CONSTITUTIONAL COURT OF SOUTH AFRICA

Pieter Paul Le Roux and another v Johannes G Coetzee & Seuns and another

CCT 117/22

Date of hearing: 16 May 2023

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday, 16 May 2023 at 10h00, the Constitutional Court will hear an application for leave to appeal against the judgment and order of the Supreme Court of Appeal which held that the applicants' claim against their attorneys for damages arising out of a breach of mandate claim had prescribed in terms of the Prescription Act 68 of 1969 (the Act). This matter turns on the point at which prescription begins to run in breach of mandate claims against legal practitioners, arising from negligent legal advice. Does prescription commence when the negligent advice is given, or when the client learns or is deemed to have known that the advice may have been incorrect? This is against the backdrop where section 12 of the Act has been interpreted to prescribe that prescription only commences when the creditor has actual or deemed knowledge of the facts (and not the legal conclusions) on which the debt arises.

The applicants, Mr Pieter Paul Le Roux and Ms Johanna Catharina Le Roux, are former clients of the respondents – the law firm Johannes G Coetzee and Seuns, and Mr Daniel Cornelius Coetzee (Attorney Coetzee) (respondents). On 13 September 2003, the applicants mandated Attorney Coetzee to exercise an option on their behalf which they had previously been granted in 2000 to purchase a farm in the Northern Cape from Mr Steenkamp. In doing so, the applicants inquired with Attorney Coetzee and were informed that they need not sign any documentation for purposes of giving effect to the mandate. On 26 September 2003, Attorney Coetzee addressed correspondence to the executor of Mr Steenkamp's estate purporting to exercise the option. It later transpired that the property had already been sold and transferred to Mr Nel, leading the applicants to bring an action against Mr Steenkamp's estate and Mr Nel to enforce the option and claim transfer of the property (previous action). In January 2005, Mr Nel filed his plea which, amongst others, disputed the validity of Attorney Coetzee's purported exercise of the option – no further details were provided in the plea. In November 2007, and during the trial in the previous action, under cross-examination, it was put to Mr Le Roux that Attorney Coetzee had failed to obtain the applicants' written authority and thus failed to comply with the requirements of section 2(1) of the Alienation of Land Act 68 of 1981 (the ALA) when exercising the option. The previous action was dismissed by High Court on the basis that the purported exercise of the option was ineffectual, as

it did not comply with the ALA. The applicants had already terminated Attorney Coetzee's mandate in January 2005 and in July 2005 had appointed new attorneys for purposes of the previous action.

Following this and on 29 September 2009, the applicants brought the breach of mandate claim against the respondents in the High Court. The respondents raised a special plea of prescription. The High Court dismissed the special plea finding that, in terms of section 12(3) of the Act, Attorney Coetzee's non-compliance with the ALA was not a legal conclusion, but a fact on which the debt arose that the applicants were required to have knowledge of for prescription to commence and which the applicants had only acquired during Mr Le Roux's cross-examination.

The respondents successfully challenged the High Court decision in the Supreme Court of Appeal. That Court found that, for purposes of section 12(3) of the Act, the primary facts included the consultation with Attorney Coetzee, the advice that they need not sign anything, the mandate provided to Attorney Coetzee to exercise the option and the subsequent letter sent by Attorney Coetzee. Further, it held that the applicants had become aware of the primary facts when they suffered damages and the option lapsed on 13 November 2003. Alternatively, it held, the applicants reasonably ought to have had knowledge when their new attorneys were appointed in January 2005. While the applicants only became aware of the non-compliance with the ALA during the cross-examination, the Supreme Court of Appeal held that this was a legal conclusion unrelated to and not required for the commencement of prescription. Aggrieved by the decision of the Supreme Court of Appeal, the applicants approach this Court for leave to appeal against the whole judgment and order of the Supreme Court of Appeal. The respondents oppose the application.

The applicants say that this Court's constitutional jurisdiction is engaged on three grounds. First, the matter relates to the proper interpretation and application of the Act which impacts their section 34 right of access to courts. Second, the Supreme Court of Appeal's decision resulted in conflicting judgments, creating legal uncertainty and, third, would create an insurmountable duty on members of the public when engaging with legal practitioners to further ascertain the correctness of the advice they receive. In the alternative, the applicants argue that these three grounds engage the Court's general jurisdiction. The respondents deny that the Court's general jurisdiction is engaged in this matter. The respondents submit that the matter falls outside this Court's jurisdiction as it turns on the question of when prescription began to run in the applicants' breach of mandate action which they say is factual, and any interpretative issues have been settled by our courts. Additionally, they submit that no constitutional issue has been raised.

On the merits, the applicants submit that the ineffectual exercise of the option was the primary fact for their breach of mandate claim. They dispute that they had deemed knowledge of this fact when they appointed new attorneys and contend that they only acquired actual knowledge in November 2007 during the cross-examination of Mr Le Roux. Accordingly, the applicants submit that the Supreme Court of Appeal was incorrect in holding that prescription commenced from the very moment that the option lapsed. The respondents submit that the primary facts in this matter were the knowledge that the applicants had given Attorney Coetzee a mandate and that he had attempted to exercise the option on their behalf, absent written authorisation. They submit that applicants' knowledge of the non-compliance with the ALA would have had no bearing on the running of prescription. The respondents submit that the applicants immediately became aware of the facts, or that they ought reasonably to have had then.