



CONSTITUTIONAL COURT OF SOUTH AFRICA

SINETHEMBA MTOKONYA V MINISTER OF POLICE

CCT 200/16

Date of judgment: 19 September 2017

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday 19 September 2017 at 10h00, the Constitutional Court handed down judgment in an application brought by Mr Sinethemba Mtokonya (the applicant) for leave to appeal against a judgment of the High Court of South Africa, Eastern Cape Local Division, Mthatha. The High Court had dismissed the applicant's claim against the Minister of Police (the respondent) for unlawful arrest, detention and assault on the basis that it had prescribed.

On 27 September 2010, the applicant was arrested by members of the South African Police Service (SAPS) at Engcobo in the Eastern Cape. He was detained for five days and was not taken to court during that period despite the fact that the law required that he be taken to court within 48 hours of his arrest. The applicant, who is illiterate and lives in a rural area, did not institute proceedings to recover damages from the respondent until September 2013. By then, more than three years had elapsed from the date of the applicant's release from detention. The respondent accordingly entered a special plea that the applicant's claim had prescribed. In response, the applicant contended that he had not known that the conduct of the police was wrongful until July 2013 when his neighbour (who happened to be an attorney) told him he had a cause of action. For that reason, prescription only started running at that time.

The dispute between the parties was, therefore, whether the prescription period should be calculated from the date of the applicant's release from detention or from July 2013 when the applicant realized he had a cause of action—that is, from the date the debt accrued or the date the applicant became aware the debt existed. The central issue is whether a claimant is required to have knowledge that a respondent's conduct was wrongful and gave rise to a debt before prescription can start running.

By way of an agreed statement the parties agreed upon the relevant facts, the nature of dispute and what the High Court was asked to decide. On the basis of the agreed statement, the High Court rejected the applicant's contention and held that knowledge that the conduct

of the other party was wrongful was not a requirement before prescription could start running. It held that prescription had started running after the applicant's release from detention and, as the period of three years from that date had elapsed by the time the applicant served summons on the respondent, his claim had prescribed.

In a majority judgment by Zondo J, in which Cameron J, Froneman J, Khampepe J, Madlanga J, Mhlantla J and Pretorius AJ concurred, this Court upheld the High Court's decision that a claimant need not know that the respondent's conduct is wrongful before prescription starts to run. This is because whether or not someone's conduct is wrongful is a conclusion of law and not fact. Moreover, section 12(3) of the Prescription Act 68 of 1969 merely requires a claimant to have knowledge of the identity of the other party (debtor) and the facts giving rise to the debt before prescription can start running. Section 12(3) does not refer to knowledge of any legal conclusions.

Zondo J pointed out that the matter could not be decided on the bases that the applicant did not know that the Minister was a co-debtor or that he had no knowledge of the existence of the debt because both of those points were not in issue between the parties. Therefore, they fell outside the stated case agreed to between the parties. As a general rule, a court is only entitled to adjudicate a dispute on the basis of the issues between the parties. Therefore, the Court granted the applicant leave to appeal but dismissed the applicant's appeal and made no order as to costs.

The minority judgment, by Jafta J, (Nkabinde ADCJ and Mojaelo AJ concurring), interpreted the legal questions arising from the special case more broadly than the majority judgment. It held that the case need not be decided on issues narrowly contained in the agreed statement. The question was, generally speaking, whether the applicant's claim had prescribed. There was nothing in the agreed statement that suggested that the applicant knew that he had a cause of action, or that the respondent could be vicariously liable for the conduct of the SAPS members. Moreover, section 12(3) of the Prescription Act should not be interpreted as allowing prescription to commence if a claimant, like here, was not aware of the existence of the debt. Doing so would deny uneducated or impoverished members of society the protection of the Constitution. The minority judgment concluded that the applicant's claim had not prescribed. As a result, the minority judgment would have upheld the applicant's appeal, set aside the High Court's order and replaced it with an order dismissing the Minister's special plea.