

# THE APPLICATION OF THE PRESCRIPTION ACT [1] TO DISPUTES UNDER THE LABOUR RELATIONS ACT [2]

## INTRODUCTION:

1. The application of the Prescription Act and specifically extinctive prescription in terms thereof has been a contentious matter in relation to disputes under the Labour Relations Act. There have been a number of differing views on the matter expressed by the Labour Court over time as detailed herein.
2. The matter was recently decided by the Constitutional Court where the order was unanimous but the reasons were supported by an equally supported split decision with views that drastically differ with the result that no majority judgment exists from the Constitutional Court once again evidencing the contentious nature of the issue.
3. Various cases are highlighted herein and summaries of the crucial aspects thereof are referred to for the purposes of the article. Please note however that the article is prepared as an overview of the legal principles applicable and is not a detailed analysis of the cases which go into more detail than what is referred to herein.

## IMPORTANT LEGISLATIVE PROVISIONS:

4. Chapter three of the Prescription Act deals with the extinction of debts in terms of the Act. The following provisions are important:

*The periods of prescription of debts shall be the following: [3]*

- (a) *thirty years in respect of -*
  - (ii) *any judgment debt;*
  - (d) *save where an Act of Parliament provides otherwise, three years in respect of any other debt.*
5. Prescription commences on the date that the debt becomes due subject to the creditor's awareness of the debt as well as the identity of the debtor and the facts that gave rise to the debt.[4]
  6. There are various ways for the running of prescription to be interrupted. For the present purposes the Act provides for judicial interruption of prescription through the service of "process"[5] whereby the debtor claims payment of the debt.[6]
  7. The provisions of chapter three of the Prescription Act are applicable in all instances other than where the provisions are in conflict with another Act which itself provides specific provisions on the periods.
  8. The Labour Relations Act previously did not deal with the issue of prescription. However, since the Labour Relations Amendment Act[7] the Labour Relations Act now includes the following provision in section 154(9) thereof:

*"An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award."*

## HISTORY OF THE APPLICATION OF PRESCRIPTION:

### THE LABOUR COURT:

9. There have been a number of different approaches to the situation by the Labour Court over time.
10. By large the position was seen to be that the Prescription Act was applicable to disputes under the Labour Relations Act and that arbitration awards prescribed after three years in accordance with section 11(d).[8]
11. Although the majority of the authority supports this view there are two sub views as well being:
  1. Although the three year prescription period is applicable it is stayed by the institution of review proceedings[9] and
  2. The Prescription Act and the three year period are applicable to arbitration awards which sound in money but not to awards which require reinstatement as that amounts to an award of specific performance rather than a debt.[10]
12. The dissenting approach as to the applicability of the Prescription Act is that the Act is not applicable to disputes in terms of the Labour Relations Act due to incompatibility between the two Acts.[11]

### THE LABOUR APPEAL COURT:

3. The Labour Appeal Court heard appeals in three separate matters and rendered a joint judgment[12] for them in terms of which it was found that the Prescription Act was applicable to all arbitration awards and that although the award did not constitute a "debt" in terms of the Act that the three year prescription period was applicable. The LAC further found that the institution of a review application or a writ of execution do not interrupt the running of prescription but that only an application in terms of section 158(1)(c) of the Labour Relations Act can interrupt it.

## THE CONSTITUTIONAL COURT:

4. The *Myathaza* judgment of the Labour Appeal Court was subsequently taken on appeal to the Constitutional Court as a result of which the recent judgment of *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Other*<sup>[13]</sup> was handed down. Although the judgment encompassed three separate judgments, with some differing views expressed therein, there was consensus on the order ultimately granted.
5. The background of the matter is in brief that Myathaza was dismissed for absenteeism. He referred an unfair dismissal dispute to the relevant bargaining council. The matter was arbitrated and an arbitration award was rendered which retrospectively reinstated him. The award was taken on review which remains pending even though all of the pleadings were filed. More than three years later Myathaza instituted a section 158(1)(c) application wherein he sought to enforce the award by having it made an order of court. This application was met with the defence that due to the running of prescription the award was no longer enforceable. The Labour Court held that the arbitration award had prescribed.
6. The Constitutional Court set aside the orders of the Labour Court and the Labour Appeal Court and substituted them with an order that the arbitration award had been made an order of court.
7. In short the first judgment (by Jafta J) found that the Prescription Act and the Labour Relations Act are incompatible with each other and that the provisions of the Labour Relations Act take preference over those in the Prescription Act. It was found that another interpretation would limit the rights of an applicant which would not be in line with the section 39(2) of the Constitution which prohibits interpretations to be imposed which are in conflict with the Bill of Rights.
8. In the dissenting judgment by Froneman J it was found that there was a need to re-interpret the provisions in order to give proper effect to the right of access to justice. However, it was found that the two Acts were not in conflict with each other but that they could be read together in a way that they would complement each other. Froneman J suggested that the 'process' would be commenced with in the referral of the dispute to the CCMA or Bargaining Council and that any review application would merely be a part of that same process in the same way as an appeal would be in normal proceedings. Thus the proposed interpretation is that prescription would not start running until the review application is finally determined.
9. The third judgment by Zondo J (who concurred with the view held by the majority) focuses on a number of technical issues in support of the findings in the first judgment. It was found that an arbitration award does not constitute a 'debt' for the purposes of the Prescription Act. Zondo J further found that an application in terms of section 158(1)(c) of the Labour Relations Act does not constitute a 'process' which would result in judicial interruption of prescription. Zondo J suggested that an amendment to the Labour Relations Act to the effect that the Prescription Act does not apply to it may be in order.

## CONCLUSION:

1. The judgments of Jafta J and Froneman J are both supported equally meaning that there was no majority judgment in the matter resulting in uncertainty as to the legal precedent set on the issue.
2. For parties that are involved in review applications the implication of both of the Constitutional Court judgments is that the prescription may not be relied upon as a defence to a claim. For this reason litigants should prosecute their review applications as expeditiously as possible to reduce the inherent risks of protracted litigation.
3. On the other hand in instances where an arbitration award has not been complied with or steps taken to enforce it within a three year period there is a possibility that on the interpretation by Froneman J that the defence of prescription may still be available.
4. In order for legal certainty on the matter the legislature will need to amend the current legislation or clarity in the form of a majority judgment from the Constitutional Court will need to be handed down.

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[1] Act 68 of 1969

[2] Act 66 of 1995

[3] Section 11 of the Act

[4] Section 12 of the Act

[5] Section 15(6) refers to the meaning of process as includes a petition, a notice of motion, a rule nisi, a pleading in reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced.

[6] Section 15(1)

[7] Act 6 of 2014

[8] *CEPPWAWU obo Le Fleur v Rotolabel A Division of Bidpaper Plus (Pty) Ltd* (2015) 36 ILJ 700 (LC)

[9] *Aon SA (Pty) Ltd v CCMA & others* (2012) 33 ILJ 1124 (LC)

[10] *Circuit Breakers Industries Ltd v NUMSA obo Hadebe & others* (2014) 35 ILJ 1261 (LC)

[\[11\]](#) *Cellucity (Pty) Ltd v CWU obo Peters* (2014) 35 ILJ 1237 (LC)

[\[12\]](#) *Myathaza v Johannesburg Metropolitan Bus Service (Soc) Limited t/a Metrobus; Mazibuko v Concor Plant; Cellucity (Pty) Ltd v CWU obo Peters* (2016) 37 ILJ 413 (LAC)

[\[13\]](#) (OCT232/15) [2016] ZACC 49 (15 December 2016)