

Unaware

In a recent matter, *RAF v Mdeyide*, decided on September 30 2010, the Constitutional Court had to decide whether s12(3) of the Prescription Act applies to claims under the RAF Act by virtue of s16 of the Prescription Act. In other words should, or could the knowledge requirement of the Prescription Act be read into the RAF Act and, if not, does s23(1) of the RAF Act limit the right of access to courts, and thus could it be declared unconstitutional?



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s12(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 claim arises: provided that a creditor shall be deemed to have the knowledge if he could have acquired it by exercising reasonable care. s16 of the Prescription Act provides that the Act shall apply to any debt (the court accepted that a debt is also a claim under the RAF Act). s23(1) of the RAF Act provides that a claim shall become prescribed upon the expiry of three years from the date upon which the action arose. The Respondent, Mr Mdeyide, was left virtually blind after a childhood accident. He had almost no formal education and is illiterate. On March 8 1999 Mdeyide, accompanied by his wife, was walking on the road close to home when he was struck by a motor vehicle. On September 17 1999, on his wife's urging Mdeyide visited the offices of an attorney who was to lodge a claim with the RAF on his behalf. Events did not run smoothly and only on March 11 2002 did the attorney send the claim to the RAF; three years and three days after the accident. The RAF raised a special Plea of prescription.

It was argued on behalf of Mdeyide that the provisions of the Prescription Act apply to claims under the RAF Act and that prescription will thus not commence until the creditor (Mdeyide) is aware, not only of the accident, but also of the existence of the RAF. The court noted that s12(3) of the Prescription Act and s23(1) of the RAF Act differ with regard to the central topic in the two provisions, namely the point when prescription starts to run. s23(1) simply relies on the date on which the cause of action arose and does not require knowledge of the identity of the debtor as does s12(3). The RAF as the "debtor" against whom claims are lodged, differs from the debtor whose identity is referred to in the Prescriptions Act. The reason why knowledge of the identity of the debtor is required in the event of prescription of claims in general is obvious. It may be known that money is owed to you, for example in terms of a delictual claim for damages to property, but one may not know who caused the damages and thus from whom to claim until the knowledge is gained. In contrast the RAF does not have an "identity" in the same sense that debtors, in general, have.

It is not one of several possible wrongdoers. It was never an actor in the fact making up the cause of action. The RAF is a statutory body created for the purpose of compensating the victims of road accidents. Knowledge of the identity of the debtor would thus mean knowledge of the law which is that a victim of a motor vehicle accident has a claim against the RAF. The court concluded that the limitation in s23(1) of the RAF Act is reasonable and justifiable under s36 of the Constitution and the Appeal by the RAF was upheld. It should be noted that the minority disagreed and concluded that s23 (1) of the RAF Act is unconstitutional.

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