



## 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

**Date:** 17 June 2022

**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***

*Rademeyer v Ferreira* (343/21) [2022] ZASCA 92 (17 June 2022)

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Today the Supreme Court of Appeal (SCA) handed down a judgment dismissing, with costs, an appeal against the decision of the Eastern Cape Division of the High Court, Port Elizabeth (the high Court).

The issues before the SCA were whether service of the notice of motion in 2012 constituted 'a process whereby the creditor claims payment of the debt' within the meaning of s 15(1) and whether the issuing of summons claiming damages under a different case number amounted to the prosecution of 'the process in question' as contemplated by s 15(4).

On 27 August 2008, the parties concluded a written agreement of sale. The appellant, Mr Rademeyer, purchased an immovable property from the respondent, Mr Ferreira, for R950 000. The appellant paid R190 000 as a deposit. However, he refused to sign the required documents to effect the transfer registration into his name and furnish guarantees for payment of the purchase price balance. As the applicant in the High Court, the respondent brought an application for rectification of the deed of sale and an order compelling the appellant to sign the necessary transfer documents to effect registration of transfer of the property into his name. Furthermore, the respondent sought an order that, in the event of the appellant failing to comply with his obligations within five days of the service of the order upon him, the agreement would be cancelled, and the respondents would be entitled to claim damages.

On 7 August 2012, Pickering J granted the relief sought by the respondent as per the notice of motion. Consequently, the appellant failed to comply with that order. In 2016, under the same case number and in the same application, the respondent applied for amended relief for payment of damages due to the appellant's failure to comply with the order of Pickering J. The appellant filed a rule 30(1) notice contending that the order of Pickering J was a final order as it disposed of all the relief set out in the first application. As a result of the objection, and in March 2016, the respondent withdrew the interlocutory application and issued fresh summons under a new case number, in which the respondent sought payment of the sum of R854 182.20 as damages arising from the appellant's failure to comply with the original order of Pickering J and cancellation of the agreement. The appellant filed a special plea to this claim contending that the claim had become prescribed as the respondent failed to institute the action by 23 August 2015, which was three years from the date the order of Pickering J was granted plus five days. The High Court found for the respondent on three grounds.

According to the SCA, there were two different case numbers which sought to enforce the debt in the current instance: one was the application seeking a declaratory order in 2012 and enforcement of the contract as a result with an alternative claim for damages, and the other was the issue of summons in 2016, in which the respondent sought to quantify his damages consequent to the alternative part of the said order since it had not been complied with.

The SCA held that it bore mentioning that s 15(1) did not refer to a cause of action but to claiming a 'debt'. Relying on case law, the SCA held that for the prescription to be interrupted, there must be a right enforceable against the debtor in respect of which prescription was running, and the process

served on the debtor instituting legal proceedings must be to enforce that right. In addition, the SCA held that it bore mentioning that ordinarily, damages claims are pursued by way of summons. In contrast, a declaratory order was ordinarily pursued by way of notice of motion. This raised the question of whether these two steps were steps in the enforcement of the same debt or conflict with the 'once and for all' rule.

Relying on case law, the SCA held that while acknowledging the undesirability of piecemeal litigation, Howie J stated that the words 'debt' and 'payment' in s 15(1) were used in a wide and general sense and that claiming payment of a debt was no different in principle from enforcing the right to payment of the debt. Moreover, the SCA held that the approach by Howie J was approved by this Court in various cases.

In order to answer the question of whether the institution of the application procedure in 2012 interrupted the running of prescription in relation to the claim that forms the basis of the present proceedings, the SCA held that it must be determined first whether the basis of the claim in the application procedure in 2012 was the same as the basis of the claim in the present proceedings; secondly, whether the application proceedings were a 'step in the enforcement of a claim for the payment of a debt'; and lastly, whether the application proceedings disposed of some element of the claim in the current action.

The SCA held that the current claim for damages was based on the alternative relief in the event of non-compliance with the order of Pickering J. Hence, the basis of the action for damages was the same as the basis for a claim for specific performance in that it arose from the same facts. In fact, the right to claim damages formed part of that order. Accordingly, the SCA held that the respondent sought to quantify his damages consequent to the cancellation of the deed of sale when the appellant failed to comply with the main part of the order. Thus, according to the SCA, he could not have succeeded in the damages claim without first establishing the appellant's liability for the damages he suffered. That liability for damages was established by way of that order when the appellant failed to comply within the requisite period.

Furthermore, the SCA had to deal with whether the service of the initial application in 2012 constituted a 'step' in enforcing a claim for payment of a debt. According to the SCA, it was clear that the declaratory order granted by Pickering J determined a key issue that arose in the damages claim, namely whether the appellant was liable for damages suffered by the respondent. The SCA found that the respondent could not succeed in his damages claim without first establishing that the appellant was liable for his damages. Hence, the claim for specific performance, alternatively damages before Pickering J accordingly constituted a crucial step in the process of recovering the debt.

Lastly, the SCA held that applying the above interpretation; it followed that the service of the notice of motion in the application for a declaratory order, alternatively damages, in 2012 had the effect of interrupting the running of prescription as provided for s 15(1) of the Act in relation to the damages claim in this case. Relying on case law, the SCA held that prescription stood interrupted unless the judgment was abandoned or set aside on appeal. Thus, the judgment of Pickering J was never abandoned. Consequently, the SCA held that this conclusion made it unnecessary to consider the other arguments raised by the appellant. Finally, the SCA held that the appeal must therefore fail.

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