**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

Case no: 1459/2024

In the matter between:

**RUAN JANSE VAN VUUREN** **APPELLANT**

and

**WJB STIEGER KONSTRUKSIE (PTY) LTD** **RESPONDENT**

**Neutral citation:** *Janse van Vuuren v WJB Stieger Konstruksie (Pty) Ltd* (1459/2024) [2026] ZASCA 102 (24 July 2026)

**Coram:** MBATHA, MEYER and MOLEFE JJA and STEYN and NORMAN AJJA

**Heard:** 26 February 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 24 July 2026.

**Summary:** Prescription – section 12(3) of the Prescription Act 68 of 1969 – application of prescription regulated by the provisions of the Housing Consumers Protection Measures Act 95 of 1998 – breach of home builder's warranty to repair

major structural defects – claim not prescribed – prescription also regulated in terms of the warranty in the building contract.

## ORDER

**On appeal from:** North West Division of the High Court, Mahikeng (Hendricks JP, Diale DJP and Peterson J, sitting as court of appeal):

1 The appeal is upheld with costs.

2 The order of the full court is set aside and substituted with the following:

'The appeal is dismissed with costs.'

3 The matter is remitted back to the trial court for determination of the merits.

## JUDGMENT

**Molefe JA (Mbatha and Meyer JJA and Steyn and Norman AJJA concurring):**

[1] The appeal concerns the question of some practical importance in the law of prescription: when does a debt arising from a home builder's breach of a warranty to repair major structural defects become 'due' within the meaning of s 12(3) of the Prescription Act 68 of 1969 (the Prescription Act).

[2] The appellant, Mr Ruan Janse van Vuuren (Mr Janse van Vuuren), a businessman, instituted an action for damages against the respondent, WJB Stieger Konstruksie (Pty) Ltd (Stieger Konstruksie), a construction company based in Rustenburg, North West Province. The claim arose from a building contract entered into in September 2015 between Mr Janse van Vuuren and Stieger Konstruksie, represented by Mr Wouter Stieger (Mr Stieger).

[3] The material terms of the agreement were as follows. Stieger Konstruksie undertook to (a) build and construct a residential home for Mr Janse van Vuuren at

stand 2311/2312, Schoongezigt Estate, Rustenburg; (b) the home was to be constructed in a workmanlike manner and be fit for habitation; (c) the home was to be constructed in accordance with the National Home Builders Registration Council (NHBRC) Technical Requirements to the extent applicable to the home at the date of enrolment of the home and the terms, plans and specification of the agreement; and (d) Stieger Konstruksie shall at its costs and upon demand by Mr Janse van Vuuren, rectify major structural defects in the home caused by the non-compliance with the NHBRC Technical Requirements occurring within a period of not less than five years as from the occupation date, and give notice to Stieger Konstruksie within that period.

[4] The building of the house was completed in September 2016. Mr Janse van Vuuren took occupation on 31 October 2016. During December 2016, Mr Janse van Vuuren observed that there were structural defects in the house, there were cracks on the walls and the floor in the bar area was sinking. He reported these defects to Stieger Konstruksie in December 2016. On 4 January 2017, Stieger Konstruksie attended to remedial work in the house.

[5] In November 2017, Mr Janse van Vuuren informed Stieger Konstruksie of the appearance of a major crack in the house. On 6 December 2017, Mr van der Walt, a civil and structural engineer from Infra Struct Design CC, appointed by Stieger Konstruksie, conducted an inspection of the house in order to identify the nature and extent of the defects and the remedial action to be taken to repair them.

[6] On 30 January 2018, Mr van der Walt produced a report which identified the existence of major structural defects in the construction of the house. The following defects were confirmed in the report: (i) severe cracks between the concrete beam

and brickwork; (ii) wall cracks in the lower ground floor in all the bedrooms and the balcony areas outside the bedrooms; (iii) severe cracking of the brick structure in the bar area and the lounge; and (iv) roof leaks were also observed. The report also identified the nature of the remedial work that needed to be done. Major repairs were needed, as the engineer found that the house was uninhabitable.

[7] On 1 June 2018, Mr Janse van Vuuren's attorney sent a letter of demand to Stieger Konstruksie, demanding that it immediately proceed with all the required steps as advised in the report to repair all defects identified therein. Furthermore, that both parties should confirm the time required to finalise all the repairs.

[8] Consequently, on 5 October 2018, Stieger Konstruksie attended to the house and attempted to effect repairs as recommended by the engineer. However, Stieger Konstruksie was unable to carry out effective remedial work due to the nature of the structural defects.

[9] On 8 June 2021, Mr Janse van Vuuren lodged a complaint with the NHBRC, in terms of the warranty forming part of the agreement. The NHBRC sent a letter to Stieger Konstruksie on 9 June 2021, informing it that in terms of s 13(2)*(b)*(i)(iii) of the Housing Consumers Protection Measures Act 95 of 1998 (the Housing Consumers Act), Stieger Konstruksie has an obligation to rectify structural defects caused by the non-compliance with the NHBRC Technical Requirements, notified by the housing consumer (Mr Janse van Vuuren), within five (5) years of the occupation date. The NHBRC requested Stieger Konstruksie to resolve the complaint.

[10] On 20 January 2021, Mr Janse van Vuuren instituted an action against Stieger Konstruksie for payment of damages for breach of the warranty to repair major structural defects in the home. The claim was for damages in the amount of R4 638 738.29, representing the fair and reasonable costs to repair the structural defects. As the house was unsafe for habitation, further damages in the amount of R20 000 per month were claimed for alternative accommodation pending completion of repairs.

[11] The matter served before the North West Division of the High Court, Mahikeng, per Reid J. Stieger Konstruksie defended the matter and raised a special plea of prescription. The high court dismissed the special plea. Dissatisfied with the decision, Stieger Konstruksie appealed the high court judgment. The appeal served before the Mahikeng full court.

[12] On appeal, the full court upheld the special plea of prescription in favour of Stieger Konstruksie, and held that the claim became due when Mr Janse van Vuuren first became aware of the existence of major structural defects, which it found to have been no later than 6 December 2017, when the engineer first attended the home. On that basis, the claim had prescribed by 6 December 2020, more than a month before the summons was served. The full court also reasoned, in part by reference to s 16 of the Prescription Act, that the statutory warranty in s 13(2)(*b*)(i) of the Housing Consumers Act, did not delay the running of prescription.

[13] The appeal against the judgment of the full court serves before this court. The nub of the appeal is whether prescription was regulated in terms of the contract or by the Prescription Act. The contract embodies a different prescription period, regulated by the Housing Consumers Act. Secondly, whether on the conspectus of

the evidence, the claim has prescribed in terms of the Prescription Act and the Housing Consumers Act.

## Legislative Framework

### *Prescription Act 68 of 1969*

[14] Prescription begins to run as soon as the debt is due. Section 12(3) of the Prescription Act provides that a debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises, subject to the proviso that a creditor shall be deemed to have such knowledge if they could have acquired it by exercising reasonable care.[1]

[15] It is settled law that prescription begins to run only when the creditor has knowledge of the minimum facts necessary to institute an action.[2] The Constitutional Court in *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* (*Trinity*)[3] confirmed that prescription will begin to run only when the creditor is in a position to enforce their right in law, not necessarily when that right first arises.

[16] Where a special plea of prescription is raised, the enquiry under s 12(3) involves two distinct steps. The first is to determine what the primary facts are from which the debt arose. The second is to determine when the creditor had or could reasonably have obtained knowledge of those primary facts.[4] There may be some overlap between these two enquiries.[5]

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[1] *Links v Department of Health, Northern Province* [2016] ZACC 10; 2016 (5) BCLR 656 (CC); 2016 (4) SA 414 (CC) para 26.
[2] *Truter and Another v Deysel* [2006] ZASCA 16; 2006 (4) SA 168 (SCA) para 16.
[3] *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* [2017] ZACC 32; 2017 (12) BCLR 1562 (CC); 2018 (1) SA 94 (CC) (*Trinity*) paras 40-41.
[4] *MEC for Health, Western Cape v Coboza* [2020] ZASCA 165; 2020 JDR 2720 (SCA) para 8.
[5] *Johannes G Coetzee & Seun and Another v Le Roux and Another* [2022] ZASCA 47; 2022 JDR 0773 (SCA) para 18.

[17] The onus of proving prescription rests on the party invoking it, including proof of the date on which actual or constructive knowledge was acquired. The evidentiary burden shifts to the creditor only once the debtor has established a prima facie case.[6]

***Housing Consumers Protection Measures Act 95 of 1998***

[18] Section 13(2) of the Housing Consumers Act imposes a series of warranties on home builders in favour of housing consumers. Section 13(2)(*a*) requires that a home be constructed in a workmanlike manner fit for habitation, and in accordance with the NHBRC Technical Requirements and the specifications of the agreement. Section 13(2)(*b*)(i) further provides that a home builder warrants that it shall, at its own cost and upon demand by the housing consumer, rectify any major structural defects in the home caused by non-compliance with the NHBRC Technical Requirements and occurring within a period of not less than five years from the occupation date, and notified to the house builder within that period.

[19] It is common cause that both the warranties in s 13(2)(*a*) and those in s 13(2)(*b*)(i) were incorporated as a contractual matrix of the building agreement between the parties, and that Stieger Konstruksie was a 'home builder' and Mr Janse van Vuuren a 'housing consumer' as defined in the Housing Consumers Act.

[20] The proper approach to the construction of legislation is now well settled. A court must ascertain the meaning of the text by reading the words in their grammatical and ordinary sense, understood in the context of the provision as a whole, and in light of the apparent purpose of the legislation.[7] Where more than one

[6] *Jugwanth v Mobile Telephone Networks (Pty) Ltd* [2021] 4 All SA 346 (SCA); 2021 JDR 2056 (SCA) para 6.
[7] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

meaning is possible, each must be weighed against all of these considerations and a meaning that leads to insensible or uncommercial results must be avoided.

[21] Section 13(2)(*b*)(i) does not prescribe a time period within which the home builder must complete repairs after being notified of the structural defects. Notification must be within the five-year period and the law imposes an obligation to rectify at the home builder's cost within a reasonable time.[8] Read in context the provision contemplates that the home builder will be afforded a reasonable opportunity to comply with the obligation to rectify after being notified. Only when the home builder has refused to repair or has failed to do so within a reasonable time is there a breach of the warranty.

[22] It follows that the minimum facts which a housing consumer must know before a debt for damages arising from a breach of a s 13(2)(*b*)(i) warranty becomes due are: that there are major structural defects in the home; those defects were caused by non-compliance with the NHBRC Technical Requirements; and that the home builder has failed or refused to repair the major structural defects at its own costs. Until that point, Mr Janse van Vuuren was not in a position to enforce his claim for damages based on the breach of s 13(2)(*b*)(i) warranty.

[23] Stieger Konstruksie's argument, adopted by the full court, was that the debt became due when Mr Janse van Vuuren first became aware of the existence of major structural defects, at the very latest by 6 December 2017. This, however, conflates two distinct issues: knowledge of the defects (which may give rise to notifying the home builder and demanding repair), with knowledge that the warranty has been breached (which arises only when the home builder fails or refuses to repair after a

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[8] *Trinity* para 50.

reasonable opportunity to do so). The former is a precondition to activate the warranty, the latter is a precondition to bring a claim for damages for its breach.

[24] Stieger Konstruksie also contended that s 13(2)(*b*)(i) is but one of the three warranty periods in s 13(2)(*b*), and that it would be impractical to have different prescription commencement dates for each warranty. This, however, is not a compelling reason to distort the meaning of s 12(3) of the Prescription Act. As aforesaid, prescription runs from the date that the relevant debt becomes due. Different warranties may give rise to different debts with different commencement dates. That is not a reason to alter the ordinary application of the Prescription Act, but is a consequence of the legislative scheme.

[25] The full court also relied on s 16 of the Prescription Act, which provides that the Act does not apply where another Act of Parliament prescribes a period within which a claim must be instituted. That provision is, however, plainly not applicable here, but is only engaged where a statute creates a time-bar for litigation (e.g., Road Accident Fund Act 56 of 1996; Defence Act 42 of 2002). Section 13(2)(*b*)(i) does not prescribe a time period within which the housing consumer must institute proceedings, it prescribes the period within which the home builder warrants against major structural defects. The full court’s reliance on s 16 was therefore misplaced.

**Analysis**

[26] It is either common cause or established by evidence, that the minimum facts (that there are major structural defects in the home, caused by non-compliance with the NHBRC Technical Requirements, and that the home builder has failed or refused to repair the defects at its own costs), were known to Mr Janse van Vuuren, or could have been known to him on the exercise of reasonable care, only at a date no earlier

than the time when Stieger Konstruksie had been afforded a reasonable opportunity to repair the defects and had failed to do so.

[27] The relevant chronology is instructive. Although the engineer attended the home on 6 December 2017 on the instructions of Stieger Konstruksie, his report was only produced on 30 January 2018. That report identified the defects and what was required to repair them. On the evidence of Mr Stieger himself, the purpose of commissioning the engineer was precisely to identify the defects and determine what needed to be done to fix them. The suggestion that Mr Janse van Vuuren had, or could have had, the requisite knowledge on 6 December 2017, when neither party had the benefit of the engineer's findings and when he had just begun his assessment, is not supported by any evidence.

[28] More importantly, the minimum fact at issue was not merely the existence of major structural defects but rather that Stieger Konstruksie had failed or refused to repair them at its own cost. It is uncontested that Stieger Konstruksie was still actively attempting to repair the defects as late as 15 October 2018, when it carried out further repair work at its own cost.

[29] The evidence of Mr Stieger was also that he could not identify any date on which Stieger Konstruksie had informed Mr Janse van Vuuren of a refusal to repair. In these circumstances, Stieger Konstruksie wholly failed to discharge the onus of proving that Mr Janse van Vuuren had actual or constructive knowledge of the minimum facts necessary to sue for damages before 21 January 2018, being within three years prior to the date of service of summons. The high court was correct to dismiss the special plea.

[30] The full court, however, erred in upholding the special plea. It found, by implication, that Mr Janse van Vuuren has relied on an alleged refusal by Stieger Konstruksie to repair major structural defects at its own cost. This was, however, at odds with the pleadings and the evidence, both of which established that Stieger Konstruksie had attempted on numerous occasions, albeit unsuccessfully, to repair the defects. It never communicated a refusal to repair.

[31] Prescription runs only when the creditor has a complete cause of action and is in a position to enforce the right in law, not merely when the right arises. Mere awareness of the defects is not knowledge of a legally enforceable claim.

[32] The statutory warranties in the Housing Consumers Act create enforceable obligations between the builder and the consumer. In *National Home Builders Registration Council v Adendorf and Others*,[9] this Court held that the object of the council is to represent the interests of housing consumers by providing warranty protection against defects in new homes. Mr Janse van Vuuren only acquired the minimum facts necessary to sustain a cause of action on 5 October 2018, when it became apparent that although the defects were being attended to, remedial work was ineffective.

[33] Mr Janse van Vuuren's claim has not prescribed, and the appeal must therefore be upheld. There is no reason to depart from the ordinary rule that costs follow the result.

[34] The following order is made:

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[9] *National Home Builders Registration Council v Adendorf and Others* [2019] ZASCA 20; 2019 (5) SA 317 (SCA) para 7.

1 The appeal is upheld with costs.

2 The order of the full court is set aside and substituted with the following:

‘The appeal is dismissed with costs.’

3 The matter is remitted back to the trial court for determination of the merits

D S MOLEFE

JUDGE OF APPEAL

Appearances

| | |
|---|---|
| For the appellant: | P A Swanepoel SC |
| Instructed by: | Du Plessis Van Der Westhuizen, Rustenburg |
| | Phatshoane Henney Incorporated, Bloemfontein |
| | |
| For the respondent: | J P Van Den Berg SC with D Hewitt |
| Instructed by: | Moloto Weiss Incorporated, Rustenburg |
| | Lovius Block Incorporated, Bloemfontein. |