

**IN THE HIGH COURT OF SWAZILAND**

**KHAYA FANA TSABEDZE**

**Plaintiff**

**And**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**1<sup>st</sup> Defendant THE COMMISSIONER OF**

**POLICE**

**2<sup>nd</sup> Defendant THE ATTORNEY**

**GENERAL**

**3<sup>rd</sup> Defendant Civil Case No. 1276/2004**

**Coram**

**S.B. MAPHALALA - J**

**For the Plaintiff MR S.C. SIMELANE**

**For the Defendants**

**MISS S MASEKO - Crown**

**Counsel (attached to the Attorney**

**General's Chambers)**

**JUDGMENT  
13<sup>th</sup> April 2007**

**[1] On the day of the trial the defendants raised a point *in limine* as follows:**

**1.The Plaintiffs claim is prescribed in that:**

- 1.1. The Plaintiff failed to serve a letter of demand upon the Attorney General within 90 days from the date on which the alleged debt became due as required by the Limitation of legal Proceedings against the Government Act, 1972.**
- 1.2 The Plaintiff failed to institute legal proceedings within 24 months from the date on which the alleged debt became due.**

**[2] In support of the above-cited point the court was referred to the provisions of the Limitation of Legal Proceedings against Government Act of 1972 more particularly Section 3 thereof. The court was also referred to the judgment of this court by Sapire CJ (as he then was) in the Civil Case No. 2987/97 in the matter of *Mandla Khumalo vs Attorney General and two others*.**

**[3] Section 3 of the Limitation of Legal Proceedings against Government Act provides as follows:**

**Non-applicability.**

**3.(1)Section 2 shall not apply in respect of:-**

- (a) a debt for which the Government has unequivocally in writing acknowledged liability to the person instituting legal proceedings in respect of such debt;**

**a counter claim in any legal proceedings instituted by the Government;**

- (b) a claim under the Motor Vehicle Insurance Act, No. 19 of 1946;**

**(d) a claim in respect of which any of the provisions of the Workmen's Compensation Act, No. 4 of 1963 apply. (2)Section 2(1) (a) shall not:-**

- (c) affect the issue of a rule nisi against the Government during such period of ninety days.**
- (d) apply to any urgent application made to court during the period referred to in such period of ninety days.**

[4] On the other hand, it was contended for the Plaintiff that on the first leg Defendants are estopped to canvas this argument as they do because in their plea they have waived raising this argument. On the second leg it is contended for the Plaintiff that the provisions of the Act does not allow the Defendant to raise this argument at this stage of the proceedings. In this regard the court was referred to *Almer's Precedence on Pleadings* and that the judgment in *Mandla Khumalo vs Attorney General and two others (supra)* cited by the Defendants is distinguishable from the facts of the present case.

[5] I have considered the arguments for and against the point *in limine* raised at the commencement of trial. It appears to me after weighing these arguments that the Plaintiff is correct in his arguments against the point of law *in limine* that it is misconceived. It is abundantly clear on the facts of the matter that the Defendants have waived their rights to canvas this point in view of what is deposed by the Defendant at paragraph 8 of the plea where Defendants admit that a demand was made but deny that they are liable to the Plaintiff for the amount claimed or any amount at all.

[6] Secondly, it would appear to me that the Plaintiff is correct that even in terms of the provisions of the Act cited by the Defendant they cannot raise such an argument at this stage in the proceedings.

[7] In the result, for the afore-going reasons the point of law *in limine* is dismissed with costs.