THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Johannes G Coetzee & Seun and Another v Le Roux and Another (969/2020) [2022] ZASCA 47 (8 April 2022)

The Supreme Court of Appeal (SCA) today upheld an appeal with costs, and set aside the decision of the Northern Cape Division of the High Court, Kimberley (W J Coetzee AJ, sitting as court of first instance) (the high court).

The first and second respondents, Mr Pieter Paul le Roux and his wife, Ms Johanna Catharina le Roux, who were the plaintiffs in the high court, instituted action against the first and second appellants, Johannes G Coetzee & Seun and Mr Daniel Cornelius Coetzee, who were the defendants therein, and which were the respondents' erstwhile attorneys. The respondents sued the appellants for damages suffered as a result of a breach of a mandate. For convenience, the parties were referred to as they were in the high court.

On 29 September 2009, the plaintiffs issued summons against the defendants in the high court whereby the plaintiffs alleged that the defendants were negligent in carrying out their mandate to exercise an option to purchase a farm in Calvinia, in the Northern Cape (the property), from the late Mr Jan Harmse Steyn (the deceased), who had concluded the option to purchase the property (the option) with the plaintiffs. In the action, the defendants delivered a special plea in terms of which they pleaded that the plaintiffs' claim had prescribed. Thereafter, the parties agreed to submit a special case on prescription for adjudication, first, in terms of rule 33(4).

The appeal was thus about extinctive prescription, in particular whether the creditor must have been aware of the full extent of its rights before prescription could have started to run against it.

The SCA found that on the common cause facts gathered from the statement of agreed facts, the pleaded case as reflected in the particulars of claim, and the founding affidavit, the plaintiffs had the required knowledge of 'the facts from which the debt

arises' on or about 26 September 2003. This was when the plaintiffs mandated the second defendant to exercise the option on their behalf and he told them that he would send a letter to the deceased's attorney, Mr Müller, and they did not sign anything. Apart from this, they became aware of the essential facts when they suffered damages when the option lapsed on 13 November 2003. Their cause of action against the defendants was thus complete on the latter date. Alternatively, the latest, objectively, that they should reasonably have had the requisite knowledge was when they terminated their mandate with the second defendant and instructed Mr Nilssen, their new attorney, in January 2005. This qualified as deemed knowledge within the contemplation of s 12(3) of the Prescription Act 68 of 1969.

The SCA found further that the fact that the plaintiffs were unaware of the provisions of s 2(1) of the Alienation of Land Act 68 of 1981 until early November 2017, could not have been a fact from which their claim arose. But instead, it was a legal conclusion. On this basis, applying the principle extrapolated from the considered precedents, the SCA found that the contention that the plaintiffs only became aware of the facts from which the debt arose during the cross-examination in early November 2007 could not have been correct.

The SCA thus held that the plaintiffs' claim prescribed before summons was served on 26 September 2009. Further, that it was not required of the plaintiffs to have known more about the Alienation of Land Act and compliance with it. Only that they had mandated the defendants to act on their behalf, and they had not done so.

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