

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL LOCAL DIVISION, DURBAN

Case No: D8481/2020

In the matter between:

AR

PLAINTFF

and

AB

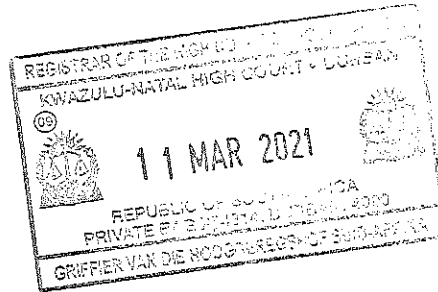
1st DEFENDANT

AN

2nd DEFENDANT

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
(to be joined)

3rd DEFENDANT



FILING SHEET

DOCUMENTS FILED HEREWITH:

1. Plaintiff's Rule 16A Notice

DATED at CAPE TOWN on this 9th day of March 2021

WOMEN'S LEGAL CENTRE

Applicant's attorney

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St George's Mall

Cape Town

Tel: 021 424 5660

Email: bronwyn@wlce.co.za |

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(Ref: B Pithey)

C/O LEGAL RESOURCES CENTRE

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Tel: 031 301 7572

Email: sharita@lrc.org.za |

saadivah@lrc.org.za

(REF: Sharita Samuel/Saadivah

Kadwa)

(served electronically by agreement)

TO:

**THE REGISTRAR
THE HIGH COURT
DURBAN**

AND TO:

D CLOETE INC ATTORNEYS

First and Second Defendants' attorney

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Tel: 0760893090

Email: dcloeteinc@outlook.com

Ref: LC-N 28

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c/o AUDIE BOTHA ATTORNEYS (DURBAN)

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Email: ashie@audie.co.za

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AND TO:

THE STATE ATTORNEY: DURBAN

Third Defendants Attorney

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391 Anton Lembede Street

Durban, 4000

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Email: NPeete@justice.gov.za

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c/o STATE ATTORNEY: CAPE TOWN

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(served electronically by agreement)

Bronwyn

From: postmaster@outlook.com
To: deon cloete
Sent: Wednesday, 10 March 2021 12:00
Subject: Delivered: AR vs AB & OTHERS: KZN HIGH COURT CASE NO: D 8481/2020

Your message has been delivered to the following recipients:

[deon cloete \(dcloeteinc@outlook.com\)](mailto:dcloeteinc@outlook.com)

Subject: AR vs AB & OTHERS: KZN HIGH COURT CASE NO: D 8481/2020

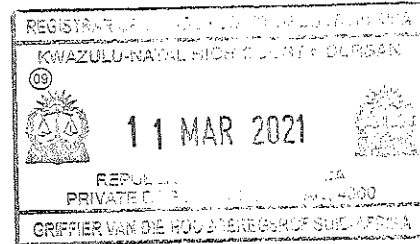
Bronwyn

From: Ashie Rughbeer <ashie@audie.co.za>
To: Aretha
Sent: Wednesday, 10 March 2021 12:03
Subject: Read: AR vs AB & OTHERS: KZN HIGH COURT CASE NO: D 8481/2020

Your message

To: deon cloete; ashie@audie.co.za
Cc: Bronwyn; Qiga; Saadiyah Kadwa; Sharita Samuel; Nokuthula Mbele; Sandra Govender
Subject: AR vs AB & OTHERS: KZN HIGH COURT CASE NO: D 8481/2020
Sent: 2021-03-10 11:59 AM

was read on 2021-03-10 12:03 PM.



IN THE HIGH COURT OF SOUTH AFRICA
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Case No: D8481/2020

In the matter between:

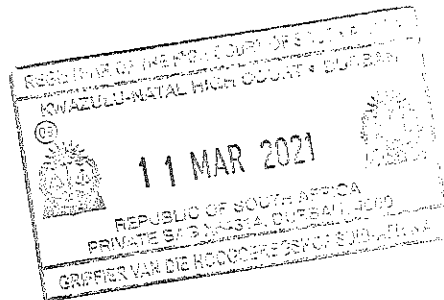
AR

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MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
(to be joined)



PLAINTFF

1st DEFENDANT

2nd DEFENDANT

3rd DEFENDANT

NOTICE IN TERMS OF RULE 16A

PLEASE TAKE NOTICE that the plaintiff's replication in the abovementioned trial action challenges the constitutional validity of section 10, 11 and 12 of the Prescription Act (as amended) to the extent that they apply to debts based on the commission of an alleged sexual offence, and raises the constitutional issues described in more detail below.

1. On 24 November 2020 the plaintiff instituted action against the first and second defendants for delictual damages based on the alleged rape and/or sexual assault of the plaintiff in November or December 1981.
2. On 12 January 2021 the first and second defendants filed their plea together with a special plea alleging that the plaintiff's claim has prescribed in terms of the

provisions of sections 11 and 12(4) of the Prescription Act 68 of 1969, as amended ("**the Prescription Act**").

3. The plaintiff filed a replication on 26 February 2021, in which she asserts *inter alia* that her claim has not prescribed.
4. The plaintiff pleads that section 10 (read together with sections 11 and 12) of the Prescription Act is inconsistent with the Constitution of the Republic of South Africa, 1996, invalid and unenforceable to the extent that it extinguishes debts based on the alleged commission of any sexual offence in terms of the common law or statute ("**sexual offences**") after the lapse of a fixed period.
5. The application of section 10(1) (read together with sections 11 and 12) of the Prescription Act to debts based on the alleged commission of a sexual offence unjustifiably limits:
 - 5.1. the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court in section 34 of the Constitution;
 - 5.2. the right to human dignity in section 10 of the Constitution;
 - 5.3. the right to equality and non-discrimination in section 9 of the Constitution;
 - 5.4. the right to freedom and security of the person in section 12 of the Constitution including the right to be free from all forms of violence from both public and private sources in section 12(1)(c) of the Constitution;

- 5.5. the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the right to appropriate relief, in section 38 of the Constitution; and
 - 5.6. the state's ability to meet its obligation to protect, fulfil and promote the rights of women, children, vulnerable people, and survivors of sexual offences in section 7 of the Constitution.
6. This is so regardless of the provisions in the Prescription Act regulating:
- 6.1. the date on which prescription commences to run in respect of debts arising from an alleged sexual offence; and
 - 6.2. the period of prescription in respect of debts arising from an alleged sexual offence.
7. In addition, sections 10, 11 and 12 of the Prescription Act are irrational and arbitrary (and inconsistent with section 1(c) and section 9(1) of the Constitution) to the extent that they extinguish the right of a survivor of a sexual offence to pursue a civil claim under the common law against the perpetrator of the sexual offence, when the Criminal Procedure Act 51 of 1977 (as amended) provides that the right to institute a prosecution in respect of a sexual offence does not lapse.
8. In the alternative, the plaintiff pleads a number of factors that individually and cumulatively are appropriate factors to take into account in a finding in terms of section 12(4) of the Prescription Act that the plaintiff was unable to institute proceedings between November or December 1981 and October or November 2018.

9. In the event that the Honourable Court finds that the above factors individually and cumulatively are not appropriate factors to take into account in a finding regarding the commencement of prescription, then the plaintiff pleads that section 12(4) of the Prescription Act is inconsistent with the Constitution of the Republic of South Africa, 1996, invalid and unenforceable to the extent that it fails to take into account and provide for the unique features of sexual offences relevant to a plaintiff's ability and/or decision to disclose and initiate legal process.

KINDLY place this notice on the notice board designated for this purpose in accordance with Rule 16A(1)(c), and place your stamp upon such notice to indicate the date upon which it has been placed on the notice board, whereafter kindly ensure that such notice remains on the notice board for a period of 20 days, in accordance with Rule 16A(1)(d).

TAKE NOTICE FURTHER that any interested party may, with the written consent of all the parties to the proceedings, given by no later than 20 days after the publication of this notice on the notice board, be admitted therein as *amicus curiae*, upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE NOTICE FURTHER that the written consent referred to above shall, within 5 days of its having been obtained, be lodged with the registrar, and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

TAKE NOTICE FURTHER that the terms and conditions agreed upon may be amended by the court.

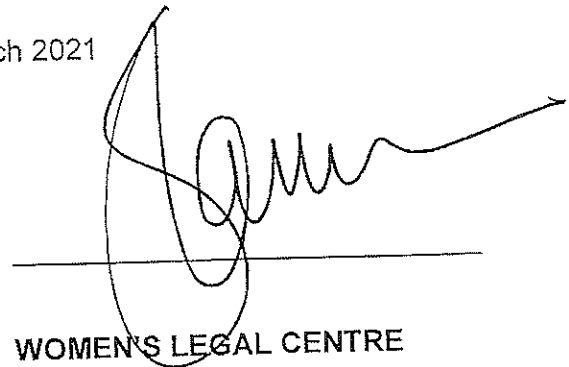
TAKE NOTICE FURTHER that if the interested party is unable to obtain the written consent as contemplated herein, it may, within 5 days of the expiry of the 20 days period referred to above, apply to the court to be admitted as an *amicus curiae* in the proceedings. Such application shall –

(a) briefly describe the interest in the proceedings of the party seeking admission as *amicus curiae*;

(b) clearly and succinctly set out the submissions which will be advanced by the party as *amicus curiae*, the relevance of those submissions to the proceedings, and the reasons for believing that the submissions will assist the court and be different from those of the other parties; and

(c) be served upon all the parties to the proceedings.

DATED at CAPE TOWN on this 9th day of March 2021



WOMEN'S LEGAL CENTRE
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St George's Mall
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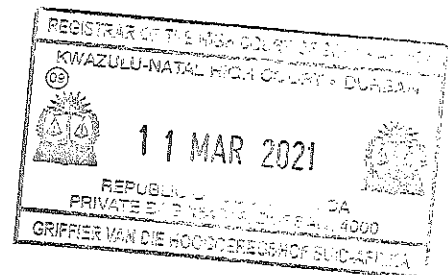
C/O LEGAL RESOURCES CENTRE
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275 Anton Lembede House
Durban
Tel: 031 301 7572
Email: sharita@lrc.org.za |
saadivah@lrc.org.za
(REF: Sharita Samuel/Saadivah
Kadwa)

TO:

THE REGISTRAR OF THE HIGH COURT, DURBAN

AND TO:

D CLOETE INC ATTORNEYS
First and Second Defendants' attorney
241 Eben Roux Street, Rietondale, Pretoria
Tel: 0760893090
Email: dcloeteinc@outlook.com
Ref: LC-N 28
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Email: ashie@audie.co.za



AND TO:

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Email: NPeete@justice.gov.za

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