



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: 24 July 2026

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

Janse van Vuuren v WJB Streiger (1459/2024) [2026] ZASCA 102 (24 July 2026)

Today, the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against the judgment and order of the North West Division of the High Court, Mahikeng.

The appeal concerned when a debt arising from a home builder's breach of a warranty to repair major structural defects becomes 'due' for purposes of s 12(3) of the Prescription Act 68 of 1969 (Prescription Act).

In September 2015, the appellant and the respondent concluded a building contract in terms of which the respondent undertook to construct a residential home. The building was completed in September 2016, and the appellant took occupation on 31 October 2016. During December 2016, structural defects became apparent and were reported to the respondent. Although the respondent carried out remedial work on 4 January 2017, further major defects appeared in November 2017. Following an inspection on 6 December 2017, the respondent's engineer confirmed the existence of major structural defects in a report dated 30 January 2018 and recommended extensive remedial work. Despite a letter of demand dated 1 June 2018 and further repair attempts on 5 October 2018, the defects remained unresolved. The appellant instituted an action for damages on 20 January 2021. The respondent's special plea of prescription was dismissed by the trial court however, upheld by the full court.

The issue before the SCA was whether prescription commenced when the appellant first became aware of the structural defects or only when the respondent had failed or refused to repair them after being afforded a reasonable opportunity to do so.

This Court held that prescription begins to run only when the creditor has knowledge of the minimum facts necessary to institute an action and is in a position to enforce the right in law. In the context of the statutory warranty in s 13(2)(b)(i) of the Housing Consumers Protection Measures Act 95 of 1998 (Housing Consumers Act), those facts include not only knowledge of the structural defects and their cause, but also knowledge that the home builder has failed or refused to repair them after being afforded a reasonable opportunity to do so.

The SCA held that the full court conflated knowledge of the defects with knowledge that the warranty had been breached. Mere awareness of the defects activates the warranty; it does not render a damages claim due. This Court further held that s 13(2)(b)(i) of the Housing Consumers Act does not prescribe a period within which legal proceedings must be instituted and therefore does not constitute a statutory time-bar contemplated in s 16 of the Prescription Act.

On the facts, the respondent continued attempting to repair the defects and never communicated a refusal to do so. It therefore failed to establish that the appellant had acquired the minimum facts necessary to institute a claim for damages more than three years before summons was served. Accordingly, the special plea of prescription could not succeed.

As a result, the appeal was upheld with costs, the order of the full court was set aside and substituted with an order dismissing the appeal with costs, and the matter was remitted to the trial court for determination of the merits.

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