely served to confirm an act or a consequence which had taken place by operation of law. In my view, the Inspector-General was correct in law when he pointed out to the applicant in his letter that "you are deemed to have discharged yourself from the Force, thus this letter merely serves as notification for record purposes of that which has already occurred by operation of law". I am therefore of the considered view that it was not the Inspector-General who discharged the applicant but that he was discharged by operation of the law.

[15] *Khariseb v Minister of Safety and Security* 2020 (3) NR 794 (SC).

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[18] Taking into account the foregoing, the conclusion I have arrived at is that the applicant's cause of action arose when he absented himself for a continuous period of 30 days without leave or permission from the Inspector-General. At worst the cause of action arose on 3 March 2016, and at best, it arose on 4 April 2016 when the Inspector-General conveyed to the applicant that he could not reinstate him. The application was served on the respondents on 5 December 2017, which is a period more than the period of 12 months stipulated by section 39. The claim has therefore prescribed.' (Emphasis supplied.)

[28] In the *Khariseb* matter, at all times, the applicant had full knowledge of all facts in relation to the dispute. Notwithstanding that, the applicant's discharge was by operation of law and not because of the conduct of a third party. In the present instance, the plaintiff, according to his replication, only obtained knowledge of the full facts pertaining to his dispute on 10 February 2022 which brought the cause of action in existence.

[29] The question to be determined is whether the section should be interpreted to disallow inmates or offenders as defined in the Act, to obtain a complete cause of action for purposes of instituting action, meaning that the knowledge component does not apply to inmates or offenders in terms of the Act and prescription begins to run against them in terms of the Act from the date of the act or omission, irrespective of the absence of the knowledge of same.

[30] In *Bhyat v Commissioner for Immigration*[16] it was held that:

'The cardinal rule of construction of a statute is to endeavour to arrive at the intention of the lawgiver from the language employed in the enactment. . . . in construing a provision of an Act of Parliament the plain meaning of its language must be adopted unless it leads to some absurdity, inconsistency, hardship or anomaly which from a consideration of the enactment as a whole a court of law is satisfied the Legislature could not have intended.'[17]

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[16] *Bhyat v Commissioner for Immigration* 1932 AD 125 at 129.

[17] Approved in inter alia *Radial Truss Industries (Pty) Ltd v Chairperson of the Central*

[31] In the *Torbitt*[18] matter the cardinal rule of construction of the words of a statute was expressed as follows:

'The cardinal rule of construction is that words of a statute must be given their ordinary literal or grammatical meaning if the words are clear and unambiguous, unless it is apparent that such literal construction would lead to manifest absurdity, inconsistency, injustice or would be contrary to the intention of the legislature.'

[32] A reformulation of the interpretation exercise resulting in a more modern and contextual approach to interpretation of statutes and other text occurred in the decision of *Natal Joint Municipal Pension Fund v Endumeni Municipality*[19] as follows:

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighted in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used.' [20]

[33] The above dictum was approved in the Supreme Court in *Total Namibia*

Procurement Board of Namibia and Others 2021 (3) NR 752 (HC) para 28.

[18] Ibid fn 7.

[19] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) ([2012] 2 All SA 262; [2012] ZASCA 13) para 18 and *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* 2009 (4) SA 399 (SCA) ([2009] 2 All SA 523; [2009] ZASCA 7) para 39.

[20] Ibid para 18.

(Pty) Ltd v OBM Engineering and Petroleum Distributors.[21]

[34] The Supreme Court had occasion to deal with the principles relating to prescription in terms of the Prescription Act 68 of 1969 ('the Prescription Act') in *Lisse v Ministry of Health and Social Services*.[22]

[35] The Supreme Court in *Lisse* held that section 10 of the Prescription Act provides that a debt shall be extinguished by prescription after the lapse of the period that applies in respect of the prescription of such debt. Section 11(*d*) provides that the periods of prescription of debts shall save where an Act of Parliament provides otherwise, three years in respect of any other debt (in this regard, the Correctional Services Act provides for a prescription period of one year in total).

[36] Although the Prescription Act uses the word 'debt', which might be understood narrowly, the courts have held that the word should be given a wide meaning to include what is due or owed as a result of a legal obligation. Section 12(1) provides that prescription will commence to run 'as soon as the debt is due'. And s 12(3) provides that:

> 'A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the fact from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.' (Emphasis supplied.)

[37] Section 15 of the Act governs the interruption of prescription. In relevant part, it provides that the running of prescription shall subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt. For the purposes of this section, 'process' includes a petition, a notice of motion, a rule *nisi*, a pleading in

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[21] *Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors* CC 2015 (3) NR 733 (SC) para 18.

[22] *Lisse v Ministry of Health and Social Services (*SA 75/2011) [2014] NASC (12 December 2014).

reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced.'[23]

[38] The Supreme Court also opined[24] that in interpreting s 15 of the Prescription Act, it is important to realise the Prescription Act displays a 'discernible looseness of language'.[25] For example, it uses the word 'debt' with several different meanings, and it is nowhere defined.[26] Also, although the word 'debt' could be construed narrowly to refer only to obligations to pay liquidated sums of money, the courts have given the word 'debt' a wide meaning to include what is due or owed as a result of a legal obligation and it is clear that it extends beyond 'an obligation to pay a sum of money'. The court held that 'prescription of a debt (which includes a delictual debt) begins running when the debt becomes due, and a debt becomes due when the creditor acquires knowledge of the facts from which the debt arises, in other words, the debt becomes due when the creditor acquires a complete cause of action for the recovery of the debt or when the entire set of facts upon which he relies to prove his claim is in place.'

[39] In *Truter and Another v Deysel*[27] it was 'held that in a delictual claim, the requirements of fault and unlawfulness do not constitute factual ingredients of the cause of action, but are legal conclusions to be drawn from the facts. For purposes of prescription, "cause of action" meant every fact which it was necessary for the plaintiff to prove in order to succeed in his claim.'

[40] The above provisions in the Prescription Act have not been ousted by the Correctional Service Act.

[41] The effect of Mr Ncube's argument results in an interpretation of s 133(4) of the Act that leads to an absurdity. This is because the effect of this argument

[23] Ibid paras 18-20.

[24] Ibid para 22.

[25] Howie J in *Cape Town Municipality and Another v Allianz Insurance Co Ltd* 1990 (1) SA 311 (C) at 330E–G.

[26] Ibid.

[27] *Truter and Another v Deysel* 2006 (4) 168 SCA.

is that in a delictual claim, as in this instance, prescription runs against an inmate or offender in spite of the fact that he or she does not have knowledge of the identity of the maker of the statement, or in instances where the inmate or offender's cause of action is not complete. This cannot on any construction be the intention of the Act. Therefore and in light of the foregoing, the second special plea must also fail.

[42] In the end, the following order is made:

1. The defendants' two special pleas are dismissed.

2. The parties must make discovery in terms of rule 28 and exchange their bundles of discovered documents on or before **24 January 2024**.

3. The matter is postponed to **5 February 2024** at **15h30** for a case management conference.

4. The parties must file a joint case management conference report on or before **31 January 2024** at **15h00**.

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E M SCHIMMING-CHASE

Judge

APPEARANCES

PLAINTIFF:	D Quickfall Society of Advocates, Windhoek *Amicus Curiae*
DEFENDANTS:	J Ncube Of Office of the Government Attorney, Windhoek