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

**JUDGMENT**

**Reportable**

Case No: 817/2013

In the matter between:

**ABSA BANK LIMITED** **APPELLANT**

and

**ANDRÉ KEET** **RESPONDENT**

**Neutral citation**: *Absa Bank v Keet* (817/13) [2015] ZASCA 81 (28 May 2015)

**Coram:** Maya, Bosielo, Wallis, Zondi JJA and Meyer AJA

**Heard:** 11 May 2015

**Delivered:** 28 May 2015

**Summary:** Prescription **-** A claim under the *rei vindicatio* not a debt in terms of Chapter III of the Prescription Act 68 of 1969 – does not prescribe after three years.

## ORDER

**On appeal from:** North Gauteng High Court, Pretoria (Fabricius J sitting as court of first instance):

1 The appeal succeeds and the order of the high court upholding the special plea of prescription is substituted with the following:

'The special plea of prescription is dismissed.'

2 No order is made as to costs.

## JUDGMENT

**Zondi JA (Maya, Bosielo, Wallis JJA and Meyer AJA concurring):**

[1] The main issue in this appeal is whether a claim under the *actio rei vindicatio* becomes prescribed after three years by virtue of the provisions of s 10 of the Prescription Act 68 of 1969 (the Prescription Act). The court a quo (Fabricius J) held that it did. In so doing he rejected the view of Blignault J in *Staegemann v Langenhoven*[1] that such a claim is not a debt for the purposes of Chapter III of the Prescription Act and can accordingly not be defeated by a plea of extinctive prescription.

[2] The issue arose in the following circumstances: Eastvaal Motors Limited ('Eastvaal Motors') sold a tractor vehicle ('vehicle') to the respondent, André Keet, in terms of a written instalment sale agreement ('the agreement') concluded by the parties on 26 September 2003. Eastvaal Motors' right, title and interest in and to the agreement was ceded to the appellant, Absa Bank Limited, on 26 September 2003. Thereafter the

[1] *Staegemann v Langenhoven & others* 2011 (5) SA 648 (WCC).

respondent took delivery of the vehicle.

[3] It was an express term of the agreement that ownership of the vehicle would not pass to the respondent until all amounts owing under the agreement had been paid in full. The purchase price would be paid by way of a specified number of instalments commencing on 1 November 2003 and ending on 1 November 2007. It was a further term of the agreement that, if the respondent failed to comply with any provisions of the agreement, or failed to make any payment in terms thereof, the appellant would be entitled to the return and possession of the vehicle. In that event the appellant would also be entitled to demand payment of any arrear instalments.

[4] On 18 November 2011 the appellant instituted action against the respondent in the North Gauteng High Court. It alleged that the respondent was in breach of the agreement in that he had defaulted in paying the instalments due and that it had cancelled the agreement. The summons was served on the respondent on 14 December 2011. In that action the appellant sought confirmation of its cancellation of the agreement and the repossession of the vehicle.

[5] The respondent defended the action, and apart from pleading over on the merits of the appellant's claims, delivered a special plea in which he alleged that the appellant's claim for payment of arrears had become prescribed under the Prescription Act. In his special plea the respondent alleged that the agreement on which the appellant sued would have come to an end on 1 November 2007, which is the date on which he contended the amount alleged to be outstanding became due and payable. The respondent contended that in terms of s 11 of the Prescription Act, 'any claim for arrears' against the respondent pursuant to the agreement prescribed on 31 October 2010. For that reason, he contended that it was not open to the appellant to cancel the agreement and recover possession of the vehicle. The appellant did not replicate to the respondent's special plea. The special plea was set down separately. On the basis of an

assumption that what was pleaded by the respondent in his special plea, though inelegantly expressed, covered the point, the issue for determination was whether the appellant's claim for repossession of the vehicle had become prescribed.

[6] The court a quo upheld the special plea with costs. It did so on the basis of its finding that *Staegemann*, in which it was held that a vindicatory claim being a claim to ownership in a thing and not a claim for payment of a debt, does not prescribe after three years, was wrongly decided.[2] In upholding the plea it followed cases such as *Evins v Shield Insurance Co Ltd*;[3] *Barnett v Minister of Land Affairs*;[4] *Grobler v Oosthuizen*;[5] and *Leketi v Tladi NO*.[6] (More on these cases will be said later in the judgment). It reasoned that if *Staegemann* were correct, 'the Bank could withhold its demand for the tractor for another decade or even longer, and then demand return of the vehicle so that it could calculate its damages'. It went on to refer to a recent decision of this Court in *Bester v Schmidt Bou Ontwikkelings CC*,[7] in which the correctness of *Barnett* and the decisions that followed it, was doubted and in which this Court found the reasoning in *Staegemann* attractive and quite convincing. This statement did not persuade the court a quo to adopt the reasoning in *Staegemann*.

[7] The parties reached a settlement shortly before the hearing so that the respondent was not represented. In view of the nature of the issues involved, this Court asked the Free State Bar Council to appoint an amicus curiae and we are grateful to him. At the hearing of this appeal this Court requested the appellant and the amicus curiae to address it on two preliminary points. The first was whether prescription of the vindicatory claim had been pertinently raised in the pleadings.[8] The second was whether

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[2] See also J Saner *Prescription in South African Law*, (Service Issue 21 – September 2014) at 3-40─3-41 in which the reasoning in *Staegemann* was criticised.
[3] *Evins v Shield Insurance Co Ltd* 1979 (3) SA 1136 (W) at 1141F-G.
[4] *Barnett & others v Minister of Land Affairs & others* 2007 (6) SA 313; [2007] ZASCA 95 (SCA) para 19.
[5] *Grobler v Oosthuizen* 2009 (5) SA 500; [2009] ZASCA 51 (SCA) para 18.
[6] *Leketi v Tladi NO & others* [2010] 3 All SA 519; [2010] ZASCA 38 (SCA) paras 8 and 21.
[7] *Bester NO & others v Schmidt Bou Ontwikkelings CC* 2013 (1) SA 125; [2012] ZASCA 125 (SCA) para 15.
[8] Section 17(2) of the Prescription Act.

the subsequent settlement of the matter by the parties and the withdrawal by the respondent of his opposition to the appeal had not rendered the appeal moot by virtue of the provisions of s 16(2)(*a*)(i) of the Superior Courts Act 10 of 2013.[9] With regard to the first point the parties were agreed that nothing turned on it as the issue was fully ventilated when the special plea was argued in the court a quo and that its judgment dealt with it and it is an issue in respect of which leave to appeal to this Court was granted, submitted the appellant. As to the second point, the appellant urged on this Court to hear the appeal notwithstanding its mootness on the ground that it raises a discrete legal issue of public importance.

[8] As a general principle, courts should not decide issues that are of solely academic interest. This principle is trite,[10] being one of long standing.[11] Notwithstanding its mootness, I am of the view that this appeal is a proper matter for this Court to exercise its discretion in favour of hearing it.[12] The issue of the legal nature of a vindicatory claim and whether it gives rise to a debt that is subject to extinctive prescription has been decided differently by different divisions of the high court. The recent decision of *Staegemann* on the period of extinctive prescription applicable to the vindicatory claim departs from the earlier decision in what is now the Gauteng Local Division in *Evins*, which received this Court's approval in *Barnett.*That decision was in turn followed by this Court in *Grobler* and *Leketi*. This Court in *Bester* doubted the correctness of all three of these decisions of this Court and expressed the view that a day would arise when this Court would have an opportunity to reconsider this vexing legal question. This is that day. Undoubtedly this appeal raises a discrete legal issue of public importance 'that would affect matters in the future and on which the adjudication of this Court is

[9] Section 16(2)*(a)*(i) provides:
'When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.'
[10] *Legal Aid South Africa v Mzoxolo Magidiwana & others* 2015 (2) SA 568; [2014] ZASCA 141 (SCA) para 2.
[11] *Coin Security Group v SA National Union for Security Officers* 2001 (2) SA 872; [2000] ZASCA 48 (SCA) para 7.
[12] *Natal Rugby Union v Gould* 1999 (1) SA 432; [1998] ZASCA 62 (SCA); *Land en Landbouontwikkelingsbank van Suid-Afrika v Conradie* 2005 (4) SA 506; [2005] ZASCA 15 (SCA) and *The Merak S: Sea Melody Enterprises SA v Bulktrans (Europe) Corporation* 2002 (4) SA 273; [2002] ZASCA 18 (SCA).

required . . .'[13] Moreover, the issue is not a factual dispute between the parties, but rather a matter of law that will affect many litigants beyond the confines of this case.

[9] I turn now to consider the merits of the appeal, namely whether the appellant's claim for the repossession of its vehicle is a 'debt', which for the purposes of the Prescription Act prescribes after three years. The court a quo dismissed the appellant's claim for repossession of the vehicle on the basis that it was a 'debt' as contemplated in s 11 of the Prescription Act and thus prescribed after three years. As I have already stated above, it reached its conclusion on the basis that *Staegemann* was wrongly decided.

[10] Counsel for the appellant submitted that a vindicatory claim is clearly a claim based on ownership of a thing and that it cannot be described as a claim for satisfaction of a debt. He argued that this Court should follow the reasoning in *Staegemann*, which he submitted, was correct. The amicus curiae submitted that if the legislature in its wisdom, had wanted to stipulate the period of prescription in respect of a vindicatory claim, for which neither the 1943 Prescription Act nor the present Prescription Act provided, it could have done so. But it chose not to do so, because, he submitted, it intended the prescription period in respect of a vindicatory claim to be decided on a case by case basis. But when asked by the Court whether that proposition reflected a correct approach to construing a statute such as the Prescription Act, he was constrained to concede that the construction he contended for was incorrect. His alternative argument was that for the sake of consistency this Court should in construing the Prescription Act interpret the concept 'debt' in the same manner as it was interpreted in cases such as *Barnett*; *Desai N.O. v Desai*; [14]; and *Electricity Supply Commission v Stewarts & Lloyds of SA (Pty) Ltd*.[15]

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[13] *Qoboshiyane NO v Avusa Publishing Eastern Cape (Pty) Ltd & others* 2013 (3) SA 315; [2012] ZASCA 166 (SCA) para 5.
[14] *Desai N.O. v Desai & others* 1996 (1) SA 141; [1995] ZASCA 113 (A).
[15] *Electricity Supply Commission v Stewarts & Lloyds of SA (Pty) Ltd* 1981 (3) SA 340 (A).

[11] *Staegemann* was a case on all fours with the present one. The applicant claimed the return of his vehicle from the first respondent, who had bought it from a third party, to whom it was fraudulently sold by the third respondent. The first respondent resisted the applicant's claim contending that the claim had prescribed. This plea was rejected after a thorough review of the authorities.

[12] It was pointed out by Holmes AJA in *Electricity Supply Commission* at 344F-H with reference to the *Shorter Oxford English Dictionary* and also to *Leviton & Son v De Klerk's Trustee*[16] that a debt is 'that which is owed or due; anything (as money, goods or services) which one person is under obligation to pay or render to another and 'whatever is due – *debitum* – from any obligation'. That definition was thereafter adopted and extended by this Court in *Desai N.O.* at 146I-J where a 'debt' was said to have 'a wide and general meaning, and includes an obligation to do something or refrain from doing something'. The notion that a vindicatory claim constituted a debt subject to extinctive prescription has its origins in the following statement in *Evins* (at 1141F-G):

'The word "debt" in the Prescription Act must be given a wide and general meaning denoting not only a debt sounding in money which is due, but also, for example, a debt for the vindication of property.'

[13] It is by no means clear what King J intended by this dictum. *Evins* dealt with a motor vehicle accident claim and the issue was whether a claim for personal injuries and a claim for damages for loss of support arising from the death of the plaintiff's husband were separate claims or a single debt for the purposes of prescription. No issue of a vindicatory claim arose for consideration. As the judge was contrasting a claim sounding in money with a claim for delivery of property, he may have meant nothing more than that both types of claims could give rise to a debt. His statement was not approved when the case came before this Court in *Evins*[17] and there is a passage in the judgment of

[16] *Leviton & Son v De Klerk's Trustee* 1914 CPD 685 at 691.
[17] *Evins v Shield Insurance Co Ltd* 1980 (4) SA 814 (A).

Corbett JA (at 842E-F) that seems inconsistent with it. There, in dealing with what constitutes a debt for purposes of prescription, Corbett JA said:

'… it is clear that the "debt" is necessarily the correlative of a right of action vested in the creditor, which likewise becomes extinguished simultaneously with the debt. (Cf *Erasmus v Grunow en 'n Ander* 1978 (4) SA 233 (O) at 245E.)'

[14] In *Erasmus v Grunow*, Van Heerden J had said that 'a right of action' and 'a debt' were two poles of an obligation' (''n Vorderingsreg en 'n skuld is egter twee pole van 'n verbintenis'.) In other words, they are the opposite poles of a single obligation.[18] An obligation for these purposes could arise from contract, delict or *ex lege* as Van Heerden AJA made clear in *Oertel*,[19] where he said that a debt is an obligation to do something, either by payment or the delivery of goods or services. It is one pole of an obligation, which in this context encompasses a right to receive and a corresponding duty to give. Significantly absent from this exposition is any suggestion that a claim arising other than from an obligation of this character, such as a claim to enforce a real right, is a debt.

[15] In *Barnett* this Court was confronted with a special plea of prescription raised by certain persons who had occupied and built structures on State land. The occupiers' argument in support of the plea relied on s 12(3) of the Prescription Act. They contended that the prescription period of three years commenced to run, at the latest, when the government acquired knowledge of the 'identity of the debtor and of the facts upon which the debt arose'; the 'debt' being the vindicatory relief which the government sought to enforce.

[16] Brand JA writing for this Court stated at para 19 of the judgment with reference

[18] *Cape Town Municipality and another v Allianz Insurance Co Ltd* 1990 (1) SA 311 (C) at 331C-E.
[19] *Oertel en Andere NNO v Direkteur van Plaaslike Bestuur* 1983 (1) SA 354 (A) at 370B-C.

to *Evins* that he was prepared to accept that the vindicatory relief which the government sought to enforce constituted a 'debt' as contemplated by the Prescription Act. He said that he could see no reason why it would not include a claim for the enforcement of an owner's right to property. But then the prescription point was dismissed on the basis of application of the concept of a continuous wrong.[20]

[17] *Grobler* concerned the question whether a claim to recover the proceeds of certain insurance policies ceded to the appellant's late husband, had prescribed. The high court held on the basis of the application of the pledge theory that what the applicant there sought to enforce was a vindicatory claim that became prescribed after 30 years. This Court rejected that finding. At para 19 this Court stated:

'. . . the prescription period of 30 years in s 1 of the Prescription Act relates to acquisitive prescription. For extinctive prescription, the period can, in the present context, only be three years provided for in s 11*(d)* of the Act'.

It referred to *Evins* and *Barnett* in support of that proposition. In the end nothing turned on the prescription point and the case was decided on other grounds.

[18] In *Leketi* the appellant alleged that his grandfather had fraudulently caused certain property to be registered in his own name instead of in the name of the appellant's late father. His claim was directed at setting aside the registration in the name of his grandfather and then procuring transfer of the property from his late father's estate. The claim was not a vindicatory claim and accordingly the reference to *Barnett* was obiter and irrelevant to the decision, which turned on the appellant's knowledge of the allegedly fraudulent transfer.

[19] In *Schmidt Bou Ontwikkelings* the question whether a vindicatory claim gives rise to a 'debt' which prescribed after three years, was raised, but not decided by this Court. But the reasoning in *Staegemann* in which the correctness of *Barnett* was doubted, was

[20] Paras 20 and 21.

found attractive and quite convincing and an inclination was expressed to revisit the correctness of the decisions in *Barnett*; *Grobler*; and *Leketi* to the effect that such a claim is extinguished by prescription after three years. [21]

[20] In my view, there is merit in the argument that a vindicatory claim, because it is a claim based on ownership of a thing, cannot be described as a debt as envisaged by the Prescription Act. The high court in *Staegemann* (para 16) was correct to say that the solution to the problem of the prescription is to be found in the basic distinction in our law between a real right (*jus in re*) and a personal right (*jus in personam*). Real rights are primarily concerned with the relationship between a person and a thing and personal rights are concerned with a relationship between two persons.[22] The person who is entitled to a real right over a thing can, by way of vindicatory action, claim that thing from any individual who interferes with his right. Such a right is the right of ownership. If, however, the right is not an absolute, but a relative right to a thing, so that it can only be enforced against a determined individual or a class of individuals, then it is a personal right.[23]

[21] That distinction between real rights and personal rights has consistently been recognised in our case law[24] and was recently explained by this Court in *National Stadium South Africa (Pty) Ltd v Firstrand Bank Ltd* [25] para 31:

'The first concerns the distinction between real and personal rights. Real rights have as their object a thing (Latin: *res*; Afrikaans: saak). Personal rights have as their object performance by another, and the duty to perform may (for present purposes) arise from a contract. Personal rights may give rise to real rights; for instance, a personal obligation to grant someone a servitude matures into a real right on registration. Real rights give rise to competencies: ownership of land entitles the owner to use the land or to give others rights in respect thereof. Others may say that ownership consists of a bundle of rights,

[21] Para 15.
[22] Reinhard Zimmerman *The Law of Obligations* (1990) at 6-7; C G Van der Merwe *Things* in 27 *LAWSA* 2 ed para 59.
[23] Wessels *Law of Contract in South Africa* 2 ed vol 1 p 3-4.
[24] *Smith v Farrelly's Trustee* 1904 TS 949 at 958; *Lorentz v Melle & others* 1978 (3) 1044 (T) at 1050D-E.
[25] *National Stadium South Africa (Pty) Ltd & others v Firstrand Bank Ltd* 2011 (2) SA 157; [2010] ZASCA 164 (SCA) para 31.

including the right to use the land, but it does not really matter who is right on this point.'

[22] Wessels points out at 3-4 that:

'In a real right we have the owner in direct relation to the thing he claims, but in a personal right the claimant must claim his right to a thing or act indirectly through an intermediate person called a debtor. The person who claims from his debtor money lent has no absolute right to particular coins, but he has the right of compelling his debtor to pay him what is due to him by virtue of the loan. The debtor is under a legal obligation to pay his creditor what is due to the latter.'

[23] The obligation which the law imposes on a debtor does not create a real right (*jus in rem*), but gives rise to a personal right (*jus in personam*). In other words, an obligation does not consist in causing something to become the creditor's property, but in the fact that the debtor may be compelled to give the creditor something or to do something for the creditor or to make good something in favour of the creditor.[26]

[24] The manner in which the Prescription Act is structured, reflects this distinction ─ acquisitive prescription of real rights is dealt with in Chapters 1 and 2 and the extinctive prescription of obligations is dealt with in Chapter 3. The reason for arranging the Prescription Act in this manner was explained by Professor J C de Wet, the author and draftsman of the present Prescription Act, in a full memorandum he submitted to the Legislature. The memorandum was published in February 1979 in a work called *Opuscula Miscellanea*.[27] Professor de Wet had this to say at p 77 para 5:

'Whether prescription is concerned with a single legal concept with two branches, viz. acquisitive and extinctive prescription, or whether there are in fact two distinct legal concepts is an old controversy. It appears to me that one is actually concerned with two distinct legal concepts and even the expressions, "acquisitive" and "extinctive" prescription are somewhat unfortunate and misleading. It is true that the passage of time plays a role in both legal concepts and that certain circumstances, connected to the person against whom "prescription runs", apply to both legal concepts, but nonetheless the two legal concepts rest on different foundations. In the case of acquisitive prescription one is concerned with real rights, which do not concern simply the acquisition of a right by the one and the loss of a right by the other, but also outward appearances that may affect third parties in their

[26] Wessels p 5.
[27] J J Gauntlett (ed) *Opuscula Miscellanea* (1979).

relationships with the one or the other. The rationale for the acquisition of real rights by prescription is the perpetuation of a factual situation that has existed for a long time, and upon which third parties may rely in their relationships with the ostensible rightful owner. In the case of extinctive prescription one is more specifically concerned with the relationship between creditor and debtor and prescription serves in the first instance to protect the debtor against claims that perhaps never came into existence or had already been extinguished. The obligation is by its nature and substance a temporary relationship that is destined to terminate through performance and moreover a relationship between creditor and debtor in which third parties are only indirectly involved. A real right, by contrast, is a relationship of a durable nature, that can be maintained against anyone and everyone, and which can impede commerce if outsiders cannot with confidence rely on the appearance thereof.'[28] (My own translation)

[25] In the circumstances, the view that the vindicatory action is a 'debt' as contemplated by the Prescription Act which prescribes after three years is, in my opinion, contrary to the scheme of the Act. It would, if upheld, undermine the significance of the distinction which the Prescription Act draws between extinctive prescription, on the one hand and acquisitive prescription on the other. In the case of acquisitive prescription one has to do with real rights. In the case of extinctive prescription one has to do with the relationship between a creditor and a debtor. The effect of extinctive prescription is that a right of action vested in the creditor, which is a corollary of a 'debt', becomes extinguished simultaneously with that debt.[29] In other

[28] The original text reads:
'5. Dit is 'n ou strydvraag of mens by verjaring met een regsinstelling te doen het wat twee vertakkings het, tw. Verkrygende en bevrydende verjaring, dan wel of hier eintlik twee selfstandige regsinstellings is. Na dit my voorkom het mens hier eintlik met twee selfstandige regsfigure te doen en is selfs die uitdrukkings "verkrygende" en "bevrydende" verjaring ietwas ongelukkig en misleidend. Dit is waar dat by albei regsfigure tydsverloop 'n rol speel en dat sekere omstandighede, wat verband hou met die persoon teen wie "verjaring loop", by albei regsfigure te pas kom, maar tog berus die twee regsinstellings of verskillende grondslae. In die geval van verkrygende verjaring het mens met saaklike regte te doen, waar dit nie net gaan oor die verkryging van 'n reg deur die een en die verlies van 'n reg deur die ander nie, maar ook met die skyn wat derdes in hulle verhoudings met die een of die ander kan raak. Die ratio vir die verkryging van saaklike regte deur verjaring is die bestendiging van 'n feitlike toestand, wat vir 'n lang termyn bestaan het, en waarop derdes ook kan afgaan in hulle verhoudings met die oënskynlike reghebbende. By bevrydende verjaring het mens meer bepaald te doen met die verhouding tussen skuldeiser en skuldenaar, en dien verjaring in die eerste plek om die skuldenaar te beskerm teen eise wat miskien nooit ontstaan het nie of reeds gedelg is. Die verbintenis is uit sy aard en wese 'n tydelike verhouding wat bestem is om deur voldoening tot niet te gaan, en bowendien 'n verhouding tussen skuldeiser en skuldenaar, waarby derdes slegs onregstreeks betrokke is. 'n Saaklike reg, daarenteen, is 'n verhouding van 'n duursame aard, wat teenoor elkeen en iedereen gehandhaaf kan word, en waarby dit in die verkeer stremmend kan werk indien buitestaners nie met vertroue op die skyn kan afgaan nie.'
[29] *Evins v Shield Insurance Co Ltd* 1980 (2) SA 814 (A) at 842E-F.

words, what the creditor loses as a result of operation of extinctive prescription is his right of action against the debtor, which is a personal right. The creditor does not lose a right to a thing. To equate the vindicatory action with a 'debt' has an unintended consequence in that by way of extinctive prescription the debtor acquires ownership of a creditor's property after three years instead of 30 years that is provided for in s 1 of the Prescription Act. This is an absurdity and not a sensible interpretation of the Prescription Act.[30]

[26] I am aware that we are differing from a view that has been expressed in three judgments of this court, albeit in my view none of those decisions was dependent upon the correctness of that view for the ultimate result. However, to the extent that this view could be seen as the ratio decidendi of those decisions, I would hold that it was incorrect. I am aware of the restricted basis upon which this Court departs from its earlier decisions, but am of the view that this is one of those rare cases in which it is appropriate to do so. First, the decision (*Barnett*) is of reasonably recent origin so it cannot be said that people have organised their affairs on the basis that it was correct. Second, the author of the decision has indicated that it should be reviewed by this Court. Third, the perpetuation of that view gives rise to absurdity in the construction of an important statute and would cause uncertainty in a multitude of relationships.

[27] In the circumstances, the court a quo erred in upholding the special plea on the basis of its finding that a claim for delivery of a tractor was a 'debt' that becomes prescribed after three years by virtue of the provisions of s 10 of the Prescription Act.

[28] In the result the following order is made:

1 The appeal succeeds and the order of the high court upholding the special plea of

[30] See, in general, *National Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593; [2012] ZASCA 13 (SCA) para 18.

prescription is substituted with the following:

'The special plea of prescription is dismissed.'

2 No order is made as to costs.

**D H Zondi**
**Judge of Appeal**

Appearances

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|---|---|
| For the Appellant: | N C De Jager |
| | Instructed by: |
| | Webber Wentzel Attorneys, Cape Town |
| | c/o Matsepes Inc Attorneys, Bloemfontein |
| Amicus Curiae: | L le R Pohl SC |